

Mark Ryan
MARK RYAN LAW PLLC
P.O. Box 306
Winthrop, WA 98862
Telephone (509) 557-5447
mryanboise@msn.com

Scott McKay
NEVIN, BENJAMIN & MCKAY LLP
P.O. Box 2772
Boise, ID 83701
Telephone: (208) 343-1000
Facsimile: (208) 345-8274
smckay@nbmlaw.com

Attorneys for Respondent New Prime, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

IN THE MATTER OF:)	
)	Docket No. RCRA-08-2020-0007
New Prime, Inc.)	
)	
Respondent.)	RESPONDENT'S MOTION FOR
)	SUPPLEMENTAL BRIEFING
_____)	

Pursuant to 40 C.F.R. § 22.16(a), Respondent New Prime, Inc. submits this motion for leave to file the attached supplemental brief regarding Complainant's pending Motion for Accelerated Decision. This motion is based on the argument below.

Under the terms of the Presiding Officer's Prehearing Order dated November 2, 2020, the parties filed their prehearing exchanges in January 2021. Respondent submitted its Prehearing Exchange on January 8, 2021, and Complainant submitted its rebuttal Prehearing Exchange on January 22, 2021. In Respondent's Rebuttal Prehearing Exchange, it provided the expert report

of Dr. Elizabeth Walker regarding, *inter alia*, the lack of significant potential harm to human health and the environment resulting from the storage of the paint in Prime's secure Salt Lake City truck yard. Complainant filed no rebuttal report in its January 22, 2021 Rebuttal Prehearing Exchange.

Complainant subsequently filed a Motion for Accelerated Decision on February 22, 2021. Complainant also supplemented its Prehearing Exchange at that time, but again did not include a rebuttal to the Dr. Walker report. The parties briefed the Accelerated Decision motion based on the documents in the record at the time as provided in the parties' prehearing exchanges. Respondent submitted its Response brief on March 9, 2021, with the understanding that the report it submitted from Dr. Walker was un rebutted. While Complainant noted in a footnote in its March 19, 2021 Reply Brief that it reserved the right to later submit a rebuttal expert report, *id.* at 11, n. 4, it had not done so by the close of briefing.

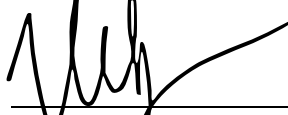
On Friday, July 16, 2021, some six months after it filed its rebuttal prehearing exchange and four months after briefing was completed on Complainant's Motion for Accelerated Decision, Complainant filed a new rebuttal expert report on the purported potential threats to human health and the environment caused by the paint storage. This dilatory report goes to the heart of this case, and indeed creates yet another set of disputed material facts between the parties.

Respondent therefore respectfully requests permission to file the attached supplemental brief to address the issues raised by Complainants' late supplementation of the record on an issue that is at the heart of the Motion for Accelerated decision that is currently before the Presiding Officer. Fairness dictates that Respondent be allowed to brief this issue because EPA chose to not submit a timely rebuttal expert report on potential threats to human health or the environment

and instead waited months after the briefing was completed on its motion for accelerated decision, depriving Respondent of the opportunity to brief this issue during the scheduled briefing on EPA's motion for accelerated decision.

RESPECTFULLY SUBMITTED this 21st day of July 2021.

MARK RYAN LAW PLLC

A handwritten signature in black ink, appearing to read 'Mark A. Ryan', is written over a horizontal line.

Mark A. Ryan
WSBA No. 18279

Scott McKay
NEVIN, BENJAMIN & McKAY LLP

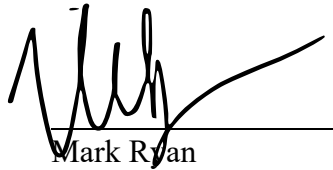
Attorneys for Respondent New Prime, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July 2021, I filed Respondent's Motion for Supplemental Briefing via the OALJ E-filing system and via email to:

Laurianne M. Jackson
Senior Assistant Regional Counsel
Regulatory Enforcement Section
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Jackson.laurianne@epa.gov

Charles Figur
Senior Assistant Regional Counsel
Regulatory Enforcement Section
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Figur.charles@epa.gov



Mark Ryan