

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

New Prime, Inc.
3720 West 800 South
Salt Lake City, Utah

Respondent.

Proceedings under Section 3008(a) of the Solid Waste Disposal Act, as amended by, inter alia, the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)

Docket No. RCRA-08-2020-0007

MOTION TO AMEND COMPLAINANT'S
PREHEARING EXCHANGE

Complainant, United States Environmental Protection Agency, Region 8 (EPA), by and through the undersigned, pursuant to section 22.19(f) of the Consolidated Rules of Practice (40 C.F. R. 40 C.F.R. § 22.19(f)), hereby requests to amend the list of witnesses in its Prehearing Exchange previously filed in this matter so as to substitute Kristin McNeill in place of Linda Jacobson as the EPA witness who will testify as to the calculation and appropriateness of the proposed penalty in light of the requisite statutory factors, the relevant RCRA Penalty Policy and the facts and circumstances of this case.

Complainant seeks to make this substitution for the following reasons:

1. Ms. Jacobson is the lead staff for Region 8 assigned to work on the Agency's Coal Combustion Residuals Rule national priority. Due the press of this work and her expertise in this area, the Region has shifted responsibility related to *in re: New Prime, Inc.*, to Mrs. McNeill.

2. Mrs. McNeill is employed in the same RCRA section of the Enforcement and Compliance Assurance Division, Region 8, as Ms. Jacobson, and Mrs. McNeill's job responsibilities include those held by Ms. Jacobson.
3. Mrs. McNeil is a qualified witness who has read the records for the penalty calculation and agrees with the conclusions made. *See Alliant Techsystems, Inc. and Rightway Services, Inc.*, CAA-III-075, 1997 WL 821126 at *5 (ALJ, Dec. 4, 1997)(Order on Motions).
4. Mrs. McNeil's testimony is not expected to differ, in any material respect, from the testimony that Mrs. Jacobson would have given.
5. Respondent's opportunity to cross examine Mrs. McNeil, about Complainant's proposed penalty, will not be diminished by the substitution.

Prior to the filing of this Motion, the undersigned contacted Respondent's counsel who indicated that Respondent would decide whether to oppose upon review of this Motion.

Complainant is also submitting Complainant's Exhibit, entitled Resume of Kristin McNeill, U.S. EPA, identified as CX67. *See* Corrected Table of Complainant's Prehearing Exchange Exhibits dated April 18, 2022 (Attachment 1).

Dated: April 18, 2022

Respectfully Submitted,

Laurianne Jackson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region 8

CERTIFICATE OF SERVICE

The undersigned certifies that on April 18, 2022, I filed electronically the foregoing **MOTION TO AMEND COMPLAINANT’S PREHEARING EXCHANGE** with the Clerk of the Office of Administrative Law Judges using the OALJ E-Filing System and sent by electronic mail to Mark Ryan, attorney for Respondent, at mryanboise@msn.com and Scott McKay, attorney for Respondent, at smckay@nbmlaw.com.

Date April 18, 2022

Kate Tribbett
Paralegal