



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
New Prime, Inc.,) Docket No. RCRA-08-2020-0007
Respondent.)

ORDER ON COMPLAINANT’S MOTION TO AMEND PREHEARING EXCHANGE

On April 18, 2022, the U.S. Environmental Protection Agency, Region 8 (“Complainant”) filed a Motion to Amend its Prehearing Exchange (“Motion”). In its Motion, Complainant requests permission to amend the list of witnesses in its Prehearing Exchange to substitute Kristin McNeill for Linda Jacobson. Ms. Jacobson was expected to testify “as to the calculation and appropriateness of the proposed penalty in light of the requisite statutory factors, the relevant [Resource Conservation and Recovery Act] Penalty Policy and the facts and circumstances of this case.” Mot. at 1. As grounds for the substitution, Complainant explains that Ms. Jacobson is the lead staff for a national priority rule, and “due [to] the press of this work,” responsibility for this case has been shifted to Ms. McNeill. Mot. at 1. Complainant relates that Ms. McNeill has reviewed the case records and the penalty calculation and that her testimony is not expected to differ from that of Ms. Jacobson. Mot. at 2.

On April 29, 2022, New Prime, Inc. (“Respondent”) filed its Response to Motion to Amend Complainant’s Prehearing Exchange. Respondent states it “does not oppose Complainant’s motion to substitute Kristin McNeill as the penalty witness in this matter.”

This Tribunal has been clear that permission to supplement a party’s prehearing exchange is unnecessary if the hearing is not imminent. In its November 2, 2020 Prehearing Order, the Tribunal pronounced that “[a]ny addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the [Consolidated Rules of Practice, 40 C.F.R. Part 22],¹ must be filed with an accompanying motion to supplement the prehearing exchange only when supplementation is sought within 60 days of the scheduled hearing.” Prehr’g Order at 4 (emphasis added). Moreover, as explained in an earlier Order from this Tribunal, “[t]here is thus no regulation or order establishing that supplementation of a party’s prehearing exchange at this point in the proceeding [when the hearing is yet to be scheduled] requires leave of the Tribunal.” See Order on Mot. to Correct Prehr’g Exch. at 2 (Mar. 31,

¹ Pursuant to 40 C.F.R. § 22.19(f) of the Consolidated Rules of Practice:

A party who has made an information exchange under [40 C.F.R. § 22.19(a)] . . . shall promptly supplement or correct the exchange when the party learns that the information exchanged . . . is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

2021).

Nevertheless, due to the importance of Ms. Jacobson's testimony and her role in crafting Exhibits CX04 and CX04Cor, both of which are expected to be featured at the penalty hearing, it is understandable that Complainant would seek leave to substitute this witness. So as Respondent does not object, and as the hearing is more than 60 days away, I see no reason to disallow the substitution. The Motion is **GRANTED**, and the substitution of the penalty witness is permitted. Exhibit CX67 (Ms. McNeill's resume) and the Updated Exhibit Index List submitted with the Motion are accepted and added to Complainant's Prehearing Exchange.

SO ORDERED.



Christine Donelian Coughlin
Administrative Law Judge

Dated: May 4, 2022
Washington, D.C.

In the Matter of *New Prime, Inc.*, Respondent.
Docket No. RCRA-08-2020-0007

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Complainant's Motion to Amend Prehearing Exchange**, dated May 4, 2022, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.


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Dated: May 4, 2022
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