

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 PREHEARING
EXCHANGE**

Pursuant to the Presiding Officer's Prehearing Order of July 11, 2024, Complainant, the Deputy 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 Prehearing Exchange:

I. Complainant's List of Witnesses Intended to be Called at the Hearing

Complainant may call any or all of the following witnesses at the hearing. Complainant 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 Complainant to be unnecessary, or if they are unavailable. Complainant 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.

Corey Hendrix (Fact Witness)

Mrs. Hendrix holds a Bachelor of Science degree in biosystems engineering from Clemson University and a Master of Science degree in public policy from the Georgia Institute of Technology.

Mrs. Hendrix has 20 years of experience with the EPA and currently serves as a financial specialist in the UST and Data Management Section of the Resource Conservation and Recovery Act (RCRA) Programs and Cleanup Branch of the Land, Chemicals and Redevelopment Division of Region 4 of the EPA. Mrs. Hendrix manages the RCRA and Toxic Substances Control Act (TSCA) Polychlorinated Biphenyl (PCB) financial assurance program for EPA Region 4. Region 4 has facilities with over \$2 billion in RCRA and \$55 million in TSCA PCB financial responsibility obligations. Mrs. Hendrix oversees the implementation of state and federal financial assurance regulations in all eight of the states in Region 4. Mrs. Hendrix has performed over 200 financial record reviews over the past five years, and she is a national instructor on the review of financial assurance mechanisms and remedial cost estimating for the EPA.

Mrs. Hendrix is expected to testify about the following topics:

- a. Respondent's obligation and failure to demonstrate financial assurance for corrective action at its facility located at 3500 35th Avenue North in Birmingham, Alabama (the Facility) since April 2021;
- b. The EPA'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, Exhibit CX03;
- 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 lack of 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, Mrs. Hendrix will provide a foundation for the authentication of both Agency records that she created and/or maintained and public records regarding the ownership of the Facility.

James Harry Smith Jr. (Fact Witness)

Mr. Smith holds a Bachelor of Science degree in geology from Tennessee Technological University and a Master of Science degree in geography from Western Kentucky University. Mr. Smith has 33 years of experience with the EPA and currently serves as a project manager and corrective action specialist in the RCRA Correction Action Section of the RCRA Programs and Cleanup Branch of the Land, Chemicals and Redevelopment Division of Region 4 of the EPA. Mr. Smith was the EPA project manager assigned to the Facility from 2006 to 2012. He became the assigned project manager once again in April of 2022, and he remains in that role as of the date of this filing.

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

- a. The corrective action remedies that led to the calculation and approval of the cost estimates for financial assurance at the Facility; and
- b. The requirements imposed by:
 - the initial Administrative Order, Docket Number 89-39-R, Proceeding Under Section 3008(h) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6928(h) that was issued to a previous owner of the Facility, Sloss Industries Corp. on September 29, 1989 (the 1989 Order), Exhibit CX08;

- the Administrative Order on Consent, Docket No. RCRA-04-2112-4255, issued to a previous owner of the Facility, Walter Coke, Inc., on September 17, 2012, pursuant to Section 3008(h)(1) of RCRA (the 2012 Order), Exhibit CX07; and
- the Administrative Order on Consent, Docket No. RCRA-04-2016-4250, issued to Respondent (formerly known as (f/k/a) ERP Compliant Coke, LLC) on August 11, 2016, pursuant to Section 3008(h)(1) of RCRA (the 2016 Order), Exhibit CX03.

Brooke York (Fact Witness and Expert Witness)

Ms. York holds a Bachelor of Science degree in civil engineering from the Georgia Institute of Technology. She currently serves as an Environmental Engineer, a RCRA Inspector, and the RCRA Enforcement Technical Adviser in the RCRA Enforcement Section of the Chemical Safety and Land Enforcement Branch of the Enforcement and Compliance Assurance Division of Region 4 of the EPA. Complainant has submitted Ms. York's resume as Exhibit CX71.

Ms. York is expected to testify about the following topics:

- c. The EPA's RCRA administrative enforcement process, including the calculation of the penalty, in general; and
- d. The EPA's RCRA administrative enforcement process, including the calculation of the penalty, in this matter.

Carlos E. Merizalde (Fact Witness)

Mr. Merizalde holds a Bachelor of Science degree in civil engineering and a Master of Science degree in traffic and transportation engineering, both from the Georgia Institute of

Technology. Mr. Merizalde currently serves as an Environmental Engineer in the RCRA Program and Permitting Section of the RCRA Programs and Cleanup Branch of the Land, Chemicals and Redevelopment Division of Region 4 of the EPA, where he has worked for the past twenty-three years. Mr. Merizalde is also the RCRA State Permitting Coordinator for Florida, Kentucky, and Tennessee.

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

- The EPA's use of the RCRAInfo database and the information available thereon; and
- Specific information in RCRAInfo showing that Respondent never received a RCRA Permit from EPA or the Alabama Department of Environmental Management (ADEM).

Justin Abrams (Fact Witness and Expert Witness)

Mr. Abrams holds a Bachelor of Business Administration degree in accounting and finance and a Master of Business Administration degree with the same concentration, both from American InterContinental University. Mr. Abrams has eleven years of experience with the EPA and currently serves as an Accountant in the Financial Integrity Branch of the Regional Support Division of the Office of Enforcement and Compliance Assurance at EPA Headquarters. Mr. Abrams provides national support to the EPA's ten regional offices relating to the implementation of the financial assurance regulations under both RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), performing several types of financial analysis, including ability-to-pay determinations. Prior to his current position, Mr. Abrams served as an Accountant for the Comptroller Branch of Region 5 of the EPA, in which capacity he regularly performed both CERCLA and RCRA financial assurance mechanism reviews on trust funds, surety bonds, letters of

credit, insurance, financial tests, and corporate guarantees. In that role, he helped implement financial assurance obligations worth approximately \$1 billion in connection with facilities that were regulated under RCRA and/or CERCLA. Complainant has submitted Mr. Abrams's resume as Exhibit CX72.

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

- a. The financial assurance regulations promulgated under RCRA;
- b. The types of financial assurance mechanisms that are available under RCRA and its associated regulations;
- c. The financial assurance requirements imposed on Respondent by the 2016 Order, Exhibit CX03;
- d. Respondent's financial information and documents in relation to the use of the financial test;
- e. The use of insurance for financial assurance generally;
- f. The insurance policy submitted by Respondent and its lack of sufficiency to meet the financial assurance requirements;
- g. The ability to pay analysis used in EPA enforcement matters; and
- h. Respondent's ability to pay.

II. Exhibits that Complainant Intends to Produce at the Hearing

Complainant includes with this Prehearing Exchange the exhibits it intends to introduce into evidence. Three of Complainant's exhibits contain Confidential Business Information (CBI) that is relevant to Complainant's allegations. 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.

Two of Complainant's exhibits (CX12 and CX43) also originally included CBI, however, at this time Complainant does not intend to produce the CBI as part of its prehearing exchange.

Complainant has therefore extracted the non-CBI portions of these documents for inclusion as exhibits. Complainant reserves the right to provide the CBI in its rebuttal exchange in the event that Respondent disputes Complainant's characterizations of their contents.

Complainant's exhibits are identified in the following table of exhibits:

Exhibit Number	Number of Pages	Document Date	Document/Title Description
CX01	1	5/22/2024	Certificate of Service
CX02	1	5/24/2024	UPS Proof of Delivery of EPA Complaint to Roanoke, VA (UPS tracking certificate)
CX03	48	8/11/2016	RCRA Section 3008(h) Order on Consent (Docket No. RCRA-04-2016-4250) modified and reissued to ERP Compliant Coke, LLC. (2016 Order)
CX04	8	8/16/2024	Bluestone Coke LLC Cleanups in My Community webpage
CX05	2	1/29/2024	Letter from Forrest Covington to Stephen Cobb Re: Intent to Pursue Formal Enforcement Action
CX06	2	1/29/2024	Transmittal email from Araceli Chavez to Alabama Re: Bluestone Coke, LLC - Intent to Pursue Formal Enforcement Action
CX07	54	9/17/2012	RCRA Section 3008(h) Order on Consent issued to Walter Coke, Inc. (Docket No. RCRA-04-2112-4255) with cover letter (2012 Order)
CX08	80	9/29/1989	RCRA Section 3008(h) Administrative Order issued to Sloss Industries Corporation (Docket No. 89-39-R)
CX09	6	8/16/2024	Comprehensive Permitting Report for Bluestone Coke, LLC from RCRAInfo
CX10	1	2/2/2016	Delaware Department of State: Division of Corporations- Bluestone Coke, LLC formation as a limited liability company
CX11	1	2/5/2016	State of Alabama Foreign Limited Liability Company Application for Registration of ERP Compliant Coke, LLC

Exhibit Number	Number of Pages	Document Date	Document/Title Description
CX12	2	6/18/2020	Letter from Hunter Naff to Alan Annicella Re: Request for Information including transmittal email (Request for Information Response)- CBI Redacted
CX13	28	3/10/2016	Ownership Documents
CX14	25	2/23/2018	Remedy for Former Chemical Plant and Former Pig Iron Foundry Response to Comments and Final Decision with transmittal letter (Final Remedy Decision SMA 4 and SMA 5)
CX15	3	7/11/2019	Letter from Wesley Hardegree to Don Wiggins Re: Final Approval of the Corrective Measures Implementation Work Plan (including cost estimates) for SMA 5 with certification of receipt (SMA 5 Approval Letter)
CX16	71	6/28/2018	SMA 5 Plan
CX17	1	8/2/2019	Letter from Don Wiggins to Wes Hardegree Re: Transfer of Ownership (ERP Compliant Coke, LLC to Bluestone Mineral, Inc.)
CX18	2	10/31/2019	Letter from Don Wiggins to Wesley Hardegree Re: Submission of Financial Assurance for Bluestone Coke, LLC SMA 5- Former Pig Iron Foundry (Certificate of Insurance)
CX19	4	12/18/2019	Letter from Wesley Hardegree to Don Wiggins Re: Final Approval of the Corrective Measures Implementation Work Plans (including cost estimates) for SMA 4 with certification of receipt (SMA 4 Approval Letter)
CX20	99	9/7/2018	SMA 4 Plan
CX21	5	5/6/2020	Email chain between Hunter Naff and Corey Hendrix from 2/4/2020, 2/12/2020, 4/3/2020, 4/30/2020, and 5/6/2020 Re: Bluestone Coke LLC- SMA 5 Former Pig Iron Foundry - Financial Assurance Mechanism
CX22	10	1/13/2020	James River Insurance Company, Ltd. Insurance Policy PKG1891127-01 (Unsigned and undated insurance policy)
CX23	16	1/21/2020	James River Insurance Company, Ltd. Insurance Certificate and Policy PKG 1891128 with transmission email
CX24	4	8/28/2020	Letter from Kimberly Bingham to Hunter Naff Re: Resource Conservation Recovery Act (RCRA) Opportunity to Show Cause
CX25	1	8/28/2020	Transmittal email from Simone Francis Robinson to Hunter Naff Re: ERP Coke Show Cause Letter
CX26	8	2/24/2021	Letter from Hunter Naff to Brooke York Re: Financial Test and Corporate Guarantee Review with enclosures- CBI Redacted (Unredacted CX26 filed via the OneDrive)
CX27	1	2/24/2021	Transmittal Email from Hunter Naff to Brooke York Re: Revised Financial Assurance Documents

Exhibit Number	Number of Pages	Document Date	Document/Title Description
CX28	3	5/12/2021	Email chain between Corey Hendrix and Hunter Naff from 3/2/2021, 4/1/2021, 4/26/2021, and 5/12/2021 Re: Financial Assurance Documents 2021, based on 2020 financials
CX29	3	6/28/2021	Letter from Kimberly Bingham to Hunter Naff Re: Notice of Violation, Bluestone Coke, LLC (the NOV)
CX30	1	6/28/2021	Transmittal email from Simone Robinson to Hunter Naff Re: Bluestone Coke, LLC Notice of Violation
CX31	5	8/9/2021	Letter from Stephen Ball to Joan Redleaf Durbin Re: SMA 4 and SMA 5 Financial Assurance Mechanism with enclosures (Financial Test Submittal) - CBI Redacted (Unredacted CX31 filed via the OneDrive)
CX32	1	8/9/2021	Transmittal email from Polly Hansen to Joan Redleaf Durbin Re: EPA Response from Bluestone (Financial Test Submittal)
CX33	3	8/24/2021	Email chain between Corey Hendrix and Steve Ball from 8/11/2021 to 8/24/2021 Re: EPA Response from Bluestone (Financial Test and Corporate Guarantee deficiencies and comments)
CX34	2	9/29/2021	Letter from Cesar Zapata to Steven Ball Re: Financial Assurance for Corrective Action, Bluestone Coke, LLC facility (Request for Alternative Financial Assurance)
CX35	2	9/29/2021	Transmittal email from Corey Hendrix to Steve Ball Re: EPA ID ALD000828848 (Request for Alternative Financial Assurance)
CX36	4	10/28/2021	Email chain between Joan Redleaf Durbin and Steve Ball from 10/26/2021 to 10/28/2021 Re: EPA ID ALD000828848 (Status for Alternative Financial Assurance)
CX37	4	3/24/2022	Letter from Keriema Newman to Ronald Hatfield Re: Notification of Accrual of Stipulated Penalties Related to Financial Assurance
CX38	1	3/24/2022	Transmittal Email from Simone Robinson to Ron Hatfield Re: Bluestone Coke LLC Notification of Accrual of Stipulated Penalties Related to Financial Assurance
CX39	13	10/12/2022	Email chain between Joan Redleaf Durbin and Rob Fowler from 8/8/2022 to 10/19/2022 Re: Bluestone Coke, LLC/RCRA Section 3008(h) Administrative Consent Order
CX40	1	2/7/2023	Transmittal email from Araceli Chavez to Steve Ball Re: Final Request for Alternative Financial Assurance Bluestone Coke, LLC
CX41	2	2/7/2023	Letter from Keriema Newman to Stephen Ball Re: Final Request for Alternative Financial Assurance
CX42	4	2/20/2023	Email chain between Joan Redleaf Durbin and Steve Ball from 2/16/2023 to 2/20/2023 Re: Final Request for Alternative Financial Assurance (Confirming receipt of Final Request for Alternative Financial Assurance letter)

Exhibit Number	Number of Pages	Document Date	Document/Title Description
CX43	3	5/26/2023	Letter from Stephen Ball to Joan Redleaf Durbin Re: SMA 4 and SMA 5 Financial Assurance Mechanism and Consolidated Financial Statements Submittal - CBI Redacted
CX44	2	5/26/2023	Email chain between Joan Redleaf Durbin and Rob Fowler on 5/26/2023 Re: Audit Proposal-year end 2022 (2021 Audited Financial Statements Transmittal)
CX45	3	5/30/2023	Email chain between Joan Redleaf Durbin and Rob Fowler on 5/30/2023 Re: Audit Proposal-year end 2022 (Failure to obtain alternate Financial Assurance)
CX46	1	8/14/2024	Bureau of Economic Analysis Table 1.1.9. Implicit Price Deflators for Gross Domestic Product
CX47	4	1/30/2015	Region 4 Delegation 8-9-A. Administrative Enforcement: Issuance of Complaints, Signing of Consent Agreements, etc.
CX48	3	5/11/1994	EPA HQ Delegation 8-32. Administrative Enforcement: Corrective Action Authority: Issuance of Orders and Signing of Consent Agreements
CX49	1	5/11/1994	EPA HQ Delegation 8-9-A. Administrative Enforcement: Issuance of Complaints, Signing of Consent Agreements, etc.
CX50	3	1/30/2015	Region 4 Delegation 8-32. Administrative Enforcement: Corrective Action Authority: Issuance of Orders and Signing of Consent Agreements
CX51	23	12/16/1985	Interpretation of Section 3008(h) of the Solid Waste Disposal Act
CX52	17	9/30/2003	Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action
CX53	113	6/23/2003	Revisions to the 1990 Civil Penalty Policy
CX54	18	12/29/2008	Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustments Rule (Effective January 12, 2009)
CX55	48	4/6/2010	EPA Memorandum from Rosemarie A. Kelley, Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009
CX56	21	1/15/2020	Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule
CX57	12	1/12/2022	Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule
CX58	20	1/10/2024	Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2024) and Transmittal of the 2024 Civil Monetary Penalty Inflation Adjustment Rule
CX59	4	10/4/2019	State of Alabama Name Change ERP Compliant Coke to Bluestone Coke

Exhibit Number	Number of Pages	Document Date	Document/Title Description
CX60	2	6/19/2024	Bluestone Organizational Chart (obtained from online news source. Exhibit B in Case 6:12-cv-00091-GFVT-HAI)
CX61	1	10/10/2019	Letter from Don Wiggins to Wes Hardegree Re: Notification that ERP Compliant Coke, LLC had changed its name to Bluestone Coke, LLC.
CX62	4	12/11/2019	Letter from Wesley Hardegree to Don Wiggins Re: Comments on the Financial Assurance Mechanism for SMA 5
CX63	2	12/9/2020	Email from Hunter Naff to Wesley Hardegree Re: Bluestone Coke Financial Assurance Mechanism
CX64	4	1/28/2021	Letter from Corey Hendrix to Hunter Naff Re: SMA 5 and SMA 4 Financial Assurance Financial Test and Corporate Guarantee Review and transmittal email
CX65	1	1/29/2021	Email from Hunter Naff to Corey Hendrix Re: Review of Financial Test (Receipt of Letter)
CX66	1	2/15/2021	Email from Hunter Naff to Corey Hendrix Re: Review of Financial Test (Status of Financial Test and Corporate Guarantee updates)
CX67	7	8/27/2021	Letter from Steven Ball to Corey Hendrix Re: Financial Test and Corporate Guarantee Response CBI REDACTED (Unredacted CX67 filed via the OneDrive) and transmittal email
CX68	4	4/7/2022	Letter from Steven Ball to Joan Redleaf Durbin Re: Facility-Bluestone Coke LLC f/k/a ERP Compliant Coke (Notification of Bankruptcy of Greensill Capital (UK) Ltd.)
CX69	252	5/1/1982	Financial Assurance for Closure and Post-Closure Care: Requirements for Owner and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities EPA Guidance Manual
CX70	17	9/30/2003	Interim Guidance on Financial Responsibility for Facility Subject to RCRA Corrective Action and transmittal memorandum
CX71	19	8/21/2024	Resume of Brooke York
CX72	2	8/22/2024	Resume of Justin Abrams
CX73	3	2/14/2024	Revised Penalty Matrices for the RCRA Civil Penalty Policy

III. Complainant's Estimate of the Time Need to Present its Case

Complainant estimates that it will take approximately 1 – 2 days to present its direct 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 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 witnesses.

IV. Translation Services

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

V. Documentation Showing Perfected Service

Service of the April 10, 2024 Complaint, Compliance Order, and Opportunity to Request a Hearing (the Complaint) was completed in accordance with section 22.5(b)(1) of the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.5(b)(1). Complainant has submitted documentation demonstrating this and has identified the documentation as exhibit CX01 (Certificate of Service) and CX02 (UPS tracking certificate) in the table of exhibits that appears in Section II above.

VI. Narrative and Documentation in Support of Non-Admitted Allegations

In the Answer by Respondent to Complaint, Compliance Order, and Opportunity to Request a Hearing (the Answer), Respondent admits the allegations contained in paragraphs 2, 45–46, 48–51, 56, 58, 70, 74, and 77 of the Complaint. (Answer paras. 2, 45–46, 48–51, 56, 58, 70, 74, and 77).

Respondent characterizes the language in Complaint paragraphs 4–7, 10–28, 30, 31, 92, 93, and 95–109 as “statements of legal conclusions” that “are not appropriate for admission or denial.” (Answer paras. 4–7, 10–28, 30, 31, 92, 93, and 95–109). There are therefore no factual allegations in these paragraphs that would require admission or denial by Respondent pursuant to 40 C.F.R. §

22.15(b).

The factual and legal positions alleged in the Complaint that were denied in whole or in part by Respondent appear in paragraphs 1, 3, 8, 9, 29, 32–44, 47, 52–55, 57, 59–69, 71–73, 75–76, and 78–95 thereof. Complainant will use witness testimony, Agency records, and public records to demonstrate these factual and legal positions. More specifically, Complainant, provides the following support for the allegations in each of these paragraphs:

Para. 1. Respondent states that the 2016 Order “being in writing, speaks for itself.”

Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterization of the document.

Respondent “denies the remaining allegations” in this paragraph. The only other allegation herein is that Respondent was formerly known as “ERP Compliant Coke, LLC.” Respondent admits the allegations in paragraphs 49–51 of the Complaint, (Answer paras. 49–51), which include the allegations that amendments were filed to corporate registrations in both Delaware and Alabama to reflect the fact that the name of the entity ERP Compliant Coke, LLC was changed to the current name of Respondent, and that the EPA was notified of this change in October of 2019. Notwithstanding Respondent’s denial, the allegation regarding Respondent’s former name is thus not in dispute.

Para. 3. Respondent denies the allegations in this paragraph but “admits that it is a limited liability company formed in Delaware.” (Answer para. 3). This paragraph of the Complaint alleges instead that Respondent is a “Delaware corporation.” This was an error, however, Complainant correctly identifies Respondent as an LLC in both this paragraph and in the Case Caption, and asserts this to be a Scrivener’s error which does not affect Complainant’s allegations.

This paragraph also alleges that Respondent is “the owner and operator of a facility located at 3500 35th Ave. North in Birmingham, Jefferson County, Alabama” (the Facility). In response to paragraph 29 of the Complaint, Respondent expressly admits this allegation, and therefore notwithstanding Respondent’s denial, this allegation is not in dispute. (Answer para. 29).

The remaining allegation in this paragraph is that the Facility is assigned the EPA Identification Number “ALD 000 828 848.” In support of this allegation, Complainant has submitted the 2016 Order as Exhibit CX03, which shows this identification number in the caption, and which was signed by Respondent on July 5, 2016. Complainant has also submitted both a screenshot of the EPA Cleanups In My Community RCRA Profile webpage as Exhibit CX04 and a screenshot of the Comprehensive Permitting Report for Bluestone Coke, LLC from RCRAInfo as Exhibit CX09. Complainant will use these exhibits to further demonstrate the identification number of the Facility. Complainant will also use testimony from the witness Carlos Merizalde to provide information about the RCRAInfo database.

Para. 8. Respondent states that it “is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained” in this paragraph and therefore denies them. (Answer para. 8). The allegations in this paragraph each merely provide context for the legal citations throughout the Complaint, indicating which particular sources of law are referenced therein. As such, they are not appropriate for admission or denial by Respondent and cannot be substantively in dispute in this matter.

Para. 9. Respondent states that it “is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation[] contained” in this paragraph and therefore denies it. (Answer para. 9). To show that notice was so given, Complainant has submitted

a January 29, 2024, letter from the EPA to Stephen A. Cobb, Chief of the Land Division of the ADEM, as Exhibit CX05, and the email demonstrating the letter's transmission as Exhibit CX06.

Para. 29. Respondent admits that it owns and operates the Facility but denies the remaining allegations in this paragraph. (Answer para. 29). In support of the allegations that the Facility contains one hazardous waste management unit that was previously operated as a surface impoundment and closed as a landfill, Complainant has submitted the 1989 Order as Exhibit CX08.

Para. 32. Respondent denies the allegation in this paragraph that there "is or has been a release of hazardous wastes into the environment from the Facility requiring corrective action under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h)." (Answer para. 32). In support of this allegation, Complainant has submitted the 2016 Order as Exhibit CX03, which makes the same allegation in its Subsection VI.f, and which was signed by Respondent.

Para. 33. Respondent denies the allegation in this paragraph that the Facility has never had a RCRA or an Alabama Hazardous Wastes Management and Minimization Act (AHWMMA) permit issued to it. (Answer para. 33). Complainant has submitted a report generated by the RCRAInfo database as Exhibit CX09 to show that neither the EPA nor ADEM has ever issued such a permit. Complainant will also use fact testimony from the witness, Carlos Merizalde to support this allegation.

Para. 34. Respondent states that the 2012 Order "being in writing, speaks for itself" and "denies the remaining allegations contained" in this paragraph. (Answer para. 34). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted the 2012 Order as Exhibit CX07 and will use this exhibit to support its characterizations of the document herein. More specifically, Section X thereof demonstrates that a

Corrective Measures Study (CMS) was required by the 2012 Order, and Section XII shows that cost estimates and financial assurance were ordered as well.

Para. 35. Respondent states that it “is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation[] contained” in this paragraph and therefore denies it. (Answer para. 35). The sole allegation in this paragraph is that ERP Compliant Coke, LLC formed as a limited liability company in Delaware on February 2, 2016. At the outset, Complainant states that Respondent’s claim to lack of information or knowledge about the formation of its own entity under its prior name makes little sense. As discussed in paragraphs 49–51 of the Complaint—and as is admitted by Respondent in paragraphs 49–51 of the Answer—ERP Compliant Coke, LLC changed its name to Bluestone Coke, LLC in 2019. The allegation in this paragraph then refers to Respondent’s own original formation, which is an event about which Respondent would be expected to have ample information and knowledge.

In support of this allegation, Complainant has submitted formation documents from the Division of Corporations of the Delaware Department of State for ERP Compliant Coke, LLC as Exhibit CX10.

Para. 36. Respondent states that it “is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation[] contained” in this paragraph and therefore denies it. (Answer para. 36). The sole allegation in this paragraph is that ERP Compliant Coke, LLC registered as a foreign limited liability company in Alabama on February 5, 2016. At the outset, Complainant states that Respondent’s claim to lack of information or knowledge about the registration of its own entity under its prior name makes little sense. As discussed in paragraphs 49–51 of the Complaint—and as is admitted by Respondent in paragraphs 49–51 of the Answer—

ERP Compliant Coke, LLC changed its name to Bluestone Coke, LLC in 2019. The allegation in this paragraph then refers to Respondent's own registration, which is an event about which Respondent would be expected to have ample information and knowledge.

In support of this allegation, Complainant has submitted registration documents from the Alabama Secretary of State for ERP Compliant Coke, LLC as Exhibit CX11.

Para. 37. Respondent states that it "is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation[] contained" in this paragraph and therefore denies it. (Answer para. 37). The allegations in this paragraph are that "ERP Compliant Coke, LLC purchased the Facility from Walter Coke Inc., because of Walter Coke, Inc.'s bankruptcy" and that ERP Compliant Coke, LLC then "agreed to implement the 2012 Order." At the outset, Complainant states that Respondent's claim to lack of information or knowledge makes little sense. As discussed in paragraphs 49–51 of the Complaint—and as is admitted by Respondent in paragraphs 49–51 of the Answer—ERP Compliant Coke, LLC changed its name to Bluestone Coke, LLC in 2019. The allegations in this paragraph then refer to Respondent's own actions, about which Respondent would be expected to have ample information and knowledge.

In support of these allegations, Complainant has submitted the 2016 Order as Exhibit CX03, which was signed by Respondent, and which on page 4 of 48 states in Section I, paragraph 2, that Respondent "purchased certain assets of Walter Coke out of bankruptcy and, in doing so, agreed to implement [the 2012 Order]." Complainant has also submitted, as Exhibit CX13, certain records from the Probate Court of Jefferson County, Alabama that were sent to the EPA by Respondent on

June 18, 2020,¹ and the transmittal email and cover letter for these records as Exhibit CX12.

Para. 38. Respondent states that it “is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation[] contained” in this paragraph and therefore denies it. (Answer para. 38). The sole allegation in this paragraph is that the EPA modified the 2012 Order and reissued it to ERP Compliant Coke, LLC as the 2016 Order. At the outset, Complainant states that Respondent’s claim to lack of information or knowledge makes little sense. As discussed in paragraphs 49–51 of the Complaint—and as is admitted by Respondent in paragraphs 49–51 of the Answer—ERP Compliant Coke, LLC changed its name to Bluestone Coke, LLC in 2019. The allegations in this paragraph then refer to an order that Respondent itself signed—and about which Respondent would be expected to have ample information and knowledge.

In support of these allegations, Complainant has submitted the 2016 Order, which is signed by Respondent, as Exhibit CX03.

Para. 39. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained” in this paragraph. (Answer para. 39). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

Para. 40. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained” in this paragraph. (Answer para. 40). There are no allegations in this paragraph that are not characterizations of the referenced document.

¹ These records were sent to EPA as part of a package of CBI that was submitted to the EPA by Respondent. However, the cover letter that accompanied these records (see Exhibit CX12, p. 2) expressly omitted the public records identified here from Respondent’s claim of CBI.

Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

Para. 41. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained” in this paragraph. (Answer para. 41). There are no allegations in this paragraph that are not characterizations of the referenced document.

Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

Para. 42. Respondent states that it “is without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation[] contained” in this paragraph and therefore denies it. (Answer para. 42). At the outset, Complainant states that Respondent’s claim to lack of information or knowledge makes little sense. The allegations in this paragraph pertain to the organization and terms of the 2016 Order to which Respondent is a signatory—and about which it would be expected to have ample information and knowledge.

In support of these allegations, Complainant has submitted the 2016 Order, which is signed by Respondent, as Exhibit CX03, as well as the Final Remedy Decision for SMA 4 and SMA 5 as Exhibit CX14.

Para. 43. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 43). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

Para. 44. Respondent states that the 2016 Order “being in writing, speaks for itself” and

“denies the remaining allegations contained therein.” (Answer para. 44). Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

The only other allegations in this paragraph are that on July 11, 2019, the EPA approved the Corrective Measures Implementation (CMI) Work Plan for the remedy for SMA 5 (Fomer Pig Iron Foundry) and that this plan “included a cost estimate for corrective measures in the amount of \$121,294.80.” In support of these allegations, Complainant has submitted a letter dated July 11, 2019, from Complainant to Respondent (operating then as ERP Compliant Coke, LLC) along with certification of its delivery as Exhibit CX15 (the SMA 5 Approval Letter). The SMA 5 Approval Letter states that the June 28, 2018, CMI Work Plan, in conjunction with the September 7, 2018, addendum, and the October 29, 2018 cost estimate comment responses thereto (together, the SMA 5 Plan), was approved. Complainant has also submitted the SMA 5 Plan as Exhibit CX16, which, on page 69, shows the final cost estimate for the corrective measures.

Para. 47. Respondent states that the August 2, 2019 letter to Complainant regarding Respondent’s transfer of ownership—under its former name, ERP Compliant Coke, LLC— (the Transfer Letter) “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 47). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted the Transfer Letter as Exhibit CX17 and will use this exhibit to support its characterizations thereof.

Para. 52. Respondent states that the Certificate of Insurance that it submitted to Complainant “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 52). There are no allegations in this paragraph that are not

characterizations of the referenced document or its transmission. Complainant has submitted an October 31, 2019 letter from Respondent, which enclosed a purported Certificate of Insurance, as Exhibit CX18 and will use this exhibit to support its characterizations of that letter and its enclosure.

Para. 53. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 53). Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

The only other allegations in this paragraph are that on December 18, 2019, the EPA approved the CMI Work Plan for the remedy for SMA 4 (Former Chemical Plant)” and that this plan “included a cost estimate for corrective measures in the amount of \$4,043,516.41.” In support of these allegations, Complainant has submitted a letter dated December 18, 2019, from the EPA to Respondent, along with its certification of delivery, as Exhibit CX19 (the SMA 4 Approval Letter). The SMA 4 Approval Letter states that the September 7, 2018 CMI Work Plan, in conjunction with the September 16, 2019 revised SMA 4 cost estimate (together the SMA 4 Plan), was approved. Complainant has also submitted the SMA 4 Plan as Exhibit CX20, which, on page 93 shows the final cost estimate for the corrective measures.

Para. 54. Respondent states that the letter from the EPA to Respondent informing it that the submitted insurance was insufficient “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 54). There are no allegations in this paragraph that are not characterizations of the referenced document or its transmission. Complainant has submitted a February 4, 2020 email, as pages 3-4 of 5 of Exhibit CX21, in which Respondent was informed that the insurance policy it submitted was insufficient. Complainant will

use this exhibit to support its characterizations of the email and its transmission.

To provide additional context to the allegations in this paragraph, Complainant has also submitted an unexecuted copy of a purported policy of insurance that was sent to the EPA by Respondent on January 13, 2020, as Exhibit CX22, and the transmittal email from Respondent as page 4 of 5 of Exhibit CX21. Complainant has also submitted a signed copy of a purported policy of insurance that was mailed to the EPA by Respondent as pages 3–16 of 16 of Exhibit CX23.

Para. 55. Respondent states that the emails from the EPA to Respondent requesting adequate financial assurance “being in writing, speak[] for [themselves]” and “denies the remaining allegations contained therein.” (Answer para. 55). There are no allegations in this paragraph that are not characterizations of the referenced documents or their transmission. Complainant has submitted these emails as Exhibit CX21. Complainant will use this exhibit to support its characterizations of these emails and their transmission.

Para. 57. Respondent states that the letter from the EPA to Respondent providing it with an opportunity to show cause why enforcement action should not be taken “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 57). There are no allegations in this paragraph that are not characterizations of the referenced document or its transmission. Complainant has submitted this August 28, 2020 letter as Exhibit CX24 and the email used to transmit it to Respondent as Exhibit CX25. Complainant will use these exhibits to support its characterizations of that letter and its transmission.

Para. 59. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 59). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has

submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

Respondent additionally states that there are other allegations in this paragraph that “are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.” (Answer para. 59). Complainant disputes this characterization and states that there are no such allegations in this paragraph, as the entire text of this paragraph is a direct quotation from the 2016 Order. To the extent that any such statements did exist in this paragraph, however, their substance would not be in dispute.

Para. 60. Respondent states that the documents submitted by Respondent to EPA to meet the criteria of the financial test and corporate guarantee (the Corporate Guarantee) “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 60). Complainant has submitted a redacted version of the Corporate Guarantee dated February 24, 2021 as Exhibit CX26² and the email used to transmit it to the EPA as Exhibit CX27. Complainant will use these exhibits to support its characterizations of the Corporate Guarantee and its transmission. Page 5 of 8 of Exhibit CX26 also lists the date Respondent’s fiscal year ends, and Complainant will use this exhibit to demonstrate that date.

Para. 61. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 61). Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

² Complainant has submitted the unredacted version of Exhibit CX26 to the OALJ via OneDrive link in accordance with the policies and procedures of that office.

Complainant has also submitted a redacted version of the Corporate Guarantee dated February 24, 2021, which, on page 5 of 8, notes the date Respondent's fiscal year ends, as Exhibit CX26.³

Respondent additionally states that there are other allegations in this paragraph that "are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial." (Answer para. 61). There are therefore no factual allegations in this paragraph that would require admission or denial by Respondent or proof thereof by Complainant.

Para. 62. Respondent states that the Corporate Guarantee "being in writing, speaks for itself" and "denies the remaining allegations contained therein." (Answer para. 62). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted a redacted copy of the Corporate Guarantee as Exhibit CX26,⁴ and it will use this exhibit to support its characterizations thereof.

Para. 63. Respondent states that the Corporate Guarantee "being in writing, speaks for itself" and "denies the remaining allegations contained therein." (Answer para. 63). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted a redacted copy of the Corporate Guarantee as Exhibit CX26,⁵ and it will use this exhibit to support its characterizations thereof.

Para. 64. Respondent states that the Corporate Guarantee "being in writing, speaks for

³ Complainant has submitted the unredacted version of Exhibit CX26 to the OALJ via OneDrive link in accordance with the policies and procedures of that office.

⁴ Complainant has submitted the unredacted version of Exhibit CX26 to the OALJ via OneDrive link in accordance with the policies and procedures of that office.

⁵ Complainant has submitted the unredacted version of Exhibit CX26 to the OALJ via OneDrive link in accordance with the policies and procedures of that office.

itself” and “denies the remaining allegations contained therein.” (Answer para. 64). There are no allegations in this paragraph that are not characterizations of the referenced document.

Complainant has submitted a redacted copy of the Corporate Guarantee as Exhibit CX26,⁶ and it will use this exhibit to support its characterizations thereof.

Para. 65. Respondent states that the emails from Complainant to Respondent informing Respondent that a new financial test and corporate guarantee was due “being in writing, speak[] for [themselves]” and “denies the remaining allegations contained therein.” (Answer para. 65). There are no allegations in this paragraph that are not characterizations of the referenced documents or their transmission. Complainant has submitted these emails as Exhibit CX28. Complainant will use this exhibit to support its characterizations of these emails and their transmission.

Para. 66. Respondent states that the June 28, 2021 Notice of Violation sent to Respondent by the EPA (the NOV) “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 66). Complainant has submitted the NOV as Exhibit CX29 and the email used to transmit it to Respondent as Exhibit CX30. Complainant will use these exhibits to support its characterizations of the NOV and its transmission.

Para. 67. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 67). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations

⁶ Complainant has submitted the unredacted version of Exhibit CX26 to the OALJ via OneDrive link in accordance with the policies and procedures of that office.

thereof.

Respondent additionally states that there are other allegations in this paragraph that “are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.” (Answer para. 67). Complainant disputes this characterization and states that there are no such allegations in this paragraph. To the extent that any such statements did exist in this paragraph, however, their substance would not be in dispute.

Para. 68. Respondent denies the allegations in this paragraph without qualification. (Answer para. 68). In support of these allegations, Complainant has submitted a redacted copy of the documents Respondent provided to EPA on August 9, 2021, in its attempt to meet the financial test criteria as Exhibit CX31⁷ and the email used to transmit these documents to the EPA as Exhibit CX32. Complainant will use these exhibits to support its characterizations of that document the financial test and its transmission. Complainant has also submitted the 2016 Order as Exhibit CX03 and will use this exhibit generally, and more specifically Attachment C on pages 39–44 of 48 thereto, to show the criteria of the financial test that Respondent was required to meet.

Complainant has also submitted the emails sent by the EPA to Respondent in August of 2021 highlighting the deficiencies of the August 09, 2021, submittal and requesting the missing information as pages 1–2 of 3 of Exhibit CX33. Complainant will also use fact testimony from Corey Hendrix to demonstrate the ways that Respondent’s submittal was incomplete.

Para. 69. Respondent states that the emails sent by the EPA to Respondent in August of 2021 to highlight the deficiencies to the August 9, 2021 submittal and to request the missing

⁷ Complainant has submitted the unredacted version of Exhibit CX31 to the OALJ via OneDrive link in accordance with the policies and procedures of that office.

information “being in writing, speak[] for [themselves]” and “denies the remaining allegations contained therein.” (Answer para. 69). There are no allegations in this paragraph that are not characterizations of the referenced documents. Complainant has submitted these emails as pages 1–2 of 3 of Exhibit CX33 and will use this exhibit to support its characterizations of the emails.

Para. 71. Respondent states that the September 29, 2021 letter from the EPA to Respondent “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 71). There are no allegations in this paragraph that are not characterizations of the referenced document or its transmission. Complainant has submitted the September 29, 2021 letter as Exhibit CX34 and the email used to transmit it to the EPA as Exhibit CX35. Complainant will use these exhibits to support its characterizations of that letter and its transmission.

Respondent additionally states that there are other allegations in this paragraph that “are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.” (Answer para. 71). Complainant disputes this characterization and states that there are no such allegations in this paragraph. To the extent that any such statements did exist in this paragraph, however, their substance would not be in dispute.

Para. 72. Respondent states that the October 28, 2021 email from Complainant to Respondent “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 72). There are no allegations in this paragraph that are not characterizations of the referenced document or its transmission. Complainant has submitted the October 28, 2021 email as Exhibit CX36 and will use this exhibit to support its characterizations of that email and its transmission.

Respondent additionally states that there are other allegations in this paragraph that “are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.” (Answer para. 72). Complainant disputes this characterization and states that there are no such allegations in this paragraph. To the extent that any such statements did exist in this paragraph, however, their substance would not be in dispute.

Para. 73. Respondent states that the March 24, 2022 letter from Complainant to Respondent “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 73). There are no allegations in this paragraph that are not characterizations of the referenced document or its transmission. Complainant has submitted the March 24, 2022 letter as Exhibit CX37 and the email used to transmit it to Respondent as Exhibit CX38. Complainant will use these exhibits to support its characterizations of that letter and its transmission.

Respondent additionally states that there are other allegations in this paragraph that “are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.” (Answer para. 73). Complainant disputes this characterization and states that there are no such allegations in this paragraph. To the extent that any such statements did exist in this paragraph, however, their substance would not be in dispute.

Para. 75. Respondent states that the email seeking further discussions between the parties that was sent by Complainant to Respondent on October 6, 2022 “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 75). There are no allegations in this paragraph that are not characterizations of the referenced email or its transmission. Complainant has submitted this email as page 3 of 13 of Exhibit CX39 and will use this

exhibit to support its characterizations of this email and its transmission.

Para. 76. Respondent states that the email claiming that a contact would be provided, which was sent by Respondent to Complainant on October 12, 2022, “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 76). There are no allegations in this paragraph that are not characterizations of the referenced email or its transmission. Complainant has submitted this email as page 2 of 13 of Exhibit CX39 and will use this exhibit to support its characterizations of this email and its transmission. Complainant will also use fact testimony from the witness Corey Hendrix to show that no such contact was provided to the EPA by Respondent.

Para. 78. Respondent states that the February 7, 2023 letter requiring alternate financial assurance, which was sent from Complainant to Respondent and Bluestone Resources, Inc., “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 78). Complainant has submitted the February 7, 2023 letter as Exhibit CX41 and the email used to transmit it to Respondent as Exhibit CX40. Complainant will use these exhibits to support its characterizations of that letter and its transmission.

Respondent also states that the February 20, 2023 confirmation email from Respondent to Complainant “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 78). Complainant has submitted the February 2023 emails as Exhibit CX42 and will use this exhibit to support its characterizations of that email and its transmission.

Para. 79. Respondent states that the consolidated financial statements provided by Respondent “being in writing, speak[] for [themselves]” and “denies the remaining allegations contained therein.” (Answer para. 79). Complainant has submitted the cover letter and list of

contents that accompanied these consolidated financial statements as Exhibit CX43 and the email used to transmit them to Complainant as Exhibit CX44. Complainant will use these exhibits to support its characterizations of those documents and their transmission. As the financial statements themselves were submitted to the EPA as CBI, and as their contents will not be relevant unless they are contested, Complainant has not yet submitted them here. Complainant reserves the right to do so in its rebuttal exchange in the event that Respondent disputes Complainant's characterizations of their contents.

Complainant has also submitted the 2016 Order as Exhibit CX03 and will use this exhibit generally, and more specifically Attachment C thereto, to show the criteria of the financial test that Respondent was required to meet. Complainant will also use fact testimony from the witness Corey Hendrix and fact and expert testimony from the witness Justin Abrams to demonstrate the ways that Respondent's submittal was incomplete.

Respondent also states that the email sent by Complainant to Respondent on May 30, 2023 to highlight the deficiencies of the May 26, 2023 submittal "being in writing, speaks for itself" and "denies the remaining allegations contained therein." (Answer para. 79). Complainant has submitted this email as page 1 of 3 of Exhibit CX45 and will use this exhibit to support its characterizations of the email therein.

Respondent additionally states that there are other allegations in this paragraph that "are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial." (Answer para. 79). Complainant disputes this characterization and states that there are no such allegations in this paragraph. To the extent that any such statements did exist in this paragraph, however, their substance would not be in dispute.

Finally, Respondent denies the allegation that it did not provide any additional information or alternate financial assurance to Complainant between May 26, 2023 and April 10, 2024, when the Complaint was filed. Complainant will also use fact testimony from Corey Hendrix and James Harry Smith Jr. to show that no such information or documents were provided to Complainant during that time period.

Para. 80. Respondent here “denies each and every material allegation of the Complaint not previously and/or specifically admitted herein and demands strict proof thereof.” (Answer para. 80). Complainant has, throughout this Section VI and in each relevant paragraph, addressed each allegation of the Complaint that is not explicitly admitted by Respondent. No additional response is therefore needed to this denial.

Respondent also “denies the allegations set forth in the unnumbered paragraphs of the Complaint.” (Answer para. 80). As there are no allegations set forth in unnumbered paragraphs of the Complaint, however, this does not require a response.

Para. 81. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 81). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

Para. 82. Respondent denies the allegations in this paragraph without qualification. (Answer para. 82). Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit generally, and more specifically Attachment C thereto, to identify the financial assurance required under that Order. Complainant will additionally use both fact testimony from the witness Corey

Hendrix and fact and expert testimony from the witness Justin Abrams to show that Respondent has not provided financial assurance that complies with the requirements of the 2016 Order.

Para. 83. Respondent states that the NOV “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 83). Complainant has submitted the NOV as Exhibit CX29 and the email used to transmit it to Respondent as Exhibit CX30. Complainant will use these exhibits to support its characterizations of the NOV and its transmission, including the fact, which appears on page 3 of Exhibit CX29, that Complainant gave Respondent 14 days following receipt of the NOV to provide financial assurance. The Complaint incorrectly alleges Complainant provided Respondent 30 days to provide financial assurance. This misstatement of time is a scrivener’s error and does not materially affect Complainant’s allegations.

Respondent states that the emails notifying Respondent that it had not met the financial criteria test “being in writing, speak[] for [themselves]” and “denies the remaining allegations contained therein.” (Answer para. 83). Complainant has submitted these emails as Exhibit CX28. Complainant will use this exhibit to support its characterizations of those emails.

Complainant has also submitted the 2016 Order as Exhibit CX03 and will use this exhibit generally, and more specifically Attachment C thereto, to identify the financial assurance required under that order. Complainant will additionally use fact testimony from the witnesses Corey Hendrix, James Harry Smith, Jr., and Justin Abrams to show that Respondent has not provided financial assurance that complies with the requirements of the 2016 Order.

Para. 84. Respondent denies the allegations in this paragraph without qualification. (Answer para. 84). Complaint has submitted the 2016 Order as Exhibit CX03 and will use this exhibit generally, and more specifically Attachment C thereto, to identify the financial assurance required

under that order. Complainant will additionally use fact and expert testimony from the witnesses, James Harry Smith Jr., Corey Hendrix, and Justin Abrams, to show that Respondent has not provided financial assurance that complies with the requirements of the 2016 Order.

Complainant has also submitted the SMA 4 Plan as Exhibit CX20 and the SMA 5 Plan as Exhibit CX16 and will use them to show that the total amount, without any adjustments for inflation, of the approved Estimated Cost of Corrective Measures Work for SMA 4 and SMA 5 was \$4,164,811.21.

Para. 85. Respondent denies the allegations in this paragraph without qualification. (Answer para. 85). Complainant asserts that the allegations in this paragraph are straightforward applications of the statutory and regulatory law to the facts that are alleged throughout the preceding paragraphs of the Complaint and therefore require neither separate admission or denial by Respondent, nor proof thereof by Complainant.

Para. 86. Respondent here “denies each and every material allegation of the Complaint not previously and/or specifically admitted herein and demands strict proof thereof.” (Answer para. 86). Complainant has, throughout this Section VI and in each relevant paragraph, addressed each allegation of the Complaint that is not explicitly admitted by Respondent. No additional response is therefore needed to this denial.

Respondent also “denies the allegations set forth in the unnumbered paragraphs of the Complaint.” (Answer para. 86). As there are no allegations set forth in unnumbered paragraphs of the Complaint, this does not require a response.

Para. 87. Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 87). Complainant has

submitted the 2016 Order as Exhibit CX03 and will use Section XII of this exhibit to support its assertion that revised cost estimates must be submitted to the EPA annually for each remedy selected.

Complainant has also submitted the Final Remedy Decision for SMA 4 and SMA 5 as Exhibit CX14. Complainant will use this exhibit to show that a remedy was selected for both SMA 4 and SMA 5.

Para. 88 Respondent states that the 2016 Order “being in writing, speaks for itself” and “denies the remaining allegations contained therein.” (Answer para. 88). There are no allegations in this paragraph that are not characterizations of the referenced document. Complainant has submitted the 2016 Order as Exhibit CX03 and will use this exhibit to support its characterizations thereof.

Para. 89. Respondent denies the allegation that, as of April 10, 2024, when the Complaint was filed, it had not provided the EPA with annual revised cost estimates for the fiscal years 2022, 2023, or 2024. (Answer para. 89). Complainant has submitted inflation tables from the Bureau of Economic Analysis as Exhibit CX46 and will use this exhibit to show the rate of inflation during the relevant time. Complainant will also use fact testimony from the witnesses Corey Hendrix and James Harry Smith Jr. to show that no such information or documents had been provided to Complainant as of that date.

Para. 90. Respondent denies the allegations in this paragraph without qualification. (Answer para. 90). Complainant has submitted the 2016 Order as Exhibit CX03 and will use Section XII of this exhibit and Attachment C thereto to demonstrate the referenced requirements of the 2016 Order. Complainant will also use fact and expert testimony from the witnesses Justin Abrams, Corey

Hendrix, and James Harry Smith Jr. to show that Respondent did not meet those requirements.

Para. 91. Respondent denies the allegations in this paragraph without qualification. (Answer para. 91). Complainant asserts that the allegations in this paragraph are straightforward applications of the statutory and regulatory law to the facts that are alleged throughout the preceding paragraphs of the Complaint and therefore require neither separate admission or denial by Respondent, nor proof thereof by Complainant.

Para. 94. Respondent denies the allegations in this paragraph without qualification. (Answer para. 94). Complainant asserts that the content of this paragraph is a proposal for penalty assessment, not an allegation of fact and therefore, it does not require separate admission or denial by Respondent, or proof thereof by Complainant.

Para. 109. Respondent states that the allegations in this paragraph “are not of a factual nature, but are statements of legal conclusions, and are not appropriate for admission or denial.” (Answer para. 109). The substance of these allegations is thus not in dispute.

Answer: Unnumbered Para. Following Para. 109.⁸ Respondent also “denies the allegations set forth in the unnumbered paragraphs of the Complaint.” (Answer para. 109). As there are no allegations set forth in unnumbered paragraphs of the Complaint, this does not require a response.

⁸ This subsection responds to an unnumbered paragraph appearing following Paragraph 109 of the Answer, that itself is not responsive to any specific paragraph of the Complaint. Complainant states that this paragraph of the Answer does not refer to any allegations in the Complaint that were not already either expressly admitted by Respondent or addressed in the preceding paragraphs of this Section VI. To provide addition clarity, however, Complainant has provided a separate response to this paragraph.

Answer: Para. 110.⁹ Respondent here “denies each and every material allegation of the Complaint not previously and/or specifically admitted herein and demands strict proof thereof.” (Answer para. 110). Complainant has, throughout this Section VI and in each relevant paragraph, addressed each allegation of the Complaint that is not explicitly admitted by Respondent. No additional response is therefore needed to this denial.

Answer: Para. 111.¹⁰ Respondent here “denies any violations of any agreement, contractual, or otherwise, that is allegedly entered into, and demands strict proof thereof.” (Answer para. 111). Complainant has, throughout this Section VI and in each relevant paragraph, addressed each allegation of the Complaint that in not explicitly admitted by Respondent. No further response is therefore needed to this denial.

VII. Facts and Documentation Relevant to the Assessment of a Penalty

The Prehearing Order requires Complainant to file “all factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty.” Complainant intends to rely on the following documents to calculate a

⁹ There is no paragraph 110 of the Complaint. This subsection responds instead to paragraph 110 of the Answer, which appears in the “Affirmative Defenses” section of the Answer, but which presents additional blanket denials to the allegations of the Complaint rather than any actual affirmative defense. Complainant states that this paragraph of the Answer does not refer to any allegations in the Complaint that were not already either expressly admitted by Respondent or addressed in the preceding paragraphs of this Section VI. To provide addition clarity, however, Complainant has provided a separate response to this paragraph.

¹⁰ There is no paragraph 111 of the Complaint. This subsection responds instead to paragraph 111 of the Answer, which appears in the “Affirmative Defenses” section of the Answer, but which presents additional blanket denials to the allegations of the Complaint rather than any actual affirmative defense. Complainant states that this paragraph of the Answer does not refer to any allegations in the Complaint that were not already either expressly admitted by Respondent or addressed in the preceding paragraphs of this Section VI. To provide addition clarity, however, Complainant has provided a separate response to this paragraph.

proposed penalty:

- i. June 23, 2003, Revisions to the 1990 RCRA Civil Penalty Policy, (Exhibit CX53), available at <https://www.epa.gov/sites/production/files/2020-05/documents/june2003rcracivilpenaltypolicyamended050620.pdf>
- j. December 29, 2008, Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (effective January 12, 2008) and Transmittal of the December 11, 2008 Civil Monetary Penalty Inflation Adjustment Rule, (Exhibit CX54), available at <https://www.epa.gov/sites/production/files/documents/amendmentstopenaltypolicies-implementpenaltyinflationrule08.pdf>
- k. April 6, 2010, EPA Memorandum from Rosemarie A. Kelley, Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009, (Exhibit CX55), available at <https://www.epa.gov/sites/production/files/documents/revisionpenaltypolicy04910.pdf>
- l. January 15, 2020, Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the January 13, 2020 Civil Monetary Penalty Inflation Adjustment Rule, (Exhibit CX56), available at <https://www.epa.gov/sites/production/files/2020-01/documents/2020penaltyinflationruleadjustments.pdf>
- m. January 12, 2022, Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty

- Inflation Adjustment Rule, (Exhibit CX57), available at https://www.epa.gov/system/files/documents/2022-01/2022amendmentstopenaltypoliciesforinflation_0.pdf
- n. January 10, 2024, Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2024) and Transmittal of the 2024 Civil Monetary Penalty Inflation Adjustment Rule, (Exhibit CX58), available at <https://www.epa.gov/system/files/documents/2024-01/amendmentstotheepacivilpenaltypolicyinflation011524.pdf>
- o. December 16, 1985, Interpretation of Section 3008(h) of the Solid Waste Disposal Act, (Exhibit CX51), available at <https://www.epa.gov/sites/default/files/2019-12/documents/3008h-interpretation-guidance-121685.pdf>
- p. September 30, 2003, Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action, (Exhibit CX52), available at <https://www.epa.gov/sites/default/files/documents/interim-fin-assur-cor-act.pdf>
- q. February 14, 2024, Revised Penalty Matrices for the RCRA Civil Penalty Policy, (Exhibit CX73). Although publicly available, this document has not been hosted on the internet.
- r. February 16, 1984, Policy on Civil Penalties, EPA General Enforcement Policy #GM-21, available at <https://www.epa.gov/sites/default/files/documents/epapolicy-civilpenalties021684.pdf>
- s. February 16, 1984, A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA's Policy on Civil Penalties, EPA General

Enforcement Policy #GM – 22, available at

<https://www.epa.gov/sites/default/files/documents/penasm-civpen-mem.pdf>

In addition, Complainant notes that factual information relevant to the calculation of a proposed penalty is provided in multiple exhibits identified herein. In particular:

- a. The 2016 Order (Exhibit CX03) requires Respondent to demonstrate financial assurance and to update its cost estimates annually for inflation;
- b. The Corporate Guarantee (Exhibit CX31) identifies Respondent's fiscal year, from which the deadline for Respondent's demonstration of financial assurance was derived;
- c. The NOV (Exhibit CX29) asserts the date upon which Respondent violated the 2016 Order;
- d. The SMA 4 Plan (Exhibit CX20) and the SMA 5 Plan (Exhibit CX16), demonstrate the cost estimates on which the calculation of financial assurance is based;
- e. The Bureau of Economic Analysis Table 1.1.9. (Exhibit CX46) provides information that Respondent should have used to adjust its cost estimates for inflation for years 2022, 2023, and 2024;
- f. Respondent's emails (Exhibits CX36, CX39, and CX42) demonstrate the fact that Respondent never provided the information required to meet the financial test criteria or the Corporate Guarantee;
- g. Witness testimony from both Corey Hendrix and Brooke York will address the economic benefit to Respondent for its failure to demonstrate financial assurance and to adjust its cost estimates for inflation;

- h. Witness testimony from both Justin Abrams and Brooke York will address the harm caused by a lack of financial assurance; and
- i. Witness testimony from both James Henry Smith, Jr. and Corey Hendrix will demonstrate Respondent's lack of good faith efforts to comply and confirm that no acceptable demonstration of financial assurance was made by Respondent between April 1, 2021, and the date of this filing.

VIII. Guidance Documents, Policies, and Regulatory Preambles Relied Upon

The Prehearing Order requires Complainant to file a copy, or a statement of the internet address (URL), of any EPA guidance documents and/or policies, including any updates or revisions to such guidance and/or policies, and any preambles to regulations that Complainant has relied upon with regard to the allegations set forth in the Complaint.

Complainant relied upon the following:

- j. December 16, 1985, Interpretation of Section 3008(h) of the Solid Waste Disposal Act, (Exhibit CX51), available at <https://www.epa.gov/sites/default/files/2019-12/documents/3008h-interpretation-guidance-121685.pdf>
- k. September 30, 2003, Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action, (Exhibit CX52), available at <https://www.epa.gov/sites/default/files/documents/interim-fin-assur-cor-act.pdf>
- l. May 1982, Financial Assurance for Closure and Post-Closure Care: Requirements for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, A Guidance Manual, (Exhibit CX69), available at <https://bit.ly/3XdbaoT>
- m. July 27, 1990, Corrective Action for Solid Waste Management Units (SWMUs) at

Hazardous Waste Facilities, 55 Fed. Reg. 30793 (Jul. 27, 1990) (proposed rule amending 40 C.F.R. Parts 264, 265, 270, and 271), available at

https://archives.federalregister.gov/issue_slice/1990/7/27/30795-30895.pdf

- n. October 24, 1986, Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Financial Assurance for Corrective Action, 51 Fed. Reg. 37854 (Oct. 24, 1986) (proposed rule amending 40 C.F.R. Parts 264, 270, and 271), available at <https://www.epa.gov/sites/default/files/2016-03/documents/51fr37854.pdf>

Dated: August 23, 2024

Respectfully Submitted,

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

CERTIFICATE OF SERVICE

The undersigned certifies that on August 23, 2024, I electronically filed the foregoing **COMPLAINANT'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 James V. Seal and Ron Hatfield, attorneys for Respondent, at James.Seal@bluestone-coal.com and Ron.Hatfield@bluestone-coal.com.

Date: August 23, 2024

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