UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

ELECTRONIC MAIL
CONFIRMATION OF RECEIPT EMAIL REQUESTED

Bluestone Coke, LLC
Attn: Hunter Naff, Associate General Counsel
3500 35th Avenue North
Birmingham, Alabama 35207
hunter.naff@bluestone-coal.com

SUBJ: Resource Conservation Recovery Act (RCRA) Opportunity to Show Cause
RCRA Section 3008(h) Administrative Order on Consent Docket No. RCRA-04-2016-4250
Bluestone Coke, LLC, Birmingham, EPA ID ALD000828848

Dear Mr. Naff:

On May 6, 2020, the U.S. Environmental Protection Agency, conducted a financial record review of Bluestone Coke, LLC (Bluestone) located at 3500 35th Avenue, Birmingham, Alabama 35207 (the facility) to determine its compliance with the financial assurance requirements set forth in the Resource Conservation and Recovery Act (RCRA) Section 3008(h) Administrative Order on Consent, Docket No. RCRA-04-2016-4250 (the Order). On June 3, 2020, the EPA requested additional information from Bluestone pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 regarding the facility's compliance with the financial assurance requirements of the Order.

The first two solid waste management unit (SWMU) management areas (SMA) that require financial assurance under the Order are SMA 5 (Former Pig Iron Foundry) and SMA 4 (Former Chemical Plant). The EPA has determined that the facility may not be in compliance with several financial assurance requirements of the Order based on apparent deficiencies observed during the financial record review and a review of additional information obtained from the June 3, 2020, information request. For each SMA, the observations made during these reviews are summarized below.

SMA 5 (Former Pig Iron Foundry)

On July 11, 2019, the EPA issued a Final Approval of Corrective Measures Implementation Work Plan for SMA 5, which included the Estimated Cost of the Corrective Measures Work dated October 29, 2018 for $121,294.80. Pursuant to Section XII of the Order which references Attachment C, Paragraph 1.e., Bluestone shall provide financial assurance coverage within 60 calendar days of the EPA's written approval of the Estimated Cost of the Corrective Measures Work (or by September 9, 2019). On September 5, 2019, Bluestone requested a forty-five (45) day extension to submit the financial assurance for SMA 5 (or by October 31, 2019). On September 6, 2019, the EPA approved this extension request.

On October 31, 2019, Bluestone submitted a certificate of insurance from James River Insurance Company, Ltd., policy number PKG1891128 effective October 31, 2019 (the Policy), as evidence of financial assurance for corrective action at SMA 5. The EPA requested a complete copy of the Policy on December 11, 2019. A review of the Policy found that it did not conform to the requirements of Section XII of the Order which references Attachment C and 40 CFR §§ 264.143(e) or 264.145(e). The apparent deficiencies identifed during the review of the Policy include but are not limited to:

1. Pursuant to Section XII of the Order which references Attachment C Paragraph 10 and 40 C.F.R. §§ 264.143(e)(1) or 264.145(e)(1), at a minumum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

2. Pursuant toSection XII of the Order which references Attachment C Paragraph 1.e , Respondent shall establish and maintain financial assurance for the benefit of EPA for the amount stated in the approved Estimated Cost of the Corrective Measures Work.

3. Pursuant to 40 C.F.R. §§ 264.143(e)(7) or 264.145(e)(7), each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

4. Pursuant to 40 C.F.R. §§ 40 CFR 264.143(e)(8) or 264.145(e)(8), the policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Regional Administrator. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Regional Administrator and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

   (i) The Regional Administrator deems the facility abandoned; or

   (ii) The permit is terminated or revoked, or a new permit is denied; or

   (iii) Closure is ordered by the Regional Administrator or a U.S. district court or other court of competent jurisdiction; or

   (iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

   (v) The premium due is paid.

On February 4, 2020, the EPA requested that Bluestone submit a policy that meets the requirements. Additionally, the EPA requested information pertaining to which state(s) within the U.S. regulate or examine James River Insurance Company, Ltd. and proof of James River Insurance Company Ltd.'s authority to issue insurance policies in Alabama as required by 40 C.F.R. § 264.143 and 40 C.F.R. § 264.145. The EPA reaffirmed this request via email on February 12, 2020, April 3, 2020 and April 30, 2020. On May 6, 2020, the EPA received an email from Bluestone stating that they "have worked

diligently to provide an alternative Financial Assurance Mechanism, but the COVID 19 pandemic has had severe financial impact on our already cash-strapped plant."

On June 3, 2020, the EPA requested additional information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 regarding Bluestone's compliance with the financial assurance requirements of the Order. The information received on June 18, 2020, in response to the formal information request appears to indicate that adequate financial assurance has not been obtained by Bluestone.

SMA 4 (Former Chemical Plant)

On December 18, 2019, the EPA issued Final Approval of Corrective Measures Implementation Work Plan for SMA 4, which included the Estimated Cost of the Corrective Measures Work dated September 16, 2019 for $4,043,516.41. Pursuant to Section XII of the Order which references Attachment C, Paragraph 1.e., Bluestone shall provide financial assurance coverage within 60 calendar days of the EPA's written approval of the Estimated Cost of the Corrective Measures Work (or by February 16, 2020). To date, the EPA has received no financial assurance coverage for this unit.

In summary, Bluestone appears to have failed to provide the EPA satisfactory financial assurance as required by the Order for SMA 4 or SMA 5 at its Birmingham, Alabama facility.

Please provide a detailed written response within fourteen (14) days following receipt of this letter describing any actions that Bluestone has taken and/or intends to take related to the observations documented in this letter . Your response should be emailed to:

Brooke York
Land, Asbestos and Lead Section
Chemical Safety and Land Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
York.Brooke@epa.gov

Bluestone is also being offered the opportunity to meet with the EPA by teleconference, to show cause why the EPA should not take formal enforcement action against Bluestone. Bluestone may elect to be represented by legal counsel at this meeting and should be prepared to present relevant information and documentation pertaining to the EPA's alleged deficiencies.

The EPA may determine that a formal enforcement action is appropriate and may assess civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Therefore, Bluestone has the opportunity to present factors and documentation that could mitigate any penalties that may be assessed against the facility, including information on Bluestone's ability to pay a penalty. Prior to the meeting, Bluestone may review the RCRA Civil Penalty Policy found at http://www2.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf, and the revised penalty matrices found at https://www.epa.gov/sites/production/files/2018-01/documents/amendmentstotheepascivilpenaltypoliciestoaccountforinflation011518.pdf.

Please be advised that any information provided by Bluestone at the meeting may be used by the EPA in any civil or criminal proceedings related to this or other matters. Any false, fictitious, or fraudulent material omissions, statements, or representations may subject Bluestone to criminal penalties under Section 3008(d)(3) of RCRA, 42 U.S.C. § 6928(d)(3).

If Bluestone chooses to accept this offer to meet with the EPA, the facility should contact Brooke York at (404) 562-8025 or by email at york.brooke@epa.gov **within fourteen (14) days** following receipt of this letter to schedule a conference call. If you decide not to accept this offer to meet to discuss the observed deficiencies, the EPA may proceed with enforcement action against Bluestone as authorized under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), including the assessment of appropriate civil penalties and injunctive relief.

If Bluestone is a Small Business or a Small Community, you can find compliance and enforcement resources specifically designed to meet your needs at: http://www2.epa.gov/enforcement/small-businesses-and-enforcement. In that webpage you can find information about the Small Business Regulatory Enforcement Fairness Act (SBREFA) that accords some rights to small businesses and is aimed at providing assistance to small businesses and other small entities, making tools available for better understanding of the regulatory and enforcement processes, and seeing that there is no unfair treatment relating to the regulatory enforcement process.

Please feel free to contact Brooke York if you have any technical questions or Joan Redleaf Durbin for any legal questions at redleaf-durbin.joan@epa.gov or by phone at (404) 562-9544 regarding the review performed on Bluestone's facility.

Sincerely,

Kimberly Bingham Digitally signed by Kimberly Bingham Date: 2020.08.28 09:36:43 -04'00'

Kimberly L. Bingham
Chief
Chemical Safety and Land Enforcement Branch