



RYAN & KUEHLER PLLC

WINTHROP, WASHINGTON

October 21, 2020

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EPA Region VIII

Hearing Clerk

October 21, 2020

VIA U.S. MAIL AND EMAIL

Ms. Mellissa Haniewicz
Regional Hearing Clerk
U.S. EPA Region 8
1959 Wynkoop Street
Denver, CO 80202-1129

Re: In re: New Prime, Inc., Docket No. RCRA-08-2020-0007

Dear Ms. Haniewicz:

Enclosed is New Prime, Inc.'s Answer to the Complaint in the above-captioned matter for filing.

Please let me know if you need anything else from me on this. Please feel free to call me at (509) 996-2617. Thank you for your assistance.

Very truly yours,

Mark A. Ryan
WSBA # 18279

cc: client
Scott McKay
Laurianne M. Jackson

Mark Ryan
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Attorneys for Respondent New Prime, Inc.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EPA Region VIII

REGION 8

Hearing Clerk

IN THE MATTER OF:)	
)	Docket No. RCRA-08-2020-0007
New Prime, Inc.)	
3720 West 800 South)	
Salt Lake City, Utah)	ANSWER TO COMPLAINT
(500.200_2019_Prime Trucking))	AND REQUEST FOR HEARING
)	
Respondent.)	
)	
_____)	

Respondent New Prime, Inc., through its attorneys, Mark Ryan of Ryan & Kuehler PLLC and Scott McKay of Nevin, Benjamin, McKay & Bartlett LLP, answers the Complaint, and Notice of Opportunity for a hearing under 42 U.S.C. § 6928(a) (“Complaint”) as follows:

1. Respondent denies each and every claim, complaint, allegation and averment in the Complaint except as the same is expressly admitted.
2. Respondent admits Paragraphs 1 through 5 of the Complaint.
3. Paragraphs 6-24 of the Complaint are statements of the law, and do not require an

admission or denial.

4. Answering Paragraph 25, Respondent admits it is a corporation licensed to do business and doing business in Utah but denies it is a Utah Corporation.

5. Respondent admits Paragraphs 26-43 of the Complaint.

6. Answering Paragraph 44 of the Complaint, Respondent admits it hired B&W to perform the clean up associated with the trailer fire but otherwise denies this paragraph.

7. Respondent admits Paragraph 45 of the Complaint. The footnote to Paragraph 45 does not allege facts relevant to the instant matter, and therefore requires no answer. To the extent that an answer is required, Respondent denies the allegations in footnote 2.

8. Respondent admits Paragraphs 46-49 of the Complaint.

9. Answering Paragraphs 50-51 of the Complaint, Respondent is without knowledge of the allegations and therefore denies.

10. Respondent admits Paragraph 52 of the Complaint.

11. Answering Paragraph 53 of the Complaint, Respondent admits that EPA conducted an inspection of the facility on August 24, 2016, but otherwise denies the allegations for want of knowledge.

12. Answering Paragraph 54 of the Complaint, Respondent admits that site testing was performed but otherwise denies this Paragraph for want of knowledge.

13. Respondent admits Paragraphs 55-56 of the Complaint.

14. Respondent is without knowledge to answer Paragraphs 57-59, and therefore denies.

15. Respondent admits Paragraphs 60-71.

16. No answer is required to Paragraph 72.

17. Paragraph 73 is a recitation of the law and requires no answer.
18. Respondent admits Paragraphs 74 and 75 of the Complaint.
19. No answer is required to Paragraph 76.
20. Paragraphs 77 and 78 are a recitation of the law and require no answer.
21. Respondent admits Paragraphs 79 and 80 of the Complaint.
22. No answer is required to Paragraph 81.
23. Paragraph 82 is a recitation of the law and requires no answer.
24. Respondent admits Paragraphs 83-85 of the Complaint.
25. No answer is required to Paragraph 86.
26. Paragraph 87 is a recitation of the law and requires no answer.
27. Answering Paragraph 88 of the Complaint, Respondent admits that several drums of the intact barrels of paint covered by a tarp were missing bung caps but denies the remainder of this paragraph.
28. Answering Paragraph 89-90 of the Complaint, Respondent admits that the paint barrels stored at the SLC Facility from October 1, 2015 to August 3, 2016 had been in a fire and some of the bung caps were missing, and the Respondent otherwise denies this paragraph.
29. No answer is required to Paragraph 91.
30. Paragraph 92 is a recitation of the law and requires no answer.
31. Respondent admits Paragraphs 93 and 94 of the complaint.
32. Paragraph 95 is a recitation of the law and requires no answer.
33. Respondent is without knowledge to answer Paragraph 96, and therefore denies.
34. Respondent denies Paragraph 97.
35. Paragraphs 98-114 are a recitation of the law and/or EPA policy and require no

answer.

GROUND FOR DEFENSE OF PROPOSED PENALTY

36. In accordance with 40 C.F.R. § 22.15(b), Respondent asserts the following “circumstances or arguments which are alleged to constitute the grounds of any defense; facts which respondent disputes; the basis for opposing any proposed relief and whether a hearing is requested.”

37. The unexpected fire, which destroyed Respondent’s trailer during the early morning hours of September 27, 2015, occurred on a remote portion of Interstate 84 near Hammett, Idaho. Middle-of-the-night communications between Respondent’s Springfield, Missouri headquarters and multiple state, federal and local responders, including the local fire department, Elmore County Dispatch, Idaho State Patrol, Idaho Department of Transportation and Idaho Department of Environmental Quality, resulted in miscommunications on how to best deal with the aftermath of the trailer fire. Ultimately, the on-scene fire chief and incident commander concluded: “It was our determination that it went from a haz-mat scene to a clean up scene. We released Region IV Haz Mat after that discussion. B&W Wrecker was on scene when we left, they were going to be in charge of the clean up.” For its, part, Respondent did everything asked of it by the local authorities and regulators and relied on B&W to perform the clean-up and disposal of the materials destroyed by the fire.

38. Respondent arranged to have the damaged trailer and its remaining contents including the intact barrels of paint moved to its Salt Lake City (SLC), Utah facility in October 2015. In arranging this transportation, a representative of Respondent mistakenly advised the Utah based tow company that the trailer involved in the fire had been hauling barrels of water-based paint. The damaged trailer and intact barrels of paint loaded on this trailer were securely

placed on an impervious concrete slab in the truck yard of Respondent's Salt Lake City facility and covered with a tarp. The area where the trailer was stored was fenced off, and not accessible to the public. No discharges from the trailer to the environment occurred. No ground or drinking water resources have been impacted.

39. When EPA notified Respondent in early August, 2016 of its intent to investigate the trailer, Respondent complied fully with all EPA requests, and gave EPA investigators unfettered access to the Facility. Respondent's staff assisted the EPA investigators with a forklift and driver to assist in sampling drums. EPA sent a letter to Respondent on August 3, 2016, instructing Respondent to not move or manipulate the paint drums stored on site. Respondent complied.

40. After an extended investigation by EPA, and after consultation with the U.S. Attorney's Offices in Idaho and Utah, the government declined a criminal prosecution and this civil administrative action ensued.

41. On September 19, 2016, Respondent disposed of the trailer and its contents as hazardous waste at significant expense to Respondent. Respondent enjoyed no economic benefit from noncompliance. Respondent also complied with all requests from EPA to rectify any paperwork problems that may have existed dating from the original 2015 fire.

42. Since the fire, Respondent has engaged in a comprehensive hazardous-waste training program for its relevant employees to ensure that future events such as this will be handled appropriately.

AFFIRMATIVE DEFENSES

1. Complainant's application of the RCRA Penalty Policy is not in accordance with the facts of the case and is not consistent with the statutory penalty factors set out in 42 U.S.C. § 6298(a)(3).

2. The proposed penalty is arbitrary and capricious and an abuse of discretion and otherwise not supported by the record.

HEARING REQUEST

Respondent requests a hearing.

DATED this 21st day of October, 2020.

RYAN & KUEHLER PLLC

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

Scott McKay
NEVIN, BENJAMIN, McKAY & BARTLETT LLP

Attorneys for Respondent New Prime, Inc.

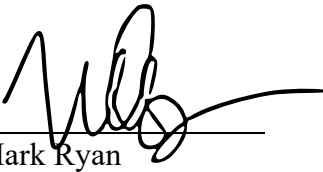
CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2020, I served the foregoing by email to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Haniewicz.melissa@epa.gov

And by Email and U.S. Mail 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



Mark Ryan