

Attachment 2

EPA's Explanation of the Proposed Penalty Assessment in the
Matter of New Prime, Inc.- CX04Cor



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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**EPA's Explanation of the Proposed Penalty Assessment in the Matter of New Prime, Inc.,
Docket No. RCRA-08-2020-0007**

Pursuant to the Prehearing Order in this matter, EPA Region 8 (EPA) provides this narrative explanation of the administrative penalty it proposes be assessed against New Prime, Inc. (Prime).

For the reasons explained below, EPA has calculated a penalty of \$631,402.

I. Introduction

This memorandum describes how EPA calculated a proposed penalty for the RCRA violations alleged against Prime. EPA conducted a calculation in accordance with the statutory factors set forth in section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including assessing the seriousness of the violations, any good faith efforts of Prime to comply with the applicable requirements, and other matters as justice may require.

EPA uses the 2003 RCRA Civil Penalty Policy (RCPP), [2003 RCPP Link](#), to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. Section II of this memorandum provides a brief overview of the RCPP calculation process. Section III describes facts that are relevant to all or most of the alleged violations. Section IV provides a detailed description of the calculations for each violation, including other relevant facts.

II. Brief Description of the RCPP Calculation Process

The RCPP requires four steps in calculating a penalty for each violation: (1) determining a gravity-based penalty from a penalty assessment matrix, (2) adding a "multi-day" component, as appropriate, to account for a violation's duration, (3) adjusting the sum of the gravity-based and multi-day components, up or down, for case specific circumstances, and (4) adding to this amount the appropriate economic benefit gained through non-compliance.

The gravity-based penalty is comprised of two components: (1) the potential for harm and (2) the extent of deviation from the regulatory requirements.

EPA determines the potential for harm based on the "risk of exposure" and "harm to the RCRA regulatory program." EPA measures the risk of exposure by evaluating the probability of exposure and potential seriousness of contamination. EPA assesses harm to the RCRA regulatory program based on how fundamental the requirement is to the integrity of the regulatory scheme. Using this analysis, EPA then assigns one of three gravity categories for the potential for harm component: (a) major, (b) moderate, or (c) minor. Each category is described in detail in the RCPP.

EPA determines the extent of deviation based on the degree to which the violator renders inoperative the requirement it has violated. Similar to the potential for harm component, EPA assigns one of three categories to the extent of deviation for a violation: (a) major, (b) moderate, or (c) minor.

EPA then uses a penalty assessment matrix to select the penalty amount. The potential for harm is represented on the vertical axis and the extent of deviation is represented on the horizontal axis. The specific penalty cell is selected after determining the appropriate category for each factor for the specific violation.

Since the enactment of RCRA, the statutory penalty maximum amounts have been amended numerous times to account for inflation pursuant to numerous pieces of legislation. Similarly, the RCPP has been amended twice to reflect inflation adjustments. The applicable RCPP amounts depend upon the date of violation. The key date for purposes of this matter is November 3, 2015, the cutoff date established for inflation adjustments under Federal Civil Penalty Inflation Adjustments Act Improvement Act of 2015.

For Counts 1, ~~and 2, and 3~~, discussed below, the violations are alleged to have occurred before November 3, 2015. In accordance with an EPA Memorandum from Rosemarie A. Kelley, *Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009* (April 6, 2010) ([Link to 2010 Matrices Update Memo](#)), the gravity-based penalty matrix and the multi-day penalty matrix in the 2003 RCPP were modified to reflect a gravity-based penalty matrix ranging from \$150 to \$37,500 and a multi-day matrix ranging from \$150 to \$7,090.

For Counts ~~3~~, 4 and 5, which are alleged to have occurred on or after November 3, 2015, the penalty amounts have been calculated pursuant to adjustments made to the 2003 RCPP matrices as directed by an EPA Memorandum from Susan Bodine, *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation* (January 15, 2020) ([Link to 2020 Matrices Update Memo](#)). Pursuant to the 2020 memorandum, the penalty calculation numbers in the RCPP that was issued in 2003 were adjusted upward by a multiplier of 1.60451. Therefore, pursuant to the 2020 memorandum each number in each matrix is adjusted upward by 1.60451.

EPA then determines whether a “multi-day” component is appropriate, and consults a similar matrix for penalties to be assessed from day 2 of violation through the last day. Generally, EPA is constrained by the RCPP to calculate a penalty for a maximum of 180 days.

The RCPP then requires consideration of case-specific facts to determine whether upward or downward adjustments to the gravity based number are warranted.

Finally, EPA is required use the best information available to EPA to determine whether any significant economic benefit has accrued to Prime as a result of the violation and, under many circumstances, include that amount in the final calculation.

III. Core Facts Relating to Each Violation Discussed in Section IV

On September 27, 2015, while en route from Pennsylvania to Oregon, a shipment of paints, including Universal Urethane Yellow Primer strontium chromate, being transported by Prime, a large national transit company, caught fire outside of Mountain Home, Idaho. Safety Data Sheets (SDS) for the paint and a bill of lading accompanied the shipment.

The SDS and bill of lading clearly state that the products Prime was transporting are hazardous materials, because they have a flash point less than 140 degrees Fahrenheit and because the primer contains significant amounts of chromium and barium. The SDS states that the strontium chromate in the primer contains chromium at concentrations between 25,000 parts per million (ppm) and 62,500

ppm, and barium chromate in the primer contains chromium at concentrations between 750 ppm and 2,500 ppm. (The federal regulatory level at which a waste becomes hazardous for chromium (D007) is 5 milligrams per liter (mg/L).¹ The SDS also states that the barium chromate in the primer contains barium at concentrations between approximately 1,620 ppm and 5,400 ppm. (The federal regulatory level at which a waste becomes hazardous for barium (D005) is 100 mg/L).

The Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-to Know Act (EPCRA)([Link to the List of Lists](#)), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and section 112(r) of the Clean Air Act (CAA) helps the regulated community identify whether they need to submit reports about these materials under 302 and 313 of EPCRA and determine if and when releases to the environment of these chemicals must be reported under 102 and 103 of CERCLA and Section 304 of EPCRA. It also helps facilities determine if they are subject to accident prevention regulations under CAA 112(r). Strontium chromate is a reportable substance under CERCLA when 10 or more pounds are released and it is a reportable quantity under EPCRA 313. The bill of lading states that the paint materials contained a reportable quantity of strontium chromate.

As a result of the fire, several drum of paint spilled along-side the highway and drums that remained in the burned trailer were rendered unusable, creating a significant amount of hazardous waste. After determining that the initial response to the fire and spillage of materials along-side the highway did not result in an adequate cleanup, the Idaho Department of Environmental Quality (IDEQ) required Prime, to conduct a second cleanup . IDEQ required that Prime or its contractors properly characterize the spilled paint residual and impacted soils to determine whether it was regulated hazardous waste and if it was to obtain an EPA ID number, use a manifest when transporting the waste, and dispose of the wastes at a permitted hazardous waste disposal facility. As part of the second cleanup, Prime hired Premium Environmental Services (Premium), and Premium arranged for H2O Environmental to conduct sampling on the residual wastes and impacted soils on November 18, 2015. Premium informed IDEQ on November 30, 2015, the residual waste and impacted soils excavated during the second clean-up were a hazardous waste being characteristically toxic for chromium, as well as carrying the D001 waste code for ignitability. As a result, Premium contacted IDEQ staff on November 30, 2015, to inquire about obtaining an EPA ID number. Finally, Premium, on behalf of Prime, arranged for disposal at U.S. Ecology, a permitted hazardous waste disposal facility and ensured the waste was transported under a manifest.

Based on the SDS and the bill of lading, both of which accompanied the original paint shipment, and based on communications from IDEQ at least as early as November 2015, Prime should have been on notice that the drums which remained on the compromised trailer contained waste that posed hazards to human health and the environment and that it might be regulated.

Prime did not make a hazardous waste determination pursuant to the regulations after the emergency ended at the site of the fire. Instead, Prime hired B&W Wrecker Services (B&W) to assist with the fire cleanup and transport materials away from the accident site, including the 32 drums which are the subject of this matter. B&W is a local wrecking company which is not equipped and trained to transport and dispose of regulated hazardous waste. B&W, with the assistance of Corder White Excavation (CWE), transported a portion of the waste generated during the initial response to CWE's facility in Idaho and then to Idaho Waste Systems solid waste landfill, which is not authorized for receipt of hazardous waste. B&W transported the remaining hazardous waste (burned drums that are the subject of this action) and the burned trailer to B&W's Lot in Idaho.

¹ Note that ppm is equivalent to mg/L; so, 1 ppm=1 mg/L.

On or about October 1, 2015, Prime hired Brett's Towing to transport the burned trailer and the remaining drums of hazardous waste from B&W's lot in Idaho to Prime's lot located at 3720 W. 800S, Salt Lake City, Utah (Facility). The drums and trailer were transported in their impaired condition and without complying with any of the requirements for safely transporting hazardous waste, including shipping the waste with a hazardous waste manifest.

After arrival at the Facility, the burned drums remained illegally stored on the impaired trailer, under a tarpaulin, for approximately 300 days until the situation was discovered by EPA's Criminal Investigation Division (EPA-CID) and the U.S. Department of Transportation Office of Inspector General. On or about August 3, 2016, in response to the discovery, EPA-CID sent a preservation letter to Prime requesting that the trailer and drums were not to be moved or manipulated.

On August 24, 2016, at the request of EPA-CID, EPA's National Enforcement Investigation Center (NEIC) conducted a field inspection at the Facility. NEIC conducted an inventory of the drums, performed on-site X-ray fluorescence spectrometry (XRF) of the 32 drums located on the burned trailer, and took representative samples of 8 of the 20 drums that the XRF indicated contained materials consistent with strontium chromate primer.

All eight samples had chromium levels between 36.8 and 352 mg/L, exceeding the regulatory level of 5 mg/L for toxicity for chromium. The samples were also tested to determine the flashpoint using an EPA-approved closed cup method. The flash point for all samples indicated that they exhibited the characteristic of ignitability, having flashpoints between 109 and 113 degrees Fahrenheit, below the threshold of 140 degrees Fahrenheit. The wastes in the 20 drums clearly are hazardous waste for ignitability (D001) and toxicity for chromium (D007).

IV. Summary and Count-Specific Analysis

SUMMARY OF TOTAL PROPOSED PENALTY

#	Count	Potential for Harm	Extent of Deviation	Gravity	Adjustment Factors Willfulness/ Negligence	Economic Benefit	Daily Statutory Max ²	Total
1	Failure to make a hazardous waste determination (Utah Admin. Code R315-5-1-1.11)	Major	Major	\$32,915	+10% \$3,292	\$10,800	\$37,500	\$37,500
2	Failure to prepare a manifest (Utah Admin. Code R315-5-2-2.20(a))	Major	Major	\$32,915	+10% \$3292	0	\$37,500	\$36,207
3	Storage of hazardous waste without a permit or interim status (Utah Admin. Code R315-3-1-1.1(a))	Moderate	Major	Day One: \$16,767 Multi-Day \$2295 x 179 \$427,572	+10% \$42,757	0	\$ <u>101,439</u> 37,500	\$ <u>470,329</u> 462,056
4	Failure to properly manage containers (Utah Admin. Code R315-7-16.4)	Major	Major	\$39,712	+10% \$3971	0	\$101,439	\$43,683
5	Failure to obtain an EPA ID Number (Utah Admin. Code R315-8-2-2.2)	Major	Major	\$39,712	+10% \$3971	0	\$101,439	\$43,683
Total								\$631,402

² Section 3008(a)(3) of RCRA, 42 U.S.C. 6928(a)(3), as modified pursuant to the Debt Collection Improvement Act of 1996, and the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. part 19, authorize a civil penalty of up to of up to \$37,500 per day per violation that occurred prior to November 2, 2015, and \$101,439 per day per violation that occurred after November 2, 2015, when penalties are assessed on or after January 13, 2020. Civil Monetary Penalties Inflation Adjustment, 71 Fed. Reg. 1751 (Jan. 13, 2020) and 78 Fed. Reg. 66643 (Nov. 6, 2013).

VIOLATIONS

Count 1. Failure to Make a Hazardous Waste Determination

According to 40 C.F.R. § 262.11, incorporated by reference at Utah Admin. Code R315-5-1-1.11, a generator must determine whether each solid waste it generates is a hazardous waste. Prime failed to conduct a hazardous waste determination for the 32 55-gallon burned drums of paint waste in violation of Utah Admin. Code R315-5-1-1.11.

Hazardous wastes regulated under RCRA, and state hazardous waste programs authorized by EPA to operate in lieu of the federal program, are either listed in 40 CFR Part 261, Subpart D, or are wastes characterized in 40 CFR Part 261 Subpart C (or state equivalent regulations), as hazardous by exhibiting one of four characteristics: ignitability (i.e., an oxidizer or flash point <140 F), corrosivity (i.e., pH < 2 or > 12.5), reactivity or toxicity. A hazardous waste determination must be made for each waste generated. Regardless of quantity, the generator of hazardous waste is then responsible for proper management of the waste from “cradle to grave” and can be held responsible for improper management of hazardous waste.

Prime did not make a hazardous waste determination at any point for almost a year after the fire. Had Prime made an accurate hazardous waste determination, Prime might have handled the waste in compliance with the transportation, storage, and disposal requirements, which would have reduced the risks of harm to humans (transporters and others) and the environment.

Penalty Summary Table:

Count 1. Failure to make a hazardous waste determination (Utah Admin. Code R315-5-1-1.11)	
Gravity Based Penalty a. Potential for Harm: Major b. Extent of Deviation: Major c. Middle of the Penalty Matrix Cell	\$32,915
Multi-day Penalty	N/A
Total Gravity Based Penalty	\$32,915
Adjustment Factors	
• Good Faith	N/A
• Willfulness/Negligence	+10%, \$3,292
• History of Noncompliance	N/A
• Other Unique Factors	N/A
Total Base Penalty	\$36,207
Economic Benefit	\$10,800
Total Penalty	\$37,500 (stat. max)

POTENTIAL FOR HARM

Major potential for harm is defined in the RCPP as (1) a violation that poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or constituents; and/or

(2) the actions have or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

The potential for harm associated with Prime's failure to make a hazardous waste violation is assigned as major. Proper hazardous waste determinations are the critical first step in the management of hazardous waste from the point of generation through final proper disposal. A failure to make a hazardous waste determination typically represents substantial harm to the RCRA program. In particular, failing to characterize hazardous waste increases the likelihood the hazardous waste will be mismanaged, treated, or disposed of in a manner that results in increased threats of harm, or actual harm, to human health and the environment. In sum, a hazardous waste determination is essential to proper management of hazardous wastes from cradle to grave.

As described in Section III above, Prime had information available to it from the time of the fire and obtained more information over the ensuing weeks indicating strongly that once a waste, the paint material they were transporting would be a regulated hazardous waste. This alone should have triggered Prime to make a hazardous waste determination, whether based on this available information or by conducting testing. Prime did neither, and EPA (through NEIC) eventually conducted tests showing that the waste was regulated because of its ignitibility and levels of chromium.

Prime's failure to make a hazardous waste determination resulted in transportation of burned drums containing hazardous waste that was not labeled, manifested, or placarded, and hauled by an unauthorized trucking company, which severely increased the risk of exposure to people and the environment if an accident or spill occurred during transportation over 300 miles of interstate. Prime's failure also put the transporters at high risk and the fact that the drums' integrity was significantly compromised further increased risk to handlers and the environment in case of another accident.

Prime's failure to make a hazardous waste determination then resulted in the storage of the burned drums of hazardous waste, most of which were open with missing bung caps, for over 300 days at the Facility, stored in a burned trailer that was covered only by a tarpaulin and exposed to the harsh outdoor elements of Salt Lake City, Utah. Prime's mismanagement of the burned drums of paint waste created a substantial potential for harm to human health and the environment including to personnel at the Facility.

Taking into account the specific facts of this matter, a major potential for harm is warranted.

EXTENT OF DEVIATION

Prime's failure to make a hazardous waste determination was itself a complete deviation from the requirement. It also directly resulted in substantial noncompliance with the entire program for almost a year, and unnecessarily created substantial risks of harm to humans and the environment. This failure to properly characterize the waste clearly jeopardizes the integrity of the RCRA program. Therefore, the selection of a major extent of deviation is appropriate.

PENALTY ASSESSMENT MATRIX

EPA analyzes and relies on case-specific factors to select a dollar figure within a particular matrix cell. The types of factors that may be considered include the seriousness of the violation relative to other violations falling within the same matrix cell, the environmental sensitivity of the area threatened by the violation, efforts at remediation or the degree of cooperation by the violator, the size and sophistication

of the violator, the number of days of violation, and other relevant matters. According to the RCPP, using the gravity-based penalty matrix for violations that occurred between December 6, 2013, and before November 2, 2015, the major potential for harm/major extent of deviation penalty cell has a penalty range of \$28,330 to \$37,500.

Taking into account the factors described in the RCPP and the size of the company, a penalty at the midpoint of the penalty cell was selected, \$32,915. EPA did not select the bottom of the cell because Prime is a large national trucking company that hauls hazardous materials and has the resources necessary to make a proper hazardous waste determination when necessary. Prime made no attempts to properly characterize and manage the burned drums of hazardous waste from the time of the fire until EPA-CID investigation, approximately 300 days later in August 2016. In addition, Prime received instruction in November 2015, from IDEQ on how to handle the waste from the fire, including contaminated soil along the highway at the site of the fire, but never tried to properly manage the burned drums that went to Utah. EPA did not select the top of the cell because Prime cooperated with EPA CID's investigation and disposed of the 32 drums of paint waste as hazardous waste at a licensed treatment, storage or disposal facility.

Multi-day Penalty: Multi-day penalties are generally considered mandatory for days 2 through last date the violation continues, up to a generally applied maximum of 180 days, for all violations with a gravity-based designation of major-major. EPA, however, has concluded that it is appropriate in this matter to view Prime's hazardous waste determination violation as independent and non-continuous; thus, EPA has not calculated a multi-day assessment for this violation.

Adjustment Factors: According to the RCPP, the following adjustment factors are to be considered before finalizing a gravity-based penalty amount: good faith, willfulness/negligence, history of compliance, ability to pay, environmental project credits, and other unique factors. Adjustments must be justified if applied. Please note that the analysis of the adjustment factors immediately below applies equally to each count, except where specifically noted in subsequent counts.

Willfulness and/or Negligence: The RCPP explains that "while 'knowing' violations of RCRA will support criminal penalties pursuant to section 3008(d), there may be instances of heightened culpability which may not meet the criteria for criminal action. In these cases, the penalty may be adjusted upward for willfulness and/or negligence." EPA proposes an upward adjustment to the gravity-based penalty for each count based on evidence of willfulness and/or negligence.

While assessing the degree of willfulness and/or negligence the following factors set forth in the RCPP were considered: Prime's full control over the events constituting the violation; foreseeability of the events constituting the violation; reasonable precautions against the events constituting the violation; whether Prime knew or should have known of the hazards associated with the conduct and whether the violator knew or should have known of the legal requirement that was violated.

Prime was contracted to haul hazardous materials. Because Prime is a large shipping company that routinely hauls hazardous materials, Prime should be aware of the dangers of shipping hazardous materials (and by extension hazardous waste). Once the hazardous materials caught fire and became unusable (as described by Prime, "a total loss"), the materials became solid waste. At that time, Prime, as the generator, was responsible for making a hazardous waste determination and then ensuring the proper transportation, storage, and disposal of the hazardous waste. By simply looking at the SDS sheets and bill of lading in the truck (accompanying the shipment), Prime should have been aware of the need

to make a waste determination for at least ignitability, or have decided to perform sampling for RCRA characteristic waste parameters (ignitability, corrosivity, reactivity, and toxicity).

Even if these documents were not clear enough, then certainly at some point during Prime's multiple interactions and communications with IDEQ, Prime should have been able to determine the waste was hazardous and then taken precautions to ensure the materials were handled correctly thereafter.

Records accompanying the materials shipment and records generated as a result of the fire response, the second residual waste and soils cleanup and improper disposal investigation at Idaho Waste Systems by IDEQ, all of which were shared with Prime at the time, support that Prime had knowledge in its possession that the wastes in the drums on the trailer likely were hazardous. Prime, though, continued to avoid compliance with any of the RCRA regulations, handling the waste for over 300 days without performing a waste determination and without managing it as hazardous wastes. For these reasons, EPA applied an upward adjustment of 10% for willfulness for each count.

Good Faith: No downward adjustment is given to Prime for efforts to comply or correct violations after the Agency's detection of the violations, since the amount set in the gravity-based penalty component matrix assumes good faith efforts by Prime to comply after EPA discovery of a violation. Thus, no justification for mitigation for good faith efforts to comply exists.

History of Compliance: According to the RCPP, the term "previous violation" includes "any act or omission for which the violator has previously been given written notification, however informal, that the Agency believes a violation exists." EPA has not identified previous violations which it views as warranting an upward adjustment for this factor.

Economic Benefit: EPA considers the least expensive means of compliance when calculating economic benefit. Although the SDS and other documents described above would serve as a reasonable basis for determining the drums contain hazardous waste it also is reasonable to assume that Prime would have decided to test the wastes in the drums since the labels were burned off, the paint had been in a fire, some of the drums had burst open and been disposed, leaving the remaining 32 drums to be of uncertain contents, thus requiring a waste determination. The least expensive way for Prime to correct this violation would have been to characterize their wastes using the toxicity characteristic leaching procedure (TCLP). The economic benefit asserted for these violations was estimated as avoided costs that will never be incurred by the Prime.

NEIC used XRF to determine that 20 of the 32 burned drums of strontium chromate primer. NEIC collected representative samples from 8 of the 20 burned drums of paint waste to conduct a TCLP analysis. Using TCLP, the representative samples were determined to be hazardous for ignitability (Flash Point < 140 F) and toxicity (chromium levels exceeding regulatory levels).

EPA estimated costs using figures from EPA's Unit Cost Compendium, Data and Algorithms for Estimating Costs Associated with "Cradle to Grave" Management of RCRA Solid and Hazardous Waste, September 30, 2000, and were adjusted to current costs using the online U.S. inflation calculator. An estimated cost of \$1,350 per TCLP sample was used for 8 samples, the same number of samples collected by NEIC, yielding an economic benefit of \$10,800 in avoided costs. This cost includes sample collection, shipment, analysis, and results report.

In this case, the total economic benefit for Count 1 is more than \$5,000; as a result, the \$10,800 economic benefit is included in EPA's penalty demand.

Recalculation of Penalty Based on New Information: No information has been received since the complaint was filed to warrant a recalculation for this count.

Count 2: Failure to Prepare a Manifest

According to 40 C.F.R. § 262.20(a)(1), 262.23, and 262.40, incorporated by reference at Utah Admin. Code R315-5-2-2.20(a), a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal shall prepare a manifest (OMB Control number 2050-0039) on EPA Form 8700-22. A generator must prepare a manifest, provide a signed manifest for each offsite shipment of hazardous waste, and retain a manifest for three years. Use of the manifest system is necessary to ensure that all hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment storage and disposal facilities for which a permit has been issued as required in RCRA. 42 U.S.C. § 6922(a)(5).

Prime's failure to prepare a manifest for Brett's Towing's transportation of the burned drums of hazardous waste from B&W's Lot to the Facility constitutes a violation of 42 U.S.C. § 6922(a)(5) and Utah Admin. Code R315-5-2-2.20(a).

Penalty Summary Table:

Count 2. Failure to prepare a manifest Utah Admin. Code R315-5-2-2.20(a)	
Gravity Based Penalty a. Potential for Harm: Major b. Extent of Deviation: Major c. Middle of the Penalty Matrix Cell	\$32,915
Multi-day Penalty	N/A
Total Gravity Based Penalty	\$32,915
Adjustment Factors • Good Faith • Willfulness/Negligence • History of Noncompliance • Other Unique Factors	
	N/A
	\$3,292
	+10%
	N/A
Total Base Penalty	\$36,207
Economic Benefit	\$0
Total Penalty	\$36,207

POTENTIAL FOR HARM

The generator of the hazardous waste offered for transport 32 drums of waste, at least 20 which were characteristically hazardous for chromium (D007) and ignitability (D001). Prime failed to prepare and retain hazardous waste manifests, in violation of R315-5-2-2.20(a). One count is considered here for the transport from the B&W's Lot to the Facility in Utah.

EPA's hazardous waste manifest system is designed to track hazardous waste from the time it leaves the point at which it was generated until it reaches the off-site waste management facility that will store, treat or dispose of the hazardous waste. The key component of the waste tracking system is the Uniform Hazardous Waste Manifest, a form required by EPA and the U.S. Department of Transportation for all generators who transport or offer for transport hazardous waste for offsite treatment, storage, recycling, or disposal. When completed, the form contains information on the type and quantity of the waste being transported, instructions for handling the waste, and signature lines for all parties involved in the disposal process, including the generator. Once the waste reaches its destination, the receiving facility is required to return a signed copy of the manifest to the generator, confirming that the waste has been received by the designated facility. Each party that handles the waste signs the manifest and retains a copy for themselves. This ensures critical accountability in the transportation and subsequent storage, treatment and disposal processes.

This violation posed a substantial risk of exposure of humans or other environmental receptors to the hazardous waste during and after transport, especially when considering the condition of the drums being transported, and that the driver for Brett's Towing likely was not trained to transport hazardous waste or respond to hazardous waste emergencies during transportation and did not secure the appropriate documentation (i.e., placards or SDS). This failure also had a substantial adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. Without a manifest, which includes information on the type of wastes and instructions for handling it, there was substantial risk for waste mismanagement in the event of a spill or another fire during transport of the drums along the 306 miles of public highways. Both responders and the public were put at danger since information on the waste characteristics was not available to facilitate the swift implementation of appropriate measures to address a release, including, for example, setting evacuation or response zones and selection of personal protective equipment for responders.

Taking into account the specific facts of this matter, a major potential for harm is warranted.

EXTENT OF DEVIATION

The generator deviated from the requirements of the regulation to such an extent that none of the transportation and subsequent handling requirements were met resulting in substantial noncompliance which jeopardizes the integrity of the RCRA program. Proper manifesting of hazardous wastes, which allows tracking of the management of the wastes from "cradle to grave," is a core component of the RCRA program. Prime did not prepare a manifest and did not meet any of the regulatory requirements for waste tracking. Violations of regulatory requirements may have serious implications and merit substantial penalties where the violation undermines the statutory or regulatory purposes or procedures for implementing the RCRA program." The RCPP gives examples of this kind of regulatory harm, which includes "failure to prepare or maintain a manifest."

Taking into account the specific facts of this matter, a major extent of deviation is warranted.

PENALTY ASSESSMENT MATRIX

Using the gravity-based penalty matrix for violations that occurred after January 12, 2009 and before November 2, 2015, the major potential for harm/major extent of deviation penalty cell has a penalty range of \$28,330 to \$37,500. A penalty at the midpoint of the penalty cell was selected, \$32,915. Please see the explanation in the penalty assessment matrix section of Count 1 for selection of the midpoint of the penalty cell, because it is equally applicable here.

Multiple/Multi-day: Multi-day penalties are generally considered mandatory for days 2 through last date the violation continues, up to a generally applied maximum of 180 days, for all violations with a gravity-based designation of major-major. EPA, however, has concluded that it is appropriate to view Prime's specific manifest violation as independent and non-continuous; thus, has not calculated a multi-day assessment for this violation.

Adjustment Factors: EPA applied the same analysis for the adjustment factors discussed in Count 1 to this count.

Economic Benefit: The economic benefit for these violations is viewed as minimal and none is asserted for this count.

Recalculation of Penalty Based on New Information: No information has been received since the complaint was filed to warrant a recalculation for this count.

Count 3: Storage of Hazardous Waste Without a Permit or Interim Status

Section 3005 of RCRA, 42 U.S.C. § 6925(a), requires each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under Subchapter C of RCRA to have a permit for such activities. Pursuant to Utah Admin. Code R315-3-1-1.1(a), no person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the State of Utah Executive Secretary for a hazardous waste permit for that facility.

On or about October 1, 2015, Prime received at least 20 burned drums of paint waste that was characteristic hazardous waste at the Facility triggering the operating requirements of Utah Admin. Code R315-7 and Utah Admin. Code R315-8 and the requirements for a permit. Between October 1, 2015, and August 3, 2016 (the date of EPA-CID preservation letter), Prime stored at least 20 burned drums of hazardous waste at the Facility without any form of authorization. The drums were stored in a compromised truck trailer from at least October 1, 2015, until they were shipped offsite on September 19, 2016. At no time has the State of Utah or EPA issued a RCRA permit to Prime to own and operate the Facility as a hazardous waste storage facility. Prime owned and operated a hazardous waste storage facility without a permit in violation of section 3005 of RCRA, 42 U.S.C. § 6925 and Utah Admin. Code R315-3-1-1.1(a). Consistent with the RCPP, the time frame considered for penalty calculation was capped at 180 days for this violation.

Penalty Summary Table:

Count 3. Storage of hazardous waste without a permit or interim status 3005 of RCRA, 42 U.S.C. § 6925 and Utah Admin. Code R315-3-1-1.1(a)	
Gravity Based Penalty a. Potential for Harm: Moderate b. Extent of Deviation: Major c. Middle of the Penalty Matrix Cell	\$16,767
Multi-day Penalty	\$2295 x179 days \$410,805
Total Gravity Based Penalty	\$427,572
Adjustment Factors • Good Faith • Willfulness/Negligence • History of Noncompliance • Other Unique Factors	
	N/A
	\$42,757
	+10%
	N/A
Total Base Penalty	\$470,329
Economic Benefit	0
Total Penalty	\$462,056 470,329

POTENTIAL FOR HARM

The violation poses or may pose a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents; and/or, the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program. From October 1, 2015, through September 19, 2016, Prime stored hazardous waste in burned drums, in the remnants of a burned truck trailer at the Facility, covered only by a tarpaulin, without either a permit or “interim status.” If Prime had been able to achieve interim status for the Facility, Prime would have been aware of specific regulatory provisions for safe storage of hazardous waste. If Prime had obtained a storage permit from the State of Utah, the permit would have provided detailed provisions for the safe storage of the hazardous waste. Whether in the regulations or in a permit, RCRA storage requirements are designed to ensure the prevention and detection of releases of hazardous waste to the environment, and to protect persons coming into contact with the containers and wastes.

Prime’s storage of the hazardous waste in compromised, unlabeled drums with missing bung hole covers, dried paint on the exterior of drums, strong odors emitting from the open drums, in a compromised trailer, and stored at a Facility that did not meet any of the RCRA hazardous waste storage standards posed a significant risk of exposure of humans or other environmental receptors to hazardous waste or constituents and/or the actions have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

The drums were stored outside without secondary containment. Because Prime failed to make a hazardous waste determination of the burned drums and failed to manage them as hazardous waste, it is logical to assume that workers were not informed that the drums contained hazardous waste and were not informed of measures to be taken in event of releases. Similarly, it is logical to assume that Prime did not conduct regular inspections of the drums to check their condition.

The SDS for the product, which Prime had in its possession prior to and after the fire, indicates that each container should be kept tightly closed; persons should not breathe the vapor or mists; the containers should be stored locked up and not stored at temperatures above 95 degrees Fahrenheit. The SDS goes on to state that the product should be protected from sunlight in a dry, cool, and well-ventilated area and not stored in unlabeled containers. The SDS also directs persons to use appropriate containment to avoid environmental contamination from leaks, spills, or venting.

Taking into account other specific facts of this matter which include the volume of the waste stored, the lack of nearby waterways, and storage of the trailer on a paved surface, a moderate potential for harm is warranted.

EXTENT OF DEVIATION

As more fully described immediately above, Prime received and stored hazardous waste in unlabeled drums in a compromised truck trailer that was burned and missing approximately half of its structure. Prime deviated from the requirements of the regulation to such an extent that none of the storage requirements that would form the core of a RCRA storage permit were met, resulting in substantial noncompliance which jeopardizes the integrity of the RCRA program.

Prime violated the storage permit requirements from the first day the hazardous waste was stored at the Salt Lake City yard, October 1, 2015, through the date of disposal in September 19, 2016.

Taking into account the specific facts of this matter, a major extent of deviation is warranted.

PENALTY ASSESSMENT MATRIX

Using the gravity-based penalty matrix for violations that occurred after ~~January 12, 2009, and before~~ November 2, 2015, the cell in the gravity-based penalty matrix for the first day of violation for a moderate potential for harm/major extent of deviation has a penalty range of \$14,120 to \$19,414. A penalty at the midpoint of the penalty cell was selected, \$16,767. Please see the explanation in Count 1 for the criteria used in selection of the midpoint of the penalty cell.

Multiple/Multi-day: This violation is appropriately viewed as multi-day. Evidence documents the first occurrence of this storage on October 1, 2015. Consistent with the RCPP, a cap of 180 days of violation was applied, despite the almost year-long storage without a permit at the Facility. For a moderate potential for harm and a major extent of deviation, the values in the penalty matrix cell range from \$706 to \$3,883. A mid-range value of \$2,295 was selected. Multi-day penalties are presumed appropriate for days 2-180 of violations with the moderate major gravity-based designation and "should be sought, unless case-specific facts overcoming the presumption for a particular violation" are documented in the case file.

Adjustment Factors: EPA applied the same analysis for the adjustment factors discussed in Count 1 to this count.

Economic Benefit: EPA considers the least expensive means of compliance when calculating economic benefit. The economic benefit for this violation includes any savings accrued from the delay in properly disposing of the hazardous waste at a permitted hazardous waste facility. Upon further consideration since the filing of the complaint, the delayed cost savings for Prime's disposal, following EPA-CID and

NEIC's inspections, using the actual disposal cost of \$19,711, were estimated and determined to be minimal relative to the gravity calculation.

No economic benefit is asserted for this count.

Recalculation of Penalty Based on New Information:

Upon further consideration, EPA reviewed the information in its possession regarding the disposal costs and the timeframe from initial storage until disposal, determining that the apparent savings likely were less than \$5,000. In light of this information, EPA determined that it is reasonable to forego the inclusion of the economic benefit for this count, thereby reducing the proposed penalty proposed in the Complaint.

Count 4. Failure to Properly Manage Containers

Pursuant to 40 C.F.R. § 265.173, incorporated by reference at Utah Admin. Code R315-7-16.4, (a) a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste; and (b) a container holding hazardous waste shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak. Between October 1, 2015, and August 3, 2016, Prime stored burned drums of hazardous waste that were left open with bung caps missing in violation of Utah Admin. Code R315-7-15-16.4. The post-fire condition of the drums created a circumstance where they were more likely to leak over time than a container that hasn't been through a fire.

Penalty Summary Table:

Count 4. Failure to properly manage containers Utah Admin. Code R315-7-15-16.4.	
Gravity Based Penalty a. Potential for Harm: Major b. Extent of Deviation: Major c. Middle of the Penalty Matrix Cell	\$39,712
Multi-day Penalty	N/A
Total Gravity Based Penalty	\$39,712
Adjustment Factors	
• Good Faith	N/A
• Willfulness/Negligence	\$3,971 +10%
• History of Noncompliance	N/A
• Other Unique Factors	N/A
Total Base Penalty	\$43,683
Economic Benefit	\$0
Total Penalty	\$43,683

POTENTIAL FOR HARM

The SDS for the product, which Prime had in its possession prior to and after the fire, indicates that each container should be kept tightly closed; persons should not breathe the vapor or mists; the containers

should be stored locked up and not stored at temperatures above 95 degrees Fahrenheit. The SDS goes on to state that the product should be protected from sunlight in a dry, cool, and well-ventilated area and not stored in unlabeled containers. The SDS also directs persons to use appropriate containment to avoid environmental contamination from leaks, spills, or venting. After the fire, Prime did not meet any of these conditions for the hazardous waste in the burned drums, or meet any of the hazardous waste drum requirements.

Even though the integrity of drums of ignitable paint was compromised during the fire, including bung hole covers popping out of the drums due to intense pressure from the heat, Prime did not overpack the drums or place the wastes in new drums before shipment. Prime also did not label the drums with the words “Hazardous Waste” and the date the wastes were placed into storage. Further, Prime did not ensure that the drums were closed. In fact, the EPA CID inspector noted strong odor/fumes and the drums were missing bung caps when they investigated the Facility approximately 10 months after the fire on August 2, 2016.

This violation posed a substantial risk of exposure of humans or other environmental receptors to hazardous waste or constituents and had a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

The RCPP explains that when a violation involves the actual management of waste, a penalty should reflect the probability that a violation could have resulted in or has resulted in a release of hazardous waste or hazardous constituents or hazardous conditions such as a threat of exposure to hazardous waste or constituents. According to the RCPP, “[s]ome factors to consider include evidence of waste mismanagement (condition of containers). . . .” A larger penalty also is presumptively appropriate where the violation significantly impairs the ability of the hazardous waste management system to prevent and detect releases of hazardous waste and constituents. Violators should not be rewarded with lower penalties simply because the violation did not result in actual harm, or no evidence of harm has been identified. In this case, EPA does not have direct evidence of spillage or leakage during transportation over 300 miles or during the over 300 days of storage. And, despite evidence of venting, EPA does not have direct evidence of harm to receptors from the venting.

EPA also considers the potential seriousness of contamination: the harm which would result if hazardous waste or constituents were released to the environment, including quantity and toxicity of wastes if released, likelihood of transport by environmental media, proximity of receptor populations and sensitive environmental media. In addition to the TCLP results for ignitibility, the TCLP analysis documented levels of chromium between 36.8 and 352 mg/L, which levels exceed the regulatory level of 5 mg/L for toxicity. The burned drums were used to store 16,000 lbs of hazardous waste.

EPA also reviewed EPA’s environmental justice (EJ) database, EJSCREEN. EJSCREEN is an environmental tool that provides EPA with a nationally consistent approach to potential areas of EJ concern that may warrant further consideration. The screening tool includes 11 environmental indicators and 7 demographic indicators to identify communities living with the greatest potential for negative environmental and health effects. If the screening tool indicates that a selected area is in the 80th percentile or higher nationally or in the State, or the Demographic indicators show that the minority or low-income population is above the state average, this area is flagged as a potential EJ area.

In this case, the EJSCREEN indicated that the Facility is located in a potential environmental justice area because the minority and low-income populations are over the state average and the EJ index for Hazardous Waste Proximity is above 80 percent for the State. For the Facility area, all of the

environmental indicators reflected in the EJSCREEN are above 80th percentile for the State, including Particulate Matter, National-Scale Air Toxics Assessment (NATA) Air Toxics Cancer Risk and NATA Respiratory Hazard Index.

In particular, EPA has assessed environmental justice factors for the Facility and determined that the Facility is located in a populated area with significantly more particulate matter and ozone pollution than usual. The release of volatiles from the open drums into the air and the unmonitored storage without regular inspections of the containers for additional releases or leakage contributed to the local environmental stressors. The Facility also has a close proximity to Superfund sites, hazardous waste facilities, and wastewater discharge locations. These factors led to a determination that the drum storage at the Facility, particularly given the condition of the drums after the fire, including missing bung hole covers, exacerbated existing EJ concerns based on a combination of social vulnerability factors and environmental stressors.

Taking into account the specific facts of this matter, a major potential for harm is warranted.

EXTENT OF DEVIATION

The Facility received and stored hazardous waste in compromised burned drums, that were missing bung hole covers and had evidence of materials staining on the exterior of the drums, and which were not appropriately labeled, in a compromised truck trailer. Prime deviated from the requirements of the regulation to such an extent that most important aspects of the requirements were not met resulting in substantial noncompliance which jeopardizes the integrity of the RCRA program.

Taking into account the specific facts of this matter, a major extent of deviation is warranted.

PENALTY ASSESSMENT MATRIX

A penalty at the midpoint of the penalty cell was selected, \$39,712. Please see the explanation in Count 1 for the criteria used in selection of the midpoint of the penalty cell.

Multiple/Multi-day: Multi-day penalties are considered mandatory for days 2-180 for all violations with a major-major gravity-based designation. Even though EPA has some evidence from the fire response that the drums had vented and were missing bung caps, because EPA is not certain that the drums identified as venting or missing bung covers at the time of the fire response are the exact drums missing bung caps at the Facility at the time of the inspections, this count is reasonably viewed as independent and non-continuous; thus, there is no multi-day assessment for this violation.

Adjustment Factors: EPA applied the same analysis for the adjustment factors discussed in Count 1 to this count.

Economic Benefit: The economic benefit asserted for these violations is viewed as minimal and none is asserted for this count.

Recalculation of Penalty Based on New Information: No information has been received since the complaint was filed to warrant a recalculation for this count.

Count 5: Failure to Obtain an EPA ID Number

Pursuant to 40 C.F.R. § 264.11, incorporated by reference at Utah Admin. Code R315-8-2-2.2, every facility owner or operator shall obtain an EPA identification number by applying to the State Executive Secretary using EPA form 8700-12 ("Notification of Regulated Waste Activity"). Prime owned and operated the Facility and stored at least 20 drums of hazardous waste at the facility between October 1, 2015 and September 19, 2016. Prime's storage of at least 20 burned drums of hazardous waste at the Facility prior to obtaining an EPA identification number constitutes a violation of Utah Admin. Code R315-8-2-2.2.

Count 5. Failure to obtain an EPA ID number Utah Admin. Code R315-8-2-2.2	
Gravity Based Penalty a. Potential for Harm: Major b. Extent of Deviation: Major c. Middle of the Penalty Matrix Cell	\$39,712
Multi-day Penalty	N/A
Total Gravity Based Penalty	\$39,712
Adjustment Factors	
• Good Faith	N/A
• Willfulness/Negligence	\$3,971
• History of Noncompliance	+10%
• Other Unique Factors	N/A
	N/A
Total Base Penalty	\$43,683
Economic Benefit	\$0
Total Penalty	\$43,683

POTENTIAL FOR HARM

All persons who generate, transport, recycle, treat, store, or dispose of hazardous waste are required to notify EPA of their hazardous waste activities. EPA ID numbers are simply obtained by filing EPA Form 8700-12, Notification of Regulated Waste Activity. A facility storing hazardous waste must obtain a US EPA ID number before shipping hazardous waste offsite.

Prime's noncompliance with this requirement directly increased the threat of harm to human health and the environment. Attainment of an EPA ID number for a hazardous waste storage facility ensures that facilities can be tracked and authorized for the proper treatment, storage and disposal of hazardous wastes. Further, it allows regulators to assess whether safe and legal hazardous waste management activities are being conducted at the facility. This is a critical component in tracking the management of the wastes from "cradle to grave," which is a core component of the RCRA program. Prime's failure to obtain an EPA ID number, therefore directly increased the risks of harm to humans and the environment.

Violation of this requirement may have serious implications and merits substantial penalty as it undermines the statutory or regulatory purposes or procedures for implementing the RCRA program.

Taking into account the specific facts of this matter, a major potential for harm is warranted.

EXTENT OF DEVIATION

Prime did not obtain an EPA ID number.

This ID number identifies each handler of hazardous waste on hazardous waste manifests and other paperwork. RCRA Subtitle C regulations do not distinguish between the generation or storage of waste on an ongoing basis and the one-time generation and storage of wastes in the necessity and assignment of EPA ID numbers.

Failure to notify as a generator or storage facility and obtain an EPA ID number significantly undermines the RCRA program. Identification numbers are an essential part of the RCRA program, being assigned to a specific location. Prime did not have an EPA identification number while storing hazardous waste and did not obtain one before they offered hazardous waste for offsite transport for either the transport to the Facility from Idaho or for the offsite transport from the Facility to Heritage Environmental in Arizona for ultimate disposal. Failure to obtain an EPA ID number caused significant harm to the integrity of the RCRA regulatory program.

Prime's failure to notify the state of Utah that it was storing hazardous waste substantially deviated from a requirement of the RCRA facility and waste tracking program.

Taking into account the specific facts of this matter, a major extent of deviation is warranted.

PENALTY ASSESSMENT MATRIX

Using the gravity-based penalty matrix for violations that occurred after November 2, 2015, for the first day of violation for a major potential for harm/major extent of deviation, the penalty cell has a penalty range of \$35,299 to \$44,124. A penalty at the midpoint of the penalty cell was selected, \$39,712. Please see the explanation in Count 1 for the criteria used in selection of the midpoint of the penalty cell.

Multiple/Multi-day: Multi-day penalties are generally considered mandatory for days 2 through last date the violation continues, up to a generally applied maximum of 180 days, for all violations with a gravity-based designation of major-major. EPA, however, has concluded that it is appropriate to view Prime's failure to obtain an EPA ID number as independent and non-continuous; thus, no multi-day assessment for this violation was calculated.

Adjustment Factors: EPA applied the same analysis for the adjustment factors discussed in Count 1 to this count.

Willfulness/Negligence: EPA assessed an upward adjustment of 10% for this factor. EPA considered the following in addition to the information contained in the willfulness analysis in Count 1. Since Prime holds an EPA ID number from Missouri, they are aware of the requirement to obtain an EPA ID number for a facility to handle hazardous waste. Based on SDS sheets, and IDEQ's communications regarding the second cleanup of the fire site with hazardous waste identified in the soil, Prime should have been aware that the burned drums contained hazardous waste (or performed a hazardous waste determination to confirm that they did not), and clearly should have notified the state and obtained an identification number to ensure proper storage and management of the waste. In fact, Premium, on behalf of Prime, obtained an EPA ID number for the residual waste and soils as part of the second cleanup in Idaho and the ultimate disposal at U.S. Ecology on December 29, 2015.

Economic Benefit: The economic benefit asserted for these violations is viewed as minimal and none is asserted for this count.

Recalculation of Penalty Based on New Information: No information has been received since the complaint was filed to warrant a recalculation for this count.