



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

**In the Matter of:** )  
 )  
**New Prime, Inc.,** ) **Docket No. RCRA-08-2020-0007**  
 )  
**Respondent.** )

**ORDER SETTING DEADLINES**

On August 22, 2022, the U.S. Environmental Protection Agency (“EPA”), Region 8 (“Complainant”) filed its Third Supplement to its Prehearing Exchange, adding two witnesses and ten exhibits. On August 24, 2022, New Prime, Inc. (“Respondent”) filed a Motion to Exclude Supplemental Exhibits and Witnesses (“Motion”).

As the hearing in this matter is scheduled to begin on October 24, 2022, in Springfield, Missouri, the Tribunal deems it necessary to set filing deadlines for the Response and Reply to the Motion. *See* 40 C.F.R. § 22.16(b).

Any **Response** filed by Complainant to Respondent’s Motion shall be filed no later than **Tuesday, September 6, 2022**.

Any **Reply** filed by Respondent to Complainant’s Response shall be filed no later than **Friday, September 16, 2022**.

In the Motion, Respondent argues for exclusion since “[a]t bottom, EPA’s Third Supplement does not meet the minimum requirements of 40 C.F.R. § 22.19(f)<sup>1</sup> because the newly offered witnesses and documents come many months after EPA was on notice of the need for them and EPA did not ‘promptly’ supplement as required by the rules when it realized its prior exchanges were incomplete.” Mot. at 3. In addition to these grounds for the exclusion of the Third Supplement, Respondent’s recent Motion shall **also** be construed as a Motion in

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<sup>1</sup> As to supplementation of a prehearing exchange, 40 C.F.R. § 22.19 states:


A party who has made an information exchange under paragraph (a) of this section, or who has exchanged information in response to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

40 C.F.R. § 22.19(f).

Limine<sup>2</sup> to exclude the witness testimony and exhibits from the hearing. Arguments in the forthcoming Response and Reply should therefore **also** focus on the admissibility (relevance, materiality, probity, etc.) of this additional evidence (*see* 40 C.F.R. § 22.22(a)) and not merely on the narrow issues raised in the Motion.

Finally, as the parties were admonished in the Notice of Hearing Order (May 9, 2022), “The time allotted for the hearing is limited. Therefore, the parties shall make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested.” It is the Tribunal’s expectation that the parties will work together to stipulate to the authenticity and admissibility of uncontested exhibits, obviating the need for such testimony at the hearing.

**SO ORDERED.**

  
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Christine Donelian Coughlin  
Administrative Law Judge

Dated: August 24, 2022  
Washington, D.C.

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<sup>2</sup> The deadline for filing motions in limine was August 19, 2022. *See* Notice of Hearing Order (May 9, 2022). However, since the Third Supplement was filed on August 22, 2022, any argument that this Motion was untimely will be unavailing.

In the Matter of *New Prime, Inc.*, Respondent.  
Docket No. RCRA-08-2020-0007

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order Setting Deadlines**, dated August 24, 2022, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.

  
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Dated: August 24, 2022  
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