

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Bluestone Coke, LLC
3500 35th Avenue North
Birmingham, Alabama 35207

Respondent.

Proceedings under Section 3008(a) and (h) of the
Solid Waste Disposal Act, as amended by, inter alia,
the Resource Conservation and Recovery Act, 42
U.S.C. §§ 6928(a) and (h)

Docket No. RCRA-04-2023-2106

**COMPLAINANT'S REBUTTAL
PREHEARING EXCHANGE**

Pursuant to 40 C.F.R. § 22.20 and the Presiding Officer's Prehearing Order of July 11, 2024 (the Prehearing Order), Complainant, the Director of the Enforcement and Compliance Assurance Division of Region 4 of the United States Environmental Protection Agency (the EPA), by and through the undersigned, provides the following as its Rebuttal Prehearing Exchange:

I. Statement in Response to Respondent's Prehearing Exchange

Pursuant to the Prehearing Order, Complainant is required to submit as part of its Rebuttal Prehearing Exchange "a statement and/or any documents in response to Respondent's Prehearing Exchange." Through communications with the EPA's Office of Administrative Law Judges (OALJ) on September 25, 2024, however, Complainant has learned that Respondent, Bluestone Coke, LLC (Respondent), has not as yet filed a Prehearing Exchange as required by the Prehearing Order. As a result, Complainant has no response to make at this time.

As Respondent's Prehearing Exchange was due on September 13, 2024, it can no longer be timely filed. The communication from the OALJ suggest, however, that Respondent has the option to file a motion for leave to file out of time. If at any point such a motion is filed by Respondent and

granted by the Presiding Officer, Complainant intends to move for the opportunity to amend this Rebuttal Prehearing Exchange in order to properly respond to any Prehearing Exchange that Respondent might properly file.

II. Statement Specifying a Proposed Penalty

Pursuant to the Prehearing Order, Complainant is also required to provide a statement specifying a proposed penalty and a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty. The Prehearing Order referenced 40 C.F.R. § 22.19(a)(4) for this requirement, which obligates Complainant to provide a proposed penalty and explanation “[w]ithin 15 days after [R]espondent files its prehearing exchange.”

In Respondent’s Prehearing Exchange, Respondent is required by the Prehearing Order to provide factual information it considers relevant to Complainant’s assessment of a penalty, including information regarding Respondent’s ability to pay. As noted above, Respondent’s Prehearing Exchange was due on or before September 13, 2024, whereas Complainant’s Rebuttal Prehearing Exchange is due on or before September 27, 2024. Therefore both the Prehearing Order and 40 C.F.R. § 22.19(a)(4) contemplate Complainant’s filing of its proposed penalty and explanation *after* the filing of Respondent’s Prehearing Exchange, presumably so that Complainant’s proposed penalty and explanation can account for information provided by Respondent.

In this case, however, Respondent has not yet filed a Prehearing Exchange at all, but the deadline for Complainant’s Rebuttal Prehearing Exchange has arrived. Given these circumstances, Complainant is uncertain as to whether it is proper for it to provide a penalty calculation and

explanation thereof at this time. In an abundance of caution, however, Complainant has elected to do so herein. If at some later date Respondent is granted leave to file a Prehearing Exchange out of time or to file any other documentation that is relevant to Complainant's penalty assessment, Complainant intends to seek leave from the Presiding Officer to amend the penalty calculation and explanation that appears below and in Exhibit CX74.

Subject to the foregoing, Complainant proposes a penalty in this matter in the total amount of **\$13,696,087**.

III. Explanation of Penalty Factors and Methodology

The proposed penalty specified in Section II above was calculated using the 2003 Revisions to the 1990 RCRA Civil Penalty Policy¹ that was previously submitted by Complainant as Exhibit CX53, in conjunction with the revisions and amendments thereto that were previously submitted by Complainant as Exhibits CX54–CX58 and CX73. These calculations are evidenced and explained in the Penalty Justification Memorandum dated September 27, 2024 (the Penalty Memo), that is newly submitted herewith as Exhibit CX74, and in the Penalty Calculation Worksheets and Penalty Calculation Narratives that are attached to the Penalty Memo (Exhibit CX74 at 4–26).

Dated: September 27, 2024

Respectfully Submitted,

Joan Redleaf Durbin
Senior Attorney
RCRA/FIFRA/TSCA Law Office
U.S. Environmental Protection Agency, Region 4

¹ The RCRA Civil Penalty Policy is based upon Section 3008 of the Resource Conservation and Recovery Act and therefore incorporates the statutory requirements for any penalty assessment to consider the seriousness of the violation and Respondent's good-faith efforts, if any, to comply.

CERTIFICATE OF SERVICE

The undersigned certifies that on September 27, 2024, I electronically filed the foregoing **COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE** with the Clerk of the Office of Administrative Law Judges using the OALJ E-Filing System and served it by electronic mail on James V. Seal and Ron Hatfield, attorneys for Respondent, at James.Seal@bluestone-coal.com and Ron.Hatfield@bluestone-coal.com.

Date: September 27, 2024

Joan Redleaf Durbin
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