

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Bluestone Coke, LLC**  
**3500 35th Avenue North**  
**Birmingham, Alabama 35207**  
EPA ID No. **ALD 000 828 848**

Respondent.

Docket No. RCRA-04-2023-2106

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

**AMENDED COMPLAINT, COMPLIANCE ORDER, AND OPPORTUNITY TO REQUEST A HEARING**

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, seeking injunctive relief pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), for violations of an Administrative Order on Consent, Docket No. RCRA-04-2016-4250, issued to Bluestone Coke, LLC (formerly known as (f/k/a) ERP Compliant Coke, LLC) on August 11, 2016, pursuant to Section 3008(h)(1) of RCRA, 42 U.S.C. § 6928(h)(1).

II. THE PARTIES

2. Complainant is the Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 4. Complainant is authorized to issue this Complaint, Compliance Order, and Opportunity to Request a Hearing (Complaint) pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.

3. Respondent is Bluestone Coke, LLC, f/k/a ERP Compliant Coke, LLC (Bluestone Coke), a Delaware limited liability company, and the owner and operator of a facility located at 3500 35th Ave. North in Birmingham, Jefferson County, Alabama, EPA Identification Number ALD 000 828 848 (Facility).

III. JURISDICTION

4. This Complaint is issued pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties*,

*Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), which are found at 40 C.F.R. Part 22.*

5. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Alabama has received final authorization from the EPA to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the Alabama authorized program are found within the Alabama Hazardous Waste Management and Minimization Act of 1978 (AHWMMA), Ala. Code §§ 22-30-1 through 22-30-24, and Alabama Department of Environmental Management (ADEM) Administrative Code (ADEM Admin. Code) r. 335-14-1 through 335-14-17.

6. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.

7. Although the EPA has granted the State of Alabama authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to address violations of the requirements of the authorized state program. This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State of Alabama.

8. Where applicable, the citations to the regulatory hazardous waste program herein will be to the State of Alabama's authorized hazardous waste program, as it operates in lieu of the federal RCRA program; however, for ease of reference, the federal citations will follow in brackets. In addition, the citations to the financial assurance requirements herein will be to the federal financial assurance requirements, as those are what are referenced in the Administrative Order on Consent, Docket No. RCRA-04-2016-4250.

9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Alabama prior to issuing this Complaint.

#### IV. STATUTORY AND REGULATORY BACKGROUND

10. Pursuant to Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

11. Section 22-30-16 of the Code of Alabama, Ala. Code § 22-30-16 [Section 3004 of RCRA, 42 U.S.C. § 6924], requires the promulgation of standards applicable to owners and operators

of hazardous waste treatment, storage, and disposal facilities. The implementing regulations for these requirements are found at ADEM Admin. Code r. 335-14-5 [40 C.F.R. Part 264].

12. Section 22-30-12 of the Code of Alabama, Ala. Code § 22-30-12 [Section 3005 of RCRA, 42 U.S.C. § 6925] sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status.

13. Pursuant to Section 22-30-12(i) of the Code of Alabama, Ala. Code § 22-30-12(i) [Section 3005(e) of RCRA, 42 U.S.C. § 6925(e)], any person who owns or operates a facility required to have a permit under this section, and has made an application for a permit under this section, shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, which is referred to as having interim status. The implementing regulations for interim status facilities are found at ADEM Admin. Code r. 335-14-6 [40 C.F.R. Part 265].

14. Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), authorizes the Administrator of the EPA or his delegate to issue an order requiring corrective action or such other response which he deems necessary to protect human health or the environment, if, on the basis of any information, he determines that there is or has been a release of hazardous waste or hazardous constituents into the environment from an interim status facility that is, was, or should have been authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).

15. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)206. [40 C.F.R. § 260.10], a “‘person’ means any and all persons, natural or artificial, including, but not limited to any individual, partnership, association, society, joint stock company, firm company, corporation, institution, trust, estate, or other legal entity or other business organization or any governmental entity, and any successor, representative, agent or agency of the foregoing.”

16. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)202. [40 C.F.R. § 260.10], an “‘owner’ means the person who owns in fee simple the property on which a facility or part of a facility is sited.”

17. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)200. [40 C.F.R. § 260.10], an “‘operator’ means the person responsible for the overall operation of a facility.”

18. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)106. [40 C.F.R. § 260.10], a “‘facility’ means: (i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them). (ii) For the purpose of implementing corrective action under 335-14-5-.06(12), all contiguous property under the control of the owner or operator seeking a permit under Chapter 30 of Title 22, Code of Alabama 1975, (AHWMMMA). This definition also applies to facilities implementing corrective action under § 22-30-19 et seq., Code of Alabama 1975, and/or RCRA Section 3008(h).”

19. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)274. [40 C.F.R. § 260.10], “‘surface impoundment’ or ‘impoundment’ means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.”
20. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)154. [40 C.F.R. § 260.10], “‘landfill’ means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave or a corrective action management unit.”
21. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)125. [40 C.F.R. § 260.10], a “‘hazardous waste management unit’ is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area.” Hazardous waste management units include surface impoundments, waste piles, land treatment areas, and landfill cells.
22. Pursuant to ADEM Admin. Code r. 335-14-1-.02(1)(a)77. and 335-14-1-.02(1)(a)78. [40 C.F.R. § 260.10], a “disposal facility” means a “disposal site” which is the location where any ultimate disposal of hazardous waste occurs.
23. Pursuant to ADEM Admin. Code r. 335-14-2-.01(2) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations.
24. Pursuant to ADEM Admin. Code r. 335-14-2-.01(3) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it is not excluded from regulation as a hazardous waste under ADEM Admin. Code r. 335-14-2-.01(4)(b) [40 C.F.R. § 261.4(b)], and it meets any of the criteria specified in Admin. Code r. 335-14-2-.01(3)(a)2. [40 C.F.R. § 261.3(a)(2)].
25. Pursuant to ADEM Admin. Code r. 335-14-2-.03(1) and (3) [40 C.F.R. §§ 261.20 and 261.22], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste and is identified with the EPA Hazardous Waste Number D002.
26. Pursuant to ADEM Admin. Code r. 335-14-2-.04(3)(a) [40 C.F.R. § 261.32], certain source-specific wastes, which are designated as particular solid wastes from certain specific industries are K-listed hazardous wastes. Wastes included on the K list are found in the regulations at ADEM Admin. Code r. 335-14-2-.04(3)(a) [40 C.F.R. § 261.32]. Decanter tank tar sludge from coking operations is listed as K087.
27. Pursuant to ADEM Admin. Code r. 335-14-5-.06(1)(a)(2) and (11) [40 C.F.R. §§ 264.90(a)(2) and 264.101(b)] the owner or operator of a facility at which corrective action is required must establish financial assurance for corrective action.

## V. STATEMENT OF FACTS

28. Respondent is a “person” within the meaning of ADEM Admin. Code r. 335-14-1-.02(1)(a)206. [40 C.F.R. § 260.10].
29. Respondent is the current “owner” and “operator” of a “facility” located at 3500 35<sup>th</sup> Ave. North in Birmingham, Alabama, as those terms are defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)202., 200., and 106. [40 C.F.R. § 260.10]. This Facility contains one “hazardous waste management unit,” previously operated as a “surface impoundment” and closed as a “landfill,” as those terms are defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)125., 335-14-1-.02(1)(a)274., and 335-14-1-.02(1)(a)154. [40 C.F.R. § 260.10].
30. Certain wastes found at the Facility are hazardous wastes as defined by Section 1004(5) of RCRA, 42 U.S.C. § 6903(5). These are also hazardous wastes within the meaning of ADEM Admin. Code r. 335-14-2-.01 [40 C.F.R. Part 261].
31. The Facility is a facility that is, was, or should have been authorized to operate under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
32. 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).
33. Neither the EPA nor ADEM ever issued a RCRA or AHWMMMA permit to the Facility.
34. On September 17, 2012, pursuant to Section 3008(h) of RCRA, the EPA issued an Administrative Order on Consent (Docket No. RCRA-04-2112-4255) to Walter Coke, Inc. (2012 Order), the owner and operator of the Facility prior to ERP Compliant Coke, LLC. The 2012 Order became effective September 24, 2012. The 2012 Order required a Corrective Measures Study (CMS) to identify and evaluate alternatives for corrective measures (also referred to as remedies) to address releases of hazardous waste from solid waste management units (SWMUs), to implement the approved remedies, to perform any other activities necessary, including interim measures, and to implement and maintain appropriate institutional controls. The 2012 Order also required cost estimates to be completed and financial assurance to be demonstrated once remedies were selected. The cost estimates and financial assurance were required to be updated annually thereafter.
35. On February 2, 2016, ERP Compliant Coke, LLC formed as a limited liability company in Delaware.
36. On February 5, 2016, ERP Compliant Coke, LLC registered as a foreign limited liability company in the State of Alabama.
37. On February 12, 2016, ERP Compliant Coke, LLC purchased the Facility from Walter Coke, Inc., because of Walter Coke, Inc.’s bankruptcy, and agreed to implement the 2012 Order.

38. On August 11, 2016, the EPA modified and reissued the 2012 Order to the new owner of the Facility, ERP Compliant Coke, LLC, as Administrative Order on Consent, Docket No. RCRA-04-2016-4250 (2016 Order), also issued pursuant to Section 3008(h) of RCRA.

39. Paragraph 5 of the 2016 Order states that the 2016 Order shall apply to and be binding upon the EPA, ERP Compliant Coke, LLC and its officers, directors, employees, agents, successors and assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of ERP Compliant Coke, LLC.

40. Paragraph 6 of the 2016 Order states that “[n]o change in ownership or corporate or partnership status relating to the Facility will in any way alter [ERP Compliant Coke, LLC’s] responsibility under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, shall not affect [ERP Compliant Coke, LLC’s] obligations under this Order. [ERP Compliant Coke, LLC] will be responsible for and liable for any failure to carry out all activities required of [ERP Compliant Coke, LLC] by the terms and conditions of the Order, regardless of [ERP Compliant Coke, LLC’s] use of employees, agents, contractors, or consultants to perform any such tasks.”

41. Pursuant to Paragraph 34 of the 2016 Order, following issuance of each approved remedy, ERP Compliant Coke, LLC shall provide cost estimates, and demonstrate financial assurance for completing the approved remedy, in accordance with Attachment C (Financial Assurance) to the 2016 Order. Pursuant to Attachment C (Financial Assurance), the financial assurance mechanism shall be one that is allowed under 40 C.F.R. §§ 264.140 through 264.151. These mechanisms include a trust fund, surety bond guaranteeing payment, surety bond guaranteeing performance, letter of credit, insurance, financial test and/or corporate guarantee.

42. The SWMUs at the Facility are grouped into solid waste management areas (SMAs) to facilitate cleanup. The first two SMAs that had approved remedies and therefore required a demonstration of financial assurance under the 2016 Order are SMA 5 (Former Pig Iron Foundry) and SMA 4 (Former Chemical Plant).

43. Pursuant to Attachment C (Financial Assurance), Paragraph 1.b., until the approved remedy required by the 2016 Order is completed, ERP Compliant Coke, LLC is required to annually adjust the cost estimates (referred to as the Estimated Cost of Corrective Measures Work) for inflation within 30 days after the close of ERP Compliant Coke, LLC’s fiscal year if using the financial test and corporate guarantee, or within 60 days prior to the anniversary date of the establishment of any other financial assurance instrument.

44. On July 11, 2019, the EPA approved the Corrective Measures Implementation Work Plan for the remedy for SMA 5 (Former Pig Iron Foundry) which included a cost estimate for corrective measures in the amount of \$121,294.80. Pursuant to Paragraph 34 of the 2016 Order, which references Paragraph 1.e. of Attachment C (Financial Assurance), ERP Compliant Coke, LLC was required to demonstrate financial assurance within 60 calendar days after the

EPA's written approval of the cost estimate for SMA 5, which was on or before September 9, 2019.

45. On July 31, 2019, the majority members of ERP Compliant Coke, LLC transferred and assigned all of their membership interests in ERP Compliant Coke, LLC to Bluestone Mineral, Inc. Specific details of this transfer in ownership were not shared with the EPA due to a non-disclosure provision of the Membership Interest Transfer Agreement between ERP Compliant Coke, LLC and Bluestone Mineral, Inc.

46. Bluestone Mineral, Inc. is wholly owned by Bluestone Resources, Inc.

47. On August 2, 2019, the EPA was notified by letter of a transfer of ownership of ERP Compliant Coke, LLC to Bluestone Mineral, Inc.

48. On September 5, 2019, ERP Compliant Coke, LLC requested a 45-day extension to submit the financial assurance for SMA 5. The EPA granted an extension until October 31, 2019.

49. On September 24, 2019, a Certificate of Amendment was filed with the Delaware Secretary of State to amend the ERP Compliant Coke, LLC Certificate of Formation to reflect the new name of Bluestone Coke, LLC.

50. On October 4, 2019, ERP Compliant Coke, LLC filed an Amendment to Registration with the Alabama Secretary of State's Office to document a name change from ERP Compliant Coke, LLC to Bluestone Coke, LLC.

51. On October 10, 2019, the EPA was notified that ERP Compliant Coke, LLC had changed its name to Bluestone Coke, LLC.

52. On October 31, 2019, Bluestone Mineral, Inc. submitted a Certificate of Insurance to the EPA to fulfill Respondent's financial assurance obligation at SMA 5.

53. On December 18, 2019, the EPA approved the Corrective Measures Implementation Work Plan for the remedy for SMA 4 (Former Chemical Plant) which included a cost estimate for corrective measures in the amount of \$4,043,516.41. Pursuant to Paragraph 34 of the 2016 Order, which references Paragraph 1.e. of Attachment C (Financial Assurance), Respondent was required to demonstrate financial assurance within 60 calendar days after the EPA's written approval of the cost estimate for SMA 4, which was on or before February 16, 2020.

54. On February 4, 2020, the EPA informed Bluestone Mineral, Inc. and Respondent that the submitted insurance policy for SMA 5 was insufficient. The EPA's review concluded that the policy did not conform to the regulations outlined in 40 C.F.R. §§ 264.143(e) and 264.145(e).

55. On February 12, 2020, April 3, 2020, and April 30, 2020, the EPA requested adequate financial assurance in the total amount for SMA 4 and SMA 5 of \$4,164,811.21 via emails to Respondent.

56. On May 6, 2020, Respondent informed the EPA that it had been working to demonstrate financial assurance to the EPA, but the COVID-19 pandemic had a severe financial impact on the Facility and therefore it was unable to afford acceptable financial assurance.

57. On August 28, 2020, the EPA sent Respondent an Opportunity to Show Cause why the EPA should not take formal enforcement action against Respondent for its violations of the financial assurance requirements applicable to the Facility.

58. On October 29, 2020, the EPA held a show cause teleconference with representatives of Respondent and Bluestone Resources, Inc. to discuss issues related to financial assurance.

59. Pursuant to Paragraph 34 of the 2016 Order, which references Attachment C (Financial Assurance), Paragraph 6, if the “Respondent provides financial assurance by means of a corporate guarantee or financial test pursuant to 40 C.F.R. § 264.151, Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in the Order, including but not limited to, (1) initial submission of required financial reports and statements from the guarantors’ chief financial officer and independent certified public accountant; (2) annual re-submission of such reports and statements within 90 days after the close of each of the guarantors’ fiscal years; and (3) notification of EPA within 90 days after the close of any of the guarantors’ fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(I).”

60. On March 2, 2021, Bluestone Resources, Inc., on behalf of Respondent, submitted a Financial Test and Corporate Guarantee (Bluestone Corporate Guarantee) providing financial assurance coverage based on information from Bluestone Resources, Inc.’s fiscal year 2019 company financial statements. This submittal demonstrated sufficient financial assurance coverage for SMA 5 and SMA 4 only until March 30, 2021, at which time the annual re-submission would have been due as Bluestone Resources, Inc.’s fiscal year ended on December 31, 2020.

61. Respondent’s next demonstration of financial assurance from April 1, 2021, to March 31, 2022, was due to the EPA on or before March 31, 2021. As required by Attachment C (Financial Assurance), Paragraph 6 of the 2016 Order, pursuant to 40 C.F.R. § 264.143(f)(5), to continue using the financial test and corporate guarantee for financial assurance coverage, an owner or operator must submit updated information annually within 90 days of the close of the company’s fiscal year. Bluestone Resources, Inc.’s fiscal year ended on December 31, 2020. Therefore, in order for Respondent to continue using the financial test and corporate guarantee for financial assurance coverage, an annual update for 2021 based on Bluestone Resources, Inc.’s 2020 year-end financial statements, must have been submitted to the EPA by March 30, 2021.

62. Pursuant to Paragraph 7 of the Bluestone Corporate Guarantee, “[g]uarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from

continuing as a guarantor of corrective action or corrective action care, he shall establish alternate financial assurance as specified in subpart H of 40 C.F.R. part 264 or 265, as applicable, in the name of Bluestone Coke, LLC unless Bluestone Coke, LLC has done so.”

63. Pursuant to Paragraph 8 of the Bluestone Corporate Guarantee, “[g]uarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the corrective action or corrective action plan, amendment or modification of the permit, the extension or reduction of the time of performance of corrective action ... or any other modification or alteration of an obligation of the owner or operator pursuant to 40 C.F.R. part 264 or 265.”

64. Pursuant to Paragraph 9 of the Bluestone Corporate Guarantee, “[g]uarantor agrees to remain bound under this guarantee for as long as Bluestone Coke, LLC must comply with the applicable financial assurance requirements of subpart H of 40 CFR parts 264 and 265 ...” for the Facility.

65. On March 2, 2021, April 1, 2021, April 26, 2021, and May 12, 2021, the EPA informed Respondent and Bluestone Resources, Inc. via email that a new financial test and corporate guarantee submittal based on fiscal year 2020 was due on or before March 30, 2021.

66. On June 28, 2021, the EPA sent a Notice of Violation to Respondent documenting that since April 1, 2021, Respondent had failed to comply with the 2016 Order and with 40 C.F.R. § 265.143(e) by: 1) failing to maintain financial assurance for the benefit of the EPA in the amount stated in the approved Estimated Cost of Corrective Measures Work for SMA 5 and SMA 4; and 2) failing to submit Bluestone Resources, Inc.’s updated annual financial reports and statements to the Regional Administrator, as required with use of the financial test and corporate guarantee for financial assurance coverage at SMA 5 and SMA 4.

67. Pursuant to Paragraph 34 of the 2016 Order, which references Attachment C (Financial Assurance), Paragraph 8, “[i]f at any time EPA determines that a financial assurance instrument provided pursuant to this Section is inadequate, or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, EPA shall so notify the Respondent in writing.... Within 30 days of receipt of notice of the EPA’s determination, or within 30 days of Respondent becoming aware of such information, as the case may be, Respondent shall obtain and present to EPA for approval, a proposal for a revised or alternative form of financial assurance listed in 40 C.F.R. § 264.151 that satisfies all requirements set forth or incorporated by reference in this Section.”

68. On August 9, 2021, Bluestone Resources, Inc. submitted incomplete information to meet the criteria of the financial test on behalf of Respondent.

69. On August 11, 2021, and August 24, 2021, the EPA requested by email the information from Bluestone Resources, Inc. that was missing from the August 9, 2021 financial assurance submittal. Missing documents included:

- a. An original, signed written guarantee worded as specified in 40 C.F.R. § 264.151(h) as required by Attachment C (Financial Assurance), Paragraph 6 of the 2016 Order;
- b. A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year pursuant to Attachment C (Financial Assurance), Paragraph 6 of the 2016 Order and 40 C.F.R. § 265.143(e)(3)(ii);
- c. A special report from the owner's or operator's independent certified public accountant to the owner or operator pursuant to Attachment C (Financial Assurance), Paragraph 6 of the 2016 Order and 40 C.F.R. § 265.143(e)(3)(iii); and
- d. Fiscal year 2020 audited financial statements pursuant to Attachment C (Financial Assurance), Paragraph 6 of the 2016 Order and 40 C.F.R. § 265.143(e)(7).

70. On August 27, 2021, Bluestone Resources, Inc. responded to the EPA stating that it did not have the documents necessary to complete the financial assurance submission.

71. On September 29, 2021, the EPA sent Respondent and Bluestone Resources, Inc. a letter documenting its finding that Bluestone Resources, Inc. had failed to meet the requirements of the financial test found in 40 C.F.R. § 265.143(e) and therefore was unable to provide a corporate guarantee, as outlined in 40 C.F.R. § 265.143(e)(10), for the Facility. Respondent and Bluestone Resources, Inc. were given 30 days, or until October 29, 2021, to provide alternative financial assurance.

72. On October 28, 2021, the EPA again notified Bluestone Resources, Inc. by email that it had failed to meet the requirements of the financial test found in 40 C.F.R. § 265.143(e) and therefore was unable to provide a corporate guarantee as outlined in 40 C.F.R. § 265.143(e)(10). As a result of this determination, the EPA required Bluestone Resources, Inc. immediately, but no later than October 29, 2021, to obtain alternative financial assurance through one or more of the approved financial assurance mechanisms identified in Subpart H of 40 C.F.R. Parts 264 and 265.

73. On March 24, 2022, the EPA notified Respondent and Bluestone Resources, Inc. by letter of the accrual of stipulated penalties related to financial assurance pursuant to Section XXVII (Delay In Performance/ Stipulated Penalties) of the 2016 Order. The EPA determined that as of March 1, 2022, stipulated penalties had accrued to \$1,306,000 and would continue to increase by \$2,000 each business day until Respondent and Bluestone Resources, Inc. came into compliance with the financial assurance provisions of the 2016 Order.

74. On April 7, 2022, Bluestone Resources, Inc. notified the EPA that as a result of the Greensill Capital (UK) Ltd. bankruptcy, Bluestone Resources, Inc. had no ability to borrow

money because of its assets being pledged to Greensill Capital (UK).<sup>1</sup> This letter also stated that Bluestone Resources, Inc. had no access to working capital and that it had not been able to complete its annual audit because of the Greensill Capital (UK) bankruptcy.

75. On October 6, 2022, the EPA sent an email to Respondent and Bluestone Resources, Inc. requesting a conversation with Bluestone Resources, Inc. financial staff to better understand the company's financial resources and constraints.

76. On October 12, 2022, Bluestone Resources, Inc. responded saying that it was working on obtaining the correct company financial contact. No contact was ever provided by Respondent or Bluestone Resources, Inc. to the EPA.

77. On January 6, 2023, the EPA received an email from Respondent's counsel providing a letter from a Certified Public Accountant that stated that an audit of Bluestone Resources, Inc. and its subsidiaries' (including Respondent) annual financial statements for year-end December 31, 2022, was anticipated to be complete on March 31, 2023.

78. On February 7, 2023, the EPA sent Respondent and Bluestone Resources, Inc. a letter requiring them to provide alternative financial assurance within 14 days. Receipt of this letter was confirmed by email on February 20, 2023. In the confirmation email, Respondent and Bluestone Resources, Inc. also reiterated that the financial audit for Bluestone Resources, Inc. and its subsidiaries was expected to be completed by March 31, 2023.

79. On May 26, 2023, Bluestone Resources, Inc. provided to the EPA its consolidated financial statements including its subsidiaries for the year ended December 31, 2022. The EPA notified Bluestone Resources, Inc. via email on May 30, 2023, that the submittal was not a complete financial assurance submittal. Although the EPA's email did not provide these details, the submittal did not demonstrate that Bluestone Resources, Inc. met the financial test as there was no letter signed by the owner's or operator's chief financial officer worded as specified in 40 C.F.R. § 264.151(f) as required by Attachment C (Financial Assurance), Paragraph 6 of the 2016 Order, nor did the submittal include a special report from the owner's or operator's independent certified public accountant to the owner or operator pursuant to Attachment C (Financial Assurance), Paragraph 6 of the 2016 Order and 40 C.F.R. 265.143(3)(3)(iii). Additionally, an original, signed written guarantee worded as specified in 40 C.F.R. § 264.151(h) as required by Attachment C (Financial Assurance), Paragraph 6 of the 2016 Order was not provided. The EPA did state in its email that Respondent and Bluestone Resources, Inc. must provide alternate financial assurance given the repeated, and continued, failure to comply with the Bluestone Corporate Guarantee provisions, the 2016 Order, and applicable regulations. The EPA requested alternate financial assurance within two weeks (on or before June 14, 2023). No additional information or alternate financial assurance has been provided to the EPA by Respondent.

---

<sup>1</sup> In the same letter, Bluestone Resources, Inc. stated that "Greensill was Bluestone's primary lender and source of credit..."

## VI. COUNT 1: FAILURE TO DEMONSTRATE FINANCIAL ASSURANCE

80. Paragraphs 1 through 79 are incorporated by reference as if fully set forth herein.

81. Paragraph 34 of the 2016 Order requires Respondent to demonstrate financial assurance for completing the approved remedy.

82. Since April 1, 2021, neither Respondent nor its parent company Bluestone Resources, Inc. has met the financial test criteria as referenced in Attachment C (Financial Assurance) of the 2016 Order; therefore, Respondent is therefore unable to continue utilizing a corporate guarantee as the mechanism for assuring financial responsibility for completing corrective action at the Facility.

83. The EPA notified Respondent by emails and with a Notice of Violation on June 28, 2021, that neither Respondent nor its parent company Bluestone Resources, Inc. has met the financial test criteria as of April 1, 2021. The EPA provided Respondent 14 days from its receipt of EPA's Notice of Violation, or until July 14, 2021, to provide alternate financial assurance. To date, Respondent has not demonstrated adequate financial assurance as required by the 2016 Order.

84. Therefore, Respondent has violated Paragraph 34 of the 2016 Order and Attachment C (Financial Assurance) by failing to demonstrate financial assurance for completing the approved remedy in the amount stated in the approved Estimated Cost of Corrective Measures Work for SMA 5 and SMA 4 of \$4,164,811.21.

85. Due to Respondent's violation of the 2016 Order, Respondent is liable for injunctive relief pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

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

86. Paragraphs 1 through 85 are incorporated by reference as if fully set forth herein.

87. Paragraph 34 of the 2016 Order requires Respondent to provide a revised cost estimate (Estimated Cost of Corrective Measures Work) annually for each approved remedy. There is an approved remedy for SMA 4 and SMA 5.

88. Attachment C (Financial Assurance), Paragraph 1.b. of the 2016 Order states that until the approved remedy required by the 2016 Order is completed, Respondent shall annually adjust the Estimated Cost of Corrective Measures Work for inflation within 30 days after the close of Respondent's fiscal year if using the financial test and corporate guarantee, or within 60 days prior to the anniversary date of the establishment of any other financial assurance instrument.

89. To date, Respondent has not provided the EPA with a revised cost estimate annually to reflect inflation for 2022, 2023, or 2024.

90. Therefore, Respondent has violated Paragraph 34 and Attachment C (Financial Assurance) of the 2016 Order by failing to revise the cost estimate annually for each approved remedy for SMA 4 and SMA 5.

91. Due to Respondent's violations of the 2016 Order, Respondent is liable for injunctive relief pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

#### VIII. COMPLIANCE ORDER

92. Pursuant to 40 C.F.R. § 22.37(b), the Compliance Order hereby included is equivalent to a Compliance Order under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Based upon the foregoing, Respondent is ordered to come into and maintain compliance with the 2016 Order by undertaking the following acts within the times specified below pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a):

- a. Within 30 days from the Effective Date of this Complaint, Respondent will establish and maintain thereafter a financial assurance mechanism for corrective action at the Facility in the amount of \$4,839,811.64 (which includes the required annual inflation adjustments), in accordance with Attachment C (Financial Assurance), Paragraph 1.d. of the 2016 Order. Respondent may choose from the following options with references to corrective action added where appropriate as determined by the EPA:
  - i. Trust fund pursuant to 40 C.F.R. § 264.143(a) or 40 C.F.R. § 264.145(a);
  - ii. Surety bond guaranteeing performance pursuant to 40 C.F.R. § 264.143(c) or 40 C.F.R. § 264.145(c);
  - iii. Letter of credit pursuant to 40 C.F.R. § 264.143(d) or 40 C.F.R. § 264.145(d); or
  - iv. Insurance pursuant to 40 C.F.R. § 264.143(e) or 40 C.F.R. § 264.145(e).
- b. Pursuant to Paragraph 34 of the 2016 Order, Respondent shall review the approved Estimated Cost of Corrective Measures Work, adjust the financial assurance instrument, and submit the revised Estimated Cost of Corrective Measures Work and instrument to the EPA annually for each approved remedy.

#### X. IMMINENT AND SUBSTANTIAL ENDANGERMENT

93. Notwithstanding any other provision of this Complaint, an enforcement action may be brought against Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and/or any other applicable statutory or regulatory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.

## XI. OPPORTUNITY TO REQUEST A HEARING

94. As provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.15(a) and (c), Respondent has the right to request a formal hearing to contest any matter of law or material fact set forth in this Complaint. In the event that Respondent does intend to request a hearing, a written Answer to this Complaint must be filed pursuant to 40 C.F.R. § 22.15 with the Regional Hearing Clerk within 30 days after service of this Complaint.

95. The written Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds for defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

96. If a written Answer to this Complaint is not filed with the Regional Hearing Clerk within 30 days after service of this Complaint, Respondent may be found in default pursuant to 40 C.F.R. § 22.17.

97. For purposes of this action, default constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. A Default Order, pursuant to 40 C.F.R. § 22.17, may thereafter be issued by the Presiding Officer, and the injunctive relief proposed herein may be ordered without further proceedings.

98. Pursuant to 40 C.F.R. § 22.5(a)(1) and (b)(2), on June 26, 2020, the EPA Region 4 Regional Judicial Officer filed a Standing Order entitled "Authorization of EPA Region 4 Electronic Filing System for Filing and Serving Documents Electronically in Proceedings Governed by 40 C.F.R. Part 22" (Standing Order), a copy of which is enclosed. Pursuant to the Standing Order, and following the requirements therein, the written Answer must be sent electronically to:

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

The name of the matter and the Docket Number should be included in the subject line of the email. If Respondent is unable to electronically file, then Respondent shall contact the Regional Hearing Clerk to discuss other options for filing permissible by 40 C.F.R. § 22.5(a)(1).

99. A copy of the Answer and other documents that Respondent files in this action should be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

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

The EPA strongly encourages electronic filing. Therefore, pursuant to 40 C.F.R. § 22.5(b)(2) and the Standing Order, the Complainant hereby consents to receipt of service electronically, by the above-named attorney on behalf of Complainant, by email at redleaf-durbin.joan@epa.gov.

100. Hearings held on this matter will be conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. §§ 551-559) and the Consolidated Rules, 40 C.F.R. Part 22, a copy of which is included with this Complaint.

## XII. APPEAL RIGHTS AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

101. The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. Respondent has the right to appeal an adverse initial decision to the Environmental Appeals Board (EAB). Such an appeal must be made in accordance with 40 C.F.R. § 22.30(a)(1) within 30 days after the initial decision is served, at the address below:

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1103M  
Washington, D.C. 20460-0001

102. Pursuant to 40 C.F.R. § 22.7(c), “where a document is served by U.S. mail ... or commercial delivery service, including overnight or same-day delivery, 3 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.” Therefore, the maximum time for filing of an appeal under 40 C.F.R. § 22.30(a)(1) is 33 days unless an extension is granted by the EAB. Note that the 45-day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to nor extend the 30 days prescribed in 40 C.F.R. § 22.30(a)(1) for filing an appeal.

103. If Respondent fails to appeal an adverse initial decision to the EAB in accordance with 40 C.F.R. § 22.30 and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), Respondent will have waived its right to judicial review.

### XIII. INFORMAL SETTLEMENT CONFERENCE

104. Whether or not Respondent requests a hearing, the EPA encourages settlement of the proceeding consistent with the provisions of RCRA. At an informal conference, Respondent may comment upon the allegations and provide whatever additional information Respondent believes is relevant to the disposition of this matter, including actions taken to correct the violation or any other special circumstance Respondent chooses to raise.

105. Any request for an informal conference and other questions regarding this Complaint should be directed to:

Joan Redleaf Durbin  
Senior Attorney  
U.S. Environmental Protection Agency, Region 4  
(404) 562-9544  
redleaf-durbin.joan@epa.gov

106. The scheduling of an informal conference does not relieve Respondent of the obligation to file a written Answer within 30 days after service of this Complaint. A request for an informal conference does not extend the 30-day period in which a written Answer and request for hearing must be submitted. The informal conference may be pursued as an alternative to or simultaneously with a request for a hearing.

### XIV. EFFECTIVE DATE

107. This Complaint will become effective as provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and the Consolidated Rules.

**[Remainder of Page Intentionally Left Blank**

**Complainant will Sign on a Separate Page.]**

IN THE MATTER OF:  
Bluestone Coke, LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 4  
Complainant

---

Keriema S. Newman  
Director  
Enforcement and Compliance Assurance Division

**CERTIFICATE OF SERVICE**

The undersigned certifies that on February 5, 2025, I electronically filed the foregoing **AMENDED COMPLAINT, COMPLIANCE ORDER, AND OPPORTUNITY TO REQUEST A HEARING** 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: February 5, 2025

---

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