

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:

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

Respondent.

Docket No. RCRA-08-2020-0007

MOTION TO CORRECT COMPLAINANT'S PREHEARING EXCHANGE

The undersigned counsel for the United States Environmental Protection Agency (EPA), Director of the Enforcement and Compliance Assurance Division Region 8 (Complainant), 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 correct its Prehearing Exchange.

Complainant seeks to file a corrected version of Complainant's Exhibit, entitled *EPA's Explanation of the Proposed Penalty Assessment in the Matter of New Prime, Inc. (12/16/2020)*, submitted with Complainant's Prehearing Exchange on December 18, 2020, and identified as CX04. The attached corrected version of the exhibit has been updated to reflect the correct penalty amounts in the penalty charts and applicable penalty matrices for Count 3, and will be identified as CX04Cor.

In CX04 Complainant inadvertently subtracted \$8,273 twice in two locations when describing the recalculated proposed penalty for Count 3. The Penalty Summary Table for Count 3 on page 13 of CX04 has the correct "Total Base Penalty" (proposed), of \$470,329, but the "Total Penalty" line reflects a second reduction of \$8,273, by mistake.

In CX 04, the Summary of Total Proposed Penalty table on page 5, reflects the incorrect total proposed penalty for Count 3. The “Total” line at the bottom of the table reflects the correct adjusted penalty amount that Complainant proposes for the alleged violations (\$631,402), but the “Total” column for Count 3 reflects a second reduction to the penalty of \$8,273, by mistake. *See also* Declaration of Linda Jacobson, filed as an attachment to Complainant’s Motion for Accelerated Decision (February 22, 2020) (Jacobson Declaration) (Attachment 1).

In CX04, Complainant incorrectly explained the two applicable sets of penalty matrices on page 2. The sentence that reads “For Counts 1, 2, and 3, discussed below, the violations are alleged to have occurred before November 3, 2015” should read “For Counts ~~1, 2, and 3~~, **1 and 2** discussed below, the violations are alleged to have occurred before November 3, 2015.” The sentence that reads “For Counts 4 and 5, which are alleged to have occurred on or after November 3, 2015” should read “For Counts **3**, 4 and 5, which are alleged to have occurred on or after November 3, 2015.” *See also* Jacobson Declaration.

In CX04, the Summary of Total Proposed Penalty table on page 5, reflects the incorrect “Daily Statutory Max” for Count 3. The statutory max “\$37,500” should read “\$101,439.” *See also* Jacobson Declaration.

In CX04, Complainant incorrectly explained the penalty matrix applicable to Count 3 on page 14. The Penalty Assessment Matrix summary for Count 3 reads “Using the gravity-based penalty matrix for violations that occurred after January 12, 2009, and before November 2, 2015.” That sentence, as corrected, should read “Using the gravity-based penalty matrix for violations that occurred after November 2, 2015.” *See also* Jacobson Declaration.

Complainant also seeks to file a corrected version of Complainant’s Exhibit, entitled *Curriculum Vitae for John J. Reschl*, identified as CX64. This exhibit has been corrected to

reflect Mr. Reschl's knowledge and experience regarding Toxicity Characteristic Leaching Procedure and flashpoint analysis.

CX04Cor. (Attachment 2) and CX64Cor. (Attachment 3) are attached to this Motion.

Complainant also notes that the "Document Title/Description" listed in the table of exhibits in Complainant's Prehearing Exchange, filed on December 18, 2020, for the exhibit identified as CX07. The exhibit should not be referred to as the "September 2015 IDEQ Inspection Report," but instead the "IDEQ Inspection Report." The "Date" listed for CX07 is accurately reflected as January 7, 2016, not September 2015. *See* Corrected Table of Complainant's Prehearing Exchange Exhibits (Attachment 4). Hereinafter, Complainant will refer to CX07 as the "IDEQ Inspection Report."

Counsel for parties conferred on February 18, 2021, regarding the Complainant's filing of the Motion to Correct Complainant's Prehearing Exchange. Respondent's counsel indicated that Respondent would decide whether to oppose this Motion upon review of this Motion.

Dated: February 24, 2021

Respectfully Submitted,

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

CERTIFICATE OF SERVICE

The undersigned certifies that on February 24, 2021, I filed electronically the foregoing **MOTION TO CORRECT 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 mr@ryankuehler.com and Scott McKay, attorney for Respondent, at smckay@nbmlaw.com.

9/24/2020
Date

By: /s/ Kate Tribbett
Kate Tribbett
Paralegal