

Attachment 1
Jacobson Declaration

**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

DECLARATION OF LINDA JACOBSON

I, Linda Jacobson, pursuant to 28 U.S.C. § 1746, hereby state under penalty of perjury that the following is true and correct:

1. I am over the age of 21 years, of sound mind, and have given this affidavit of my own free will and choice.
2. I have personal knowledge of the matters addressed herein.
3. If called upon to testify, I could and would competently testify to all matters addressed herein.
4. My resume has been submitted to the proceeding as part of Complainant's Prehearing Exchange. (CX05)
5. I developed the penalty calculation for each count in the Complaint filed in this matter. The calculations follow the methodology of the 2003 RCRA Civil Penalty Policy in full consideration of the statutory penalty factors and the information available at that time.
6. Paragraph 45 of the Complaint has a footnote which contains the following information and statement "On or about September 29, 2015, Respondent also hired Corder, LLC (also known as Corder Excavation), through B&W, to transport and dispose of a portion of the burned drums of paint waste from the B&W Lot to the Simco Road"
7. The information in footnote 2 to paragraph 45 of the Complaint was included in CX04, at 2-3.
8. Complainant included this information to provide a comprehensive picture of the immediate aftermath of the fire and for no other purpose.

9. As the person who calculated the penalties proposed for each Count in the Complaint, I state unequivocally that the information in footnote 2 to paragraph 45 was not considered by me in the calculation of any proposed penalty for any Count in the Complaint.
10. Complainant's Exhibit 4 (CX04), submitted as part of Complainant's Prehearing Exchange on December 18, 2020, accurately elaborates on the penalty worksheets, which formed the basis for my calculation of the penalties proposed for each count in the Complaint, with the exception of the calculation for Count 3 described in paragraphs 13 through 15 below.
11. Complainant found two errors in CX04 since it was submitted. The first is a mathematical, or typographical error. *See*, paragraph 10 above and paragraphs 12-15 below. The second error is an editing error that was not caught on final review before finalizing and filing the exhibit. *See*, paragraphs 16 through 19 below.
12. The only change from my original calculation reflected in the Complaint and CX04 is that upon further analysis after the Complaint was filed it was determined that the apparent economic benefit from the violation alleged in Count 3 would be less than \$5,000. EPA removed the economic benefit component from the calculation for Count 3, for a reduction of \$8,273, from the amount pled in the Complaint.
13. During final review of CX04, Complainant inadvertently subtracted \$8,273 twice in two locations when describing the recalculated proposed penalty for Count 3.
14. The Summary of Total Proposed Penalty table on page 5 of CX04, reflects the incorrect total proposed penalty for Count 3. The "Total" line at the bottom of the table, however, reflects the correct adjusted penalty amount that Complainant proposes for the alleged violations. (\$631,402). Thus, the total proposed penalty for Counts 1 through 5 remains unchanged in CX04.
15. 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. The "Total Penalty" line should read "\$470,329."
16. The Summary of Total Proposed Penalty table on page 5 of CX04, reflects the incorrect statutory maximum penalty for Count 3 as "\$37,500". The correct statutory maximum for Count 3 is "\$101,439".
17. 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." CX04, at 2.
18. 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". CX04, at 2.
19. The Penalty Assessment Matrix 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 should read “Using the gravity-based penalty matrix for violations that occurred after ~~January 12, 2009, and before~~ November 2, 2015.” CX04, at 14.

20. It is my understanding that counsel for Complainant is filing a Motion to Correct Complainant’s Prehearing Exchange to request permission to substitute a corrected version of CX04, to be identified as CX04Cor.
21. I have reviewed Respondent’s Answer, Respondent’s Prehearing Exchange, and the exhibits submitted with Respondent’s Prehearing Exchange.
22. Upon full consideration of Respondent’s submittals in this proceeding I have seen no evidence, information, argument or potential testimony which would cause me to make downward adjustments to my calculation.
23. CX04, therefore, with the exception of the numerical and/or typographical errors noted above, remains an accurate elaboration on the basis for my calculation of a proposed penalty for each count in the Complaint.

I state under penalty of perjury that the foregoing is true and correct.

LINDA
JACOBSON
Linda Jacobson

Digitally signed by LINDA
JACOBSON
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