



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Bluestone Coke, LLC,) Docket No. RCRA-04-2023-2106
)
Respondent.)

ORDER TO RESPONDENT TO SHOW CAUSE

This proceeding was initiated on April 10, 2024, when Complainant, the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region 4, filed with the Regional Hearing Clerk a Complaint against Respondent Bluestone Coke, LLC, for alleged violations of an Administrative Order on Consent issued to Respondent on August 11, 2016, pursuant to Section 3008(h)(1) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(h)(1). Complaint, Compliance Order, and Opportunity to Request a Hearing (Apr. 10, 2024). Respondent subsequently filed an Answer to the Complaint with the Regional Hearing Clerk. Answer by Respondent to Complaint, Compliance Order, and Opportunity to Request a Hearing (June 27, 2024).

On July 11, 2024, upon being designated to preside over this proceeding, I issued a Prehearing Order wherein I established deadlines for various prehearing procedures, including a prehearing exchange of information by the parties pursuant to Section 22.19(a) of the Rules of Practice that govern this proceeding, 40 C.F.R. § 22.19(a). Prehearing Order 4 (July 11, 2024). Specifically, I ordered Complainant to file its Initial Prehearing Exchange no later than August 23, 2024, Respondent to file its Prehearing Exchange no later than September 13, 2024, and Complainant to file its Rebuttal Prehearing Exchange no later than September 27, 2024. Prehearing Order 4.

The Prehearing Order also notified the parties that, in accordance with Sections 22.5(a)(1) and (b) of the Rules of Practice, 40 C.F.R. § 22.5(1)(a), (b), “the original and one copy of each document intended to be part of the record of this proceeding . . . shall be filed with the Headquarters Hearing Clerk” of the Office of Administrative Law Judges (“OALJ”), and a copy of each document filed must be served on the presiding judge. Prehearing Order 5, 7. The Prehearing Order explained that the parties were to fulfill these filing and service requirements either by submitting documents through the OALJ E-Filing System or by sending physical copies to the Headquarters Hearing Clerk via mail or commercial delivery service. Prehearing Order 7–8.

Complainant timely filed and served its Initial Prehearing Exchange on August 23, 2024. Conversely, the Tribunal has yet to receive Respondent’s Prehearing Exchange.

On September 20, 2024, a staff attorney for the OALJ reached out to Respondent's counsel Ron H. Hatfield, Jr., Esq., to inquire whether Respondent's failure to file a Prehearing Exchange was the result of technical issues in accessing the OALJ E-filing System. Mr. Hatfield responded on September 25, 2024, and reported that Respondent had sent a copy of its Prehearing Exchange to the Regional Hearing Clerk for Region 4. Mr. Hatfield further represented that Respondent had timely served its Prehearing Exchange upon Complainant's counsel via email. Later that day, the OALJ's staff attorney emailed Mr. Hatfield and Respondent's other designated counsel, James V. Seal, Esq., to confirm Respondent's filing error, to inform Respondent's counsel that Respondent was required to file and serve its Prehearing Exchange in the manner specified in the Prehearing Order, and to inform counsel that Respondent's submission would now need to be accompanied by a motion for leave to file out of time.

On September 27, 2024, Complainant timely filed its Rebuttal Prehearing Exchange. Complainant's Rebuttal was truncated, stating that because of Respondent's failure to properly file and serve a Prehearing Exchange, "Complainant has no response to make at this time." Complainant's Rebuttal Prehearing Exchange 1.

Respondent made no further response until October 1, 2024, when Mr. Hatfield emailed the Tribunal's staff attorney to express his belief that Mr. Seal was "working on getting this resolved." To date, however, Respondent still has not filed its Prehearing Exchange as required by the Rules of Practice and the Prehearing Order.

The Rules of Practice provide that when a party fails to exchange information within its control as required by Section 22.19:

[T]he Presiding Officer may, in his discretion:

- (1) Infer that the information would be adverse to the party failing to provide it;
- (2) Exclude the information from evidence; or
- (3) Issue a default order under § 22.17(c).

40 C.F.R. § 22.19(g). The Rules of Practice further provide that a party may be found to be in default upon failure to comply with an order of the presiding judge. 40 C.F.R. § 22.17(a).¹

Three weeks have passed since Respondent's Prehearing Exchange deadline, and Respondent has yet to properly file and serve that Prehearing Exchange with this Tribunal. See

¹ When default is found to have occurred, the presiding Administrative Law Judge "shall issue a default order against the defaulting party . . . unless the record shows good cause why a default order should not be issued." 40 C.F.R. § 22.17(c). "Default by [a] respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." 40 C.F.R. § 22.17(a).

Prehearing Order 4, 5, 7–8. Accordingly, Respondent is hereby **ORDERED** to file and serve a document, on or before **October 11, 2024**, showing cause as to why it failed to file a Prehearing Exchange as required by Section 22.19(a) of the Rules of Practice and as directed by the Prehearing Order, and why an adverse order should not be entered against it.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'M. Wright', is written over a horizontal line.

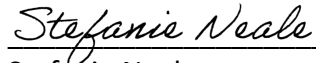
Michael B. Wright
Administrative Law Judge

Dated: October 4, 2024
Washington, D.C.

In the Matter of *Bluestone Coke, LLC*, Respondent.
Docket No. RCRA-04-2023-2106

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order to Respondent to Show Cause**, dated October 4, 2024, and issued by Administrative Law Judge Michael B. Wright, was sent this day to the following parties in the manner indicated below.



Stefanie Neale
Attorney Advisor

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
<https://yosemite.epa.gov/OA/EAB/EAB-ALJ Upload.nsf>

Copy by Electronic Mail to:
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Dated: October 4, 2024
Washington, D.C.