

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

FILED

June 27, 2024

9:37 AM

U.S. EPA REGION 4  
HEARING CLERK

IN THE MATTER OF: )  
)  
Bluestone Coke, LLC )  
3500 35<sup>th</sup> Avenue North )  
Birmingham, Alabama 35207 )  
Respondent. )  
)  
v. )  
)  
EPA ID. No. ALD 000 828 848 )

PROCEEDING UNDER SECTION  
3008(a) and (h) OF THE RESOURCE  
CONSERVATION AND RECOVERY  
ACT, 42 U.S.C. § 6928(a) and (h)

DOCKET NO: RCRA-04-2023-2106

**ANSWER BY RESPONDENT TO COMPLAINT, COMPLIANCE ORDER, AND  
OPPORTUNITY TO REQUEST A HEARING**

COMES NOW, Respondent, Bluestone Coke, LLC, by counsel, and in its Answer to the United States Environmental Protection Agency’s Complaint (the “Complaint”) seeking injunctive relief and the imposition of civil penalties pursuant to Section 3008(a) and (h) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a) and (h), for violations of an Administrative Order on Consent, Docket No. RCRA-04-2016-4250, issued to Bluestone Coke, LLC (formerly known as (f/k/a) ERP Compliant Coke, LLC) on August 11, 2016, pursuant to Section 3008(h)(1) of RCRA, 42 U.S.C. § 6928(h)(1), states as follows:

**I. NATURE OF THE ACTION**

1. Answering Paragraph 1 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

**II. THE PARTIES**

2. Answering Paragraph 2 of the Complaint, Respondent admits the allegations contained therein.

3. Answering Paragraph 3 of the Complaint, Respondent denies the allegations contained therein. Respondent admits that it is a limited liability company formed in Delaware.

### **III. JURISDICTION**

4. Answering Paragraph 4 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

5. Answering Paragraph 5 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

6. Answering Paragraph 6 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

7. Answering Paragraph 7 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

8. Answering Paragraph 8 of the Complaint, Respondent is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

9. Answering Paragraph 9 of the Complaint, Respondent is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

#### **IV. STATUTORY AND REGULATORY BACKGROUND**

10. Answering Paragraph 10 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

11. Answering Paragraph 11 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

12. Answering Paragraph 12 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

13. Answering Paragraph 13 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

14. Answering Paragraph 14 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

15. Answering Paragraph 15 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

16. Answering Paragraph 16 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

17. Answering Paragraph 17 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

18. Answering Paragraph 18 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

19. Answering Paragraph 19 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

20. Answering Paragraph 20 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

21. Answering Paragraph 21 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

22. Answering Paragraph 22 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

23. Answering Paragraph 23 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

24. Answering Paragraph 24 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

25. Answering Paragraph 25 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

26. Answering Paragraph 26 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

27. Answering Paragraph 27 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

## **V. STATEMENT OF FACTS**

28. Answering Paragraph 28 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

29. Answering Paragraph 29 of the Complaint, Respondent admits that it owns and operates the facility located at 3500 35<sup>th</sup> Avenue North in Birmingham, Alabama. Defendants deny the remaining allegations contained therein.

30. Answering Paragraph 30 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

31. Answering Paragraph 31 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

32. Answering Paragraph 32 of the Complaint, Respondent denies the allegations contained therein.

33. Answering Paragraph 33 of the Complaint, Respondent denies the allegations contained therein.

34. Answering Paragraph 34 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

35. Answering Paragraph 35 of the Complaint, Respondent is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

36. Answering Paragraph 36 of the Complaint, Respondent is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

37. Answering Paragraph 37 of the Complaint, Respondent is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

38. Answering Paragraph 38 of the Complaint, Respondent is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

39. Answering Paragraph 39 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

40. Answering Paragraph 40 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

41. Answering Paragraph 41 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

42. Answering Paragraph 42 of the Complaint, Respondent is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and therefore deny the same.

43. Answering Paragraph 43 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

44. Answering Paragraph 44 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

45. Answering Paragraph 45 of the Complaint, Respondent admits the allegations contained therein.

46. Answering Paragraph 46 of the Complaint, Respondent admits the allegations contained therein.

47. Answering Paragraph 47 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

48. Answering Paragraph 48 of the Complaint, Respondent admits the allegations contained therein.

49. Answering Paragraph 49 of the Complaint, Respondent admits the allegations contained therein.

50. Answering Paragraph 50 of the Complaint, Respondent admits the allegations contained therein.

51. Answering Paragraph 51 of the Complaint, Respondent admits the allegations contained therein.

52. Answering Paragraph 52 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

53. Answering Paragraph 53 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

54. Answering Paragraph 54 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

55. Answering Paragraph 55 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

56. Answering Paragraph 56 of the Complaint, Respondent admits the allegations contained therein.

57. Answering Paragraph 57 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.



58. Answering Paragraph 58 of the Complaint, Respondent admits the allegations contained therein.

59. Answering Paragraph 59 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

60. Answering Paragraph 60 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

61. Answering Paragraph 61 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

62. Answering Paragraph 62 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

63. Answering Paragraph 63 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

64. Answering Paragraph 64 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

65. Answering Paragraph 65 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

66. Answering Paragraph 66 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

67. Answering Paragraph 67 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

68. Answering Paragraph 68 of the Complaint, Respondent denies the allegations contained therein.

69. Answering Paragraph 69 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

70. Answering Paragraph 70 of the Complaint, Respondent admits the allegations contained therein.

71. Answering Paragraph 71 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

72. Answering Paragraph 72 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

73. Answering Paragraph 73 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

74. Answering Paragraph 74 of the Complaint, Respondent admits the allegations contained therein.

75. Answering Paragraph 75 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

76. Answering Paragraph 76 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

77. Answering Paragraph 77 of the Complaint, Respondent admits the allegations contained therein.

78. Answering Paragraph 78 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

79. Answering Paragraph 79 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

#### **VI. COUNT1: FAILURE TO DEMONSTRATE FINANCIAL ASSURANCE**

80. Answering Paragraph 80 of the Complaint, Respondent denies each and every material allegation of the Complaint not previously and/or specifically admitted herein and demands strict proof thereof. Further, Respondent denies the allegations set forth in the unnumbered paragraphs of the Complaint.

81. Answering Paragraph 81 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

82. Answering Paragraph 82 of the Complaint, Respondent denies the allegations contained therein.

83. Answering Paragraph 83 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

84. Answering Paragraph 84 of the Complaint, Respondent denies the allegations contained therein.

85. Answering Paragraph 85 of the Complaint, Respondent denies the allegations contained therein.

## **VII. COUNT 2: FAILURE TO UPDATE COST ESTIMATES**

86. Answering Paragraph 86 of the Complaint, Respondent denies each and every material allegation of the Complaint not previously and/or specifically admitted herein and demands strict proof thereof. Further, Respondent denies the allegations set forth in the unnumbered paragraphs of the Complaint.

87. Answering Paragraph 87 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

88. Answering Paragraph 88 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Respondent denies the remaining allegations contained therein.

89. Answering Paragraph 89 of the Complaint, Respondent denies the allegations contained therein.

90. Answering Paragraph 90 of the Complaint, Respondent denies the allegations contained therein.

91. Answering Paragraph 91 of the Complaint, Respondent denies the allegations contained therein.

## **VIII. COMPLIANCE ORDER**

92. Answering Paragraph 92 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

#### **IX. PROPOSED CIVIL PENALTY**

93. Answering Paragraph 93 of the Complaint, Respondent states that the document, being in writing, speaks for itself. Further, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

94. Answering Paragraph 94 of the Complaint, Respondent denies the allegations contained therein.

#### **X. IMMINENT AND SUBSTANTIAL ENDANGERMENT**

95. Answering Paragraph 95 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. Respondent denies the remaining allegations contained therein.

#### **XI. OPPORTUNITY TO REQUEST A HEARING**

96. Answering Paragraph 96 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

97. Answering Paragraph 97 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

98. Answering Paragraph 98 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

99. Answering Paragraph 99 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

100. Answering Paragraph 100 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

101. Answering Paragraph 101 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

102. Answering Paragraph 102 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

## **XII. APPEAL RIGHTS AND EXHAUSTION OF ADMINISTRATIVE REMEDIES**

103. Answering Paragraph 103 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

104. Answering Paragraph 104 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

105. Answering Paragraph 105 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

### **XIII. INFORMAL SETTLEMENT CONFERENCE**

106. Answering Paragraph 106 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial. **Respondent is open to an informal settlement conference.**

107. Answering Paragraph 107 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

108. Answering Paragraph 108 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

### **XIV. EFFECTIVE DATE**

109. Answering Paragraph 109 of the Complaint, Respondent states that the allegations contained therein are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.

Respondent denies the allegations set forth in any unnumbered paragraphs of the Complaint or any sections praying for relief.

### **AFFIRMATIVE DEFENSES**

In response to the Complaint, Bluestone raises the following affirmative defenses:

110. Respondent denies each and every material allegation of the Complaint not previously and/or specifically admitted herein and demands strict proof thereof.

111. Respondent denies any violations of any agreement, contractual, or otherwise, that is allegedly entered into, and demands strict proof thereof.

112. Respondent contends that the Complaint separately and severally fails to state a claim or cause of action against the Respondent upon which relief may be granted.

113. Any claim for punitive damages made in the Complaint is barred under either Federal Law or State Law against the Respondent and should be stricken.

114. Respondent pleads the defense of laches and estoppel as a bar to the Complaint.

115. Respondent pleads collateral estoppel or issue preclusion as a bar to the Complaint.

116. Respondent pleads lack of cooperation as a bar to the Complaint. Respondent provided an insurance policy providing adequate financial assurance that was summarily rejected.

117. Respondent pleads the willful concealment of facts as a bar to the Complaint.

118. Respondent pleads force majeure and events beyond the Respondent's control as a bar to the Complaint. Beginning in June 2018, Bluestone's primary senior secured lender was Greensill Capital (UK) Limited ("Greensill"). In March of 2021, Greensill collapsed financially overnight resulting in Greensill filing for bankruptcy protection in multiple international jurisdictions. Bluestone sued Greensill to protect its interests (Bluestone Resources, Inc., et al. v. Greensill Capital (UK) Limited, et al. 21-cv-02253 USDC SDNY). Bluestone's lawsuit claims breach of contract, breach of implied covenant of good faith and fair dealing, fraud, breach of duty of care, breach of fiduciary duty, unjust enrichment, as well as certain claims against individuals involved with Greensill.

Greensill's bankruptcy has left Bluestone in a distressed financial position. Bluestone no longer has access to a working capital credit facility, which was the intent of the original Greensill agreement. Bluestone's cash and capital strain is further exacerbated because Bluestone is now required to pay back Credit Suisse, who purchased the outstanding Greensill loans.



Further, the Jefferson County (Alabama) Board of Health has rejected any permit renewals. Bluestone has challenged that action by filing a response and requesting a hearing, and that matter remains pending.

119. The Respondents plead that the Respondent's counsel has not yet had an opportunity to complete a full investigation into all of the facts and legal issues involved in this case. The withdrawal by amendment or by pretrial order and after all legal and factual discovery has been concluded: improper venue, insufficiency of process, insufficiency of service of process, failure to join a party under Rule 19 of the Federal Rules of Civil Procedure, lack of jurisdiction over the subject matter or person, accord and satisfaction, arbitration and award, matters claimed are required to be submitted to arbitration, assumption or risk, contributory negligence, discharge in bankruptcy, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, superseding and/or intervening efficient cause, lack of causal relation, lack of notice, failure to mitigate damages, claim of offset based on previous payments made pursuant to contract or otherwise, subsequent negligence, last clear chance, sudden emergency, subsequent contributory negligence, lack of duty owed, unqualified or qualified immunity, mechanical failure, open and obvious danger, failure to state a legal claim, lack or legal capacity to be sued.

120. Respondents hereby give notice that they intend to rely upon any other defenses that may become available or appear during the discovery proceedings in this case and hereby reserve the right to amend their Answer to assert any such defenses.

Respectfully submitted,

/s/ James V. Seal (SEA034)

**OF COUNSEL:**

Ron H. Hatfield, Jr., Esq.  
James V. Seal, Esq.  
Bluestone Resources, Inc.  
302 South Jefferson Street  
Roanoke, VA 24011  
Phone: (540) 759-2621  
Fax: (540) 301-1370  
*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2024, a copy of the Answer by Respondent was sent via electronic mail, delivery receipt requested, to the following:

Shannon L. Richardson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
(404) 562-8929  
Email: [R4\\_Regional\\_Hearing\\_Clerk@epa.gov](mailto:R4_Regional_Hearing_Clerk@epa.gov)

Joan Redleaf Durbin  
Senior Attorney  
U.S. Environmental Protection Agency  
61 Forsyth Street, SW  
13<sup>th</sup> Floor, ORC  
Atlanta, Georgia 30303  
(404) 562-9544  
Email: [redleaf-durbin.joan@epa.gov](mailto:redleaf-durbin.joan@epa.gov)

Respectfully submitted,

/s/ James V. Seal (SEA034)