

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:	)	
	)	
Bluestone Coke, LLC	)	
3500 35 <sup>th</sup> Avenue North	)	PROCEEDING UNDER SECTION
Birmingham, Alabama 35207	)	3008(a) and (h) OF THE RESOURCE
	)	CONSERVATION AND RECOVERY
Respondent.	)	ACT, 42 U.S.C. § 6928(a) and (h)
	)	
v.	)	
	)	
EPA ID. No. ALD 000 828 848	)	DOCKET NO: RCRA-04-2023-2106

**RESPONDENT’S PREHEARING EXCHANGE**

COMES NOW, Respondent, Bluestone Coke, LLC, by counsel, and pursuant to the Presiding Officer’s Prehearing Order of July 11, 2024, and provides the following as its Prehearing Exchange:

**I. Respondent’s List of Witnesses Intended to be Called at the Hearing**

Respondent may call any or all of the following witnesses at the hearing. Respondent may choose not to call one or more witnesses on this list if, at the time of hearing, the substance of their testimony is undisputed or stipulated, if they are otherwise determined by Respondent to be unnecessary, or if they are unavailable. Respondent respectfully reserves the right to supplement this list of witnesses to the full extent allowed by 40 C.F.R. Part 22, or by order of the Presiding Officer.

**Stephen W. Ball (Fact Witness)**

Mr. Ball is Executive Vice President and General Counsel for Bluestone Resources, Inc. Mr. Ball is an attorney licensed in the state of West Virginia and serves as Bluestone’s corporate representative in legal matters and also the company’s acting Chief Financial Officer.

Mr. Ball is expected to testify about the following topics:

- a. Respondent's obligation regarding the EPA's required financial assurance for corrective action at its facility located at 3500 35th Avenue North in Birmingham, Alabama (the Facility) since April 2021;
- b. The Respondent's review and interpretation of the records related to financial assurance in this matter;
- c. The financial assurance requirements imposed on Respondent by the 2016 Order;
- d. Respondent's financial information and documents in relation to the use of the financial test; and
- e. The insurance policy submitted by Respondent and its sufficiency to meet the financial assurance requirements.

Additionally, to the extent that admissibility of such records remains in dispute at the time of the hearing, Mr. Ball will provide a foundation for the authentication of both Agency records that he oversaw or created and/or maintained and public records regarding the ownership of the Facility.

**Don Wiggins (Fact Witness)**

Mr. Wiggins is the Bluestone Coke plant manager currently supervising and working on site at the closed Bluestone facility. Mr. Wiggins has an engineering degree from Auburn University. Mr. Wiggins has been employed at the Facility since December 1989. Mr. Wiggins has served in the following positions at the Facility: Project Engineer (Coke Plant) – project work; Plant Engineer (Fiber Plant) – maintenance and project work; Plant Manager (Fiber Plant) – Operations, Quality, and Accounting; General Manager (Fiber Plant) – Operations, Quality, Accounting and Sales; Manager of Technical Services (Complex) – Complex Engineering, Safety, BTF DMR preparer, DMR Certifier; Operations, Representative of the Company (Complex) – advised management on operations, safety, and DMR Certifier. Today, Mr. Wiggins conducts maintenance as needed, grounds upkeep, security,

manage EPA RCRA order via consulting firm, manage JCDH requirements, BTF pH sampling done in-house.

Mr. Wiggins is expected to testify about the following topics:

- a. Respondent’s obligation regarding the EPA’s “on the ground” requirements at its facility located at 3500 35th Avenue North in Birmingham, Alabama (the Facility) since April 2021;
- b. Respondent’s day to day actions in compliance with the EPA’s requirements at the Facility

Additionally, to the extent that admissibility of such records remains in dispute at the time of the hearing, Mr. Wiggins will provide a foundation for the authentication of both Agency records that he oversaw or created and/or maintained while managing the Facility.

**II. Exhibits that Respondent Intends to Produce at the Hearing**

Respondent includes with this Prehearing Exchange the exhibits it intends to introduce into evidence. Three of Respondent’s exhibits contain Confidential Business Information (CBI) that is relevant to Respondent’s case. These exhibits (CX26, CX31, and CX67) have been redacted prior to filing in the OALJ’s E-Filing system. Unredacted versions of these exhibits have been provided separately to the OALJ pursuant to instructions received therefrom. These exhibits are identified in the table below, in bold, and they have been handled and submitted according to applicable law and the procedures provided by the OALJ to Complainant for filing CBI in this matter.

Respondent’s exhibits are identified in the following table of exhibits:

Exhibit Number	Pages	Document Date	Document Title/Description
RX01	59	3/28/2024	Complainant’s Initial Complaint
RX02	19	6/27/2024	Respondent’s Answer
RX03	34	3/25/2024	EPA Rules of Procedure

RX04	3	8/2/2024	Joint Preliminary Statement
RX05	2	8/2/2024	Joint Status Report
RX06	1	8/5/2024	Jeff Muth Document Letter 1
RX07	1	8/5/2024	Jeff Muth Document Letter 2
RX08	1	8/5/2024	Jeff Muth Document Letter 3
RX09	2036	11/15/2023	Confidential Business Information 1
RX10	29	8/6/2024	Confidential Business Information 2
RX11	7	6/30/2024	Confidential Business Information 3

### **III. Respondent's Estimate of the Time Need to Present its Case**

Respondent estimates that it will take approximately 1 day to present its case. The Respondent's timeframe will be directly influenced by how much or how little rebuttal testimony and evidence it will present after hearing the Complainant's case. This timeframe may be shortened significantly if the parties agree prior to the hearing to stipulate to any of the facts in dispute and/or to the admission of Complainant's or Respondent's documents and exhibits.

This timeframe also could be shortened significantly if the parties reach agreement on any of the elements of the expected testimony of any of Complainant's or Respondent's witnesses.

### **IV. Translation Services**

Respondent does not anticipate that it will need the services of an interpreter with regard to any of its witnesses.

Dated: September 13, 2024

Respectfully submitted,

/s/ James V. Seal (SEA034)

**OF COUNSEL:**

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*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 10, 2024, I electronically filed the foregoing Respondent's Prehearing Exchange with the Clerk of the Office of Administrative Law Judges using the OALJ E-Filing System and sent it by electronic mail to:

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)

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Respectfully submitted,

/s/ James V. Seal (SEA034)