



AlaFile E-Notice

01-CV-2021-902311.00

Judge: PAT BALLARD

To: STOKES SARAH MCCARRON
sstokes@selcal.org

NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

JEFFERSON COUNTY BOARD OF HEALTH V. BLUESTONE COKE, LLC
01-CV-2021-902311.00

A court action was entered in the above case on 12/14/2022 11:31:28 AM

ORDER

[Filer:]

Disposition: GRANTED
Judge: PJB
Notice Date: 12/14/2022 11:31:28 AM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
716 N. RICHARD ARRINGTON BLVD.
BIRMINGHAM, AL, 35203

205-325-5355
jackie.smith@alacourt.gov

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

JEFFERSON COUNTY BOARD OF)	
HEALTH, ET AL.,)	
Plaintiffs,)	
)	
v.)	01-CV-2021-902311
)	
BLUESTONE COKE, LLC,)	
Defendant.)	

CONSENT DECREE AND FINAL ORDER

This Consent Decree was agreed upon this 14th day of December, 2022, between the Jefferson County Board of Health (the “Board” or “Plaintiff”), GASP (“GASP” or “Plaintiff-Intervenor”), and Bluestone Coke, LLC (“Bluestone” or “Defendant”), in the resolution of the above referenced matter.

WITNESSETH

WHEREAS, Bluestone owns a metallurgical coke plant in Jefferson County, Alabama; and

WHEREAS, the Jefferson County Department of Health (the “Health Department”) issued Official Notice of Violation No. 3203 (“NOV No. 3203”) to Defendant Bluestone on July 15, 2020; and

WHEREAS, NOV No. 3203 describes Bluestone’s violations of the Jefferson County Board of Health Air Pollution Control Rules and Regulations (hereinafter, referred to as the “Rules and Regulations”) and Bluestone’s Operating Permit, as alleged by the Board; and

WHEREAS, Bluestone initially responded to NOV No. 3203 on July 17, 2020, advising the Board that Bluestone disagreed with the violations as described by the Board, and Bluestone provided supplemental responses on July 28, 2020, and December 7, 2020; and

WHEREAS, the Board filed this action on August 11, 2021; and

WHEREAS, on September 16, 2021, the Health Department issued official Notice of Violation No. 3283 (“NOV No. 3283”) to Bluestone; and

WHEREAS, on October 1, 2021, GASP filed a Motion to Intervene and was granted intervention on October 10, 2021, by this Court, and filed a Complaint in Intervention asserting claims for numerous violations by Bluestone at the Bluestone coke plant; and

WHEREAS, in October of 2021, Bluestone chose to cold-idle its facility (i.e., remove the heat from its coke ovens and cease all production); and

WHEREAS, as of the Effective Date of this Consent Decree, Bluestone remains in cold-idle; and

WHEREAS, on November 19, 2021, the Board filed an amended complaint to include NOV 3283 and additional violations, and GASP filed an amended complaint in intervention on February 28, 2022; and

WHEREAS, without any admission by Bluestone that it has violated any of the Rules and Regulations or Bluestone’s Operating Permit (whose renewal was denied by the Department; that denial is under administrative challenge), the Board, Bluestone, and GASP (collectively “the parties”) have reached an agreement regarding the settlement of this action and the Official Notices of Violation; and

WHEREAS, the parties agree that the actions to be taken herein are for the purpose of resolving this dispute and protecting the health of the citizens of Jefferson County; and

WHEREAS, the parties agree that settlement of this matter is in the public interest and is the most appropriate way of resolving all matters of dispute regarding this action and the Official Notices of Violation; and

WHEREAS, the parties have reached agreement in settlement of all issues regarding this matter and are desirous of this Consent Decree being performed in accordance with the terms and conditions set out herein.

NOW THEREFORE, in consideration of premises, covenants, and agreements contained herein, the parties agree as follows:

ARTICLE ONE

Future Operations

As of the Effective Date of this Consent Decree, Bluestone remains in cold-idle and the extent to which the Bluestone plant would have to be rebuilt prior to resuming operations has not been determined. This Consent Decree is not (and should not be interpreted to be) a permit or authorization for Bluestone to resume production or any of its operations. The Articles and requirements of this Consent Decree do not replace any of the applicable requirements contained in the Rules and Regulations or any current or future permit. Likewise, none of the Articles contained in this Consent Decree are a permit or authorization for Bluestone to resume production or any of its operations. Rather, this Consent Decree and its Articles are intended to control Bluestone's operations *if* Bluestone is allowed to resume production after Bluestone first obtains all applicable permits and completes rebuilding or repairs deemed necessary for the safe and compliant operation of the plant. Notwithstanding anything to the contrary that may be contained in this Consent Decree, Bluestone must obtain the applicable permit(s) (as determined by the Health Department) prior to resuming production and/or operations. Likewise, the requirements of this Consent Decree shall not become part of existing or future permits absent those permits imposing the same requirements.

ARTICLE TWO

Corrective Action Plan

Bluestone shall, to the Board's satisfaction, submit a written Corrective Action Plan including a schedule of maintenance and other projects necessary to bring Bluestone into compliance with all violations alleged in the Board's Complaint, as amended. Bluestone must submit this Corrective Action Plan as part of any permit application it submits to the Health Department. The permit application will be deemed incomplete without this Corrective Action Plan. The Corrective Action Plan shall include an assessment of corrective actions needed to achieve compliance with the following categories of items: (1) Operation and Maintenance of Capture and Control System For Pushing Emissions, (2) Operation and Maintenance of Coke Oven Batteries, (3) Doors, Offtakes, and Charging Operations, (4) Requirements For Spare Doors and Lids, (5) Reporting Requirements, including the timely submission of Breakdown/Malfunction Reports, (6) Operation and Maintenance of the Wheel Wash, and (7) Operation and Maintenance of the Quench Towers' Baffles. The Corrective Action Plan shall also include a schedule for the implementation of such corrective actions.

As part of the Corrective Action Plan, Bluestone shall hire (and will pay) an independent contractor to help assess the scope of work needed to achieve compliance. The contractor must have a current Professional Engineering (P.E.) License and have significant audit experience for compliance with Clean Air Act regulations that apply to the by-product recovery coke making process. This auditor should provide these credentials as part of the Corrective Action Plan.

Subject to the Board's approval, based on a reasonable assessment, Bluestone shall incorporate each of the independent contractor's recommendations into the Corrective Action Plan. If the contractor provides multiple methods for achieving compliance for a single violation or type of violation, Bluestone may select from the presented alternatives. If Bluestone rejects

any of the contractor's recommendations, Bluestone must, to the Board's satisfaction, propose and justify an acceptable means of achieving compliance. All aspects of the Corrective Action Plan are subject to the Board's approval. Bluestone will not be allowed to resume operations unless and until the Board approves the Corrective Action Plan and all necessary recommendations in the Corrective Action Plan are implemented. The public will be provided an opportunity to comment on this Corrective Action Plan as part of the public comment period if/when a new draft permit is out for public comment.

ARTICLE THREE

Work Practice Plan

At least (60) days prior to resuming production, Bluestone shall review work practices for doors, oftakes, and charging emissions to minimize emissions from these points as required by 40 CFR 63, Subpart L, and shall submit a written Work Practice Plan to the Board and GASP meeting the requirements of 40 CFR § 63.306. The revised Work Practice Plan is subject to the Board's approval. Bluestone will not be allowed to resume operations unless and until the Board approves the Work Practice Plan.

ARTICLE FOUR

Independent Auditor

Bluestone will hire and pay for an appropriately credentialed and qualified independent auditor to visit the plant every two months for two years after the Corrective Action Plan has been implemented and the plant is in operation, and will perform an inspection and provide a written audit of the plant to assure compliance with the Corrective Action Plan, not limited to the batteries, ovens, lids, doors, wheel wash and quench towers. This auditor will write a bi-monthly report and send his/her report to the Health Department and GASP. Each Audit Report

shall be submitted within the first fourteen (14) days after every two months of operation. This auditor must have a current Professional Engineering (P.E.) License and have significant audit experience for compliance with Clean Air Act regulations that apply to the by-product recovery coke making process. This auditor should provide these credentials in the initial report.

ARTICLE FIVE

Monthly Pushing Emissions Control System Reports

Within 30 days of resuming production, Bluestone shall submit a Pushing Emissions Control System Report to the Health Department and GASP, in a format supplied by the Health Department. If any oven has been pushed without the permitted pushing emissions control system (the “control system”), then a report within seven days of the occurrence is required to be supplied to the Health Department and GASP. If every oven was pushed with the control system for the entire month, then only a monthly report is required.

None of the reporting requirements in this Article or this Consent Decree alter or replace any of the applicable reporting requirements contained in the Rules and Regulations and/or any current or future permit.

Each Report will count the daily number of ovens pushed with the control system and the number of ovens pushed without the control system. The first Monthly Report shall provide information for the period of the first full calendar month following the date Bluestone resumes production and shall be due within the first week of the second calendar month following the date Bluestone resumes production. Each subsequent Monthly Report shall be due within the first week of the calendar month immediately following the applicable coverage period. The requirements of this Article (including the requirement to submit weekly pushing reports if the ovens are pushed without the controls) will cease to be applicable upon Bluestone establishing,

to the satisfaction of the Board, acceptable performance with this Consent Decree and the applicable Rules and Regulations or two years after the Corrective Action Plan has been implemented, whichever is later.

ARTICLE SIX

Progress Reports

Bluestone shall submit written Progress Reports every quarter to the Health Department and GASP, beginning two months after the Effective Date of this Consent Decree and ending upon the Board's determination that the Consent Decree has been fully and properly implemented. Each Progress Report shall be submitted within the first fourteen (14) days after each quarter (three months) of operation. The Progress Reports shall describe the work that Bluestone has performed in accordance with the Corrective Action Plan and Consent Decree, problems or violations encountered or anticipated problems or violations in performing the Corrective Action Plan and this Consent Decree, as well as non-compliance with the requirements of this Consent Decree and the reason for that non-compliance.

ARTICLE SEVEN

Certification of Reports

Each report required in this Consent Decree and submitted by Bluestone shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

All reports and plans required by this Consent Decree will be placed on the Health Department's website within 30 days of approval of those documents by the Board.

ARTICLE EIGHT

Fenceline Monitoring

Prior to resuming production, Bluestone shall purchase, install, and operate a fenceline air monitoring system at its facility for the purpose of monitoring the sulfur dioxide (SO₂) levels at the boundaries of its property. Bluestone shall operate the fenceline monitoring system for at least five (5) years.

The monitoring system must be fully operational when Bluestone resumes production and monitoring must begin before the resumption of production. The five-year period will begin to run when Bluestone resumes production. Bluestone shall, to the Board's satisfaction, submit a written Fenceline Monitoring Plan that includes fixed monitors, which shall include details regarding the instruments/systems that Bluestone intends to purchase, the frequency of the monitoring, Bluestone's proposed locations for the air monitors (with the parties' understanding and agreement that the Health Department will have the final authority to select the locations of the air monitors in the manner described in the following paragraph), along with proposed plans for quality assurance, maintenance, data collection, and the sharing of all air monitoring data with the Health Department. This Monitoring Plan will be submitted at the time the permit application is submitted. The public will be provided an opportunity to comment on the Fenceline Monitoring Plan as part of the public comment period if/when a new draft permit is out for public comment.

As part of the fenceline air monitoring system required by this Consent Decree, at least two SO₂ monitors that capture continuous data will be purchased and installed by Bluestone.

One such air monitor will be placed on Bluestone's property along its fenceline in the location most likely to detect the highest concentration of SO₂ based on either EPA's model (e.g. EPA Region 4 Modeling Report SO₂ Emissions, Jefferson County October 15, 2021 (p. 25-28) report) (attached as Exhibit 1 to this Consent Decree)) or the most updated dispersion model, as determined by the Health Department. The second air monitor will be placed on Bluestone's fenceline at the location best suited for background readings, as determined by the Health Department.

The monitors must monitor according to the federal reference method or federal equivalent method. Bluestone will bear all costs related to the air monitoring system required by this Article, including all costs related to the purchase, installation, operation, and/or maintenance of the system. Bluestone understands and acknowledges that it will not be allowed to resume operations unless and until (1) the Board approves the Fenceline Monitoring Plan and (2) the fenceline monitoring system is fully operational, as demonstrated to the Board's satisfaction. Bluestone will provide the Health Department and GASP with all SO₂ data from the monitors each month beginning the first full month after Bluestone resumes production, in a method to be approved by the Board. Bluestone will use an FTP site or the cloud to publicly disseminate this information each month. Bluestone will pay for and be responsible for any costs associated with publicly sharing the air monitoring data.

ARTICLE NINE

Stipulated Penalties

Bluestone shall pay to the Board as stipulated penalties the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per day for each day for which Bluestone fails to submit an acceptable Corrective Action Plan by the deadline referenced in **ARTICLE TWO** or

complete the required recommendations by the independent contractor as referenced in **ARTICLE TWO**, and for each day for which Bluestone fails to submit an acceptable Work Practice Plan for Subpart L by the deadline referenced in **ARTICLE THREE**, and for each day which Bluestone fails to submit an Audit Report referenced in **ARTICLE FOUR**, and for each day for which Bluestone fails to submit an acceptable Monthly or Weekly Pushing Emissions Control System Report by the deadline referenced in **ARTICLE FIVE**, and for each day for which Bluestone fails to submit an acceptable Written Progress Report by the deadline referenced in **ARTICLE SIX**, and for each day for which Bluestone fails to submit an acceptable Fenceline Monitoring Plan by the deadline referenced in **ARTICLE EIGHT** or otherwise fails to comply with the terms of **ARTICLE EIGHT**, and for each day it is late in payment of its penalty in **ARTICLE TEN**. The payment of stipulated penalties based on Bluestone's failure to comply with any one Article shall not relieve Bluestone of its obligation to pay stipulated penalties based on its failure to comply with any other Article. The Board shall notify Bluestone of any required payment, and payments shall be made to the Board within fifteen (15) days after the date of noncompliance, as determined by the Board. For the purposes of this Consent Decree, a deliverable is considered submitted by Bluestone on the date it is postmarked (if the deliverable is mailed) or hand-delivered, whichever is sooner.

ARTICLE TEN

Civil Penalty

Bluestone shall pay to the Board a civil penalty in the amount of NINE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$925,000) for all violations identified in the Complaint, as amended. This civil penalty is within the range of civil penalties authorized under the controlling federal and state statutes and regulations, including the Rules and

Regulations.

Defendant shall pay the civil penalty in twelve (or fewer) installments. Defendant shall pay at least SEVENTY-SEVEN THOUSAND EIGHTY-THREE AND 37/100 DOLLARS (\$77,083.37) of the civil penalty within thirty (30) days of the Effective Date of this Consent Decree. Defendant shall make the remaining payments every thirty (30) days and such payments shall be in an amount of at least SEVENTY-SEVEN THOUSAND EIGHTY-THREE AND 33/100 DOLLARS (\$77,083.33). Notwithstanding anything to the contrary that may be contained herein, Defendant shall pay the entire civil penalty within one year of the Effective Date of this Consent Decree.

Within 60 days of receipt of any portion of the civil penalty, the Health Department agrees to transfer 50% of the civil penalty that has been collected by the Health Department to the Sustainable Residential-Industrial Buffers Fund (the "Fund"). All such portions of the civil penalty will be spent for the benefit of the communities (Collegeville, Harriman Park, and Fairmont) adjacent to Bluestone's plant. More specifically, such funds will be used consistent with the purposes of the Sustainable Residential-Industrial Buffers Fund and will be used to create green spaces and clear blight in those communities. The resolution that established this fund is attached as Exhibit 2. As to the portions of the civil penalty that are transferred to the Fund, the Health Department must spend such portions within five years of the Effective Date of this Consent Decree or the time such portions are received by the Health Department, whichever is later. The Health Department will seek public comments, giving the public at least thirty days to comment, and hold a public input session where members of the public can publicly voice its preference for how the funding should be spent, before spending the funds. The Health Officer and the Board retain full and final decision-making authority regarding the disbursement of the

civil penalty from the Sustainable Residential-Industrial Buffers Fund.

ARTICLE ELEVEN

Release

Subject to the terms and conditions of this Consent Decree, the Board and GASP, for and in consideration of the civil penalty and the other good and valuable consideration referred to in this Consent Decree, do hereby remise, release, acquit, and forever discharge: Bluestone, its officers, shareholders, directors, limited partners, general partners, partners, servants, agents, employees, parents, subsidiaries, successors, predecessors, affiliates, sister corporations, attorneys and assigns; and all other persons and/or entities of whatever type from all manner of actions pertaining to the violations alleged in this action as well as any other violations regarding the Clean Air Act and Title V air permit known by the Board and GASP, whether asserted or not or admitted or not, existing as of the Effective Date of this Agreement. Notwithstanding anything to the contrary that may be contained in this Consent Decree, if Bluestone fails to comply with any Article or obligation of this Consent Decree, Bluestone shall not be released from any of the Board's or GASP's claims.

ARTICLE TWELVE

Force Majeure

“Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Bluestone or of any entity controlled by Bluestone, or of Bluestone's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Bluestone's best efforts to fulfill the obligation (for example, these could include acts of God, riots, war, terrorist acts, natural catastrophes, pandemic, and quarantines). The requirement that Bluestone exercise “best efforts to fulfill the obligation” includes using

best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Bluestone’s financial inability to perform any obligation under this Consent Decree.

If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Bluestone shall provide notice orally or by electronic transmission to the Board and GASP within 72 hours of when Bluestone first knew that the event might cause a delay. Within seven days thereafter, Bluestone shall provide in writing to the Board and GASP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Bluestone’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Bluestone, such event may cause or contribute to an endangerment to public health, welfare or the environment. Bluestone shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Bluestone from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Bluestone shall be deemed to know of any circumstance of which Bluestone or any entity controlled by Bluestone knew or should have known.

If the Board, after a reasonable opportunity for review and comment by GASP, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for

performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the Board and GASP for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The Board will notify Bluestone and GASP in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

If the Board, after a reasonable opportunity for review and comment by GASP, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the Board will notify Bluestone and GASP in writing of its decision.

Bluestone shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Bluestone complied with the previous notice requirements. If Bluestone carries this burden, the delay at issue shall be deemed not to be a violation by Bluestone of the affected obligation of this Consent Decree.

ARTICLE THIRTEEN

Severability

In the event that any Article or portion of this Consent Decree is found to be invalid or otherwise unenforceable, such finding will not affect any other Article or portion of this Consent Decree.

ARTICLE FOURTEEN

Additional Remedies

In the event of a breach by Bluestone of any Article or obligation contained in this Consent Decree, the Board or GASP may, in addition to any other remedy the Board may have available, file a legal action (or otherwise begin legal proceedings) for the purpose of bringing about compliance with this Consent Decree.

ARTICLE FIFTEEN

Effective Date

The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

ARTICLE SIXTEEN

Attorneys' Fees

Bluestone agrees to be responsible for and to reimburse the Board and GASP for any and all of the Board's and GASP's attorneys' fees, expenses, and any other costs associated with any successful legal action taken by the Board and/or GASP to enforce the terms of this Consent Decree. Otherwise, each party shall bear its own costs and attorneys' fees.

ARTICLE SEVENTEEN

Incorporation into Final Order

The parties agree and will request the Court to fully incorporate this Consent Decree into a Final Order. The parties agree and will request the Court to retain jurisdiction to enforce this Consent Decree. The parties agree to take all reasonable steps to accomplish the terms of this Article, including the filing of a joint motion requesting the Court to (1) fully incorporate this Consent Decree into a Final Order and (2) retain jurisdiction to enforce the terms of this Consent Decree.

If any party fails to perform any obligation imposed in this Consent Decree, then any other party may seek a Court Order compelling specific performance of any provision of the Consent Decree through the use of its civil contempt powers.

ARTICLE EIGHTEEN

Entire Agreement

This Consent Decree constitutes the entire agreement between the parties concerning the subject matter hereof. All prior agreements, discussions, representations, warranties, and covenants are merged herein. There are no warranties, representations, covenants or agreements, expressed or implied, between the parties except those expressly set forth in this Consent Decree. In order to be effective, any amendments or modifications of this Consent Decree must be in writing and executed and agreed upon by all parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

ARTICLE NINETEEN

Counterparts

This Consent Decree may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

ARTICLE TWENTY

Authority

Each party to this Consent Decree represents and warrants that the execution, delivery, and performance of this Consent Decree and the consummation of the transactions and actions provided in this Consent Decree have been duly authorized by all necessary action of the respective entity and that the person executing this Consent Decree on its behalf has the full

capacity to bind that entity. Each party further represents and warrants that it has been represented by independent counsel of its choice in connection with the negotiation and execution of this Consent Decree, and that counsel has reviewed this Consent Decree. Each signatory specifically represents that they have the authority to bind their respective entity to the terms of this Consent Decree.

ARTICLE TWENTY-ONE

Transfer

The obligations of this Consent Decree apply to and are binding upon the Parties and any successors, assigns, or other entities or persons otherwise bound by law. Bluestone will ensure that all successors, assigns, future owners, or other entities or persons otherwise bound by agreement will comply with all obligations of this Consent Decree to ensure that the terms of the Consent Decree are implemented. Bluestone will provide documentation of this assurance to GASP and the Board.

At least 30 days prior to a transfer of ownership or operation, Bluestone shall provide a copy of this Consent Decree to the proposed transferee. The transferee will sign an agreement stating that it assumes all responsibilities and obligations of this Consent Decree. Bluestone shall provide written notice of the transfer, together with a copy of the written agreement stating that the transferee assumes all responsibilities and obligations stated in this Consent Decree to the Board and GASP, ten days after the transfer. Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree, and Bluestone's parent company and/or former owners are responsible.

Bluestone shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent

Decree, as well as to any contractor retained to perform work required under this Consent Decree. Bluestone shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

In any action to enforce this Consent Decree, Bluestone shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

ARTICLE TWENTY-TWO

Termination

After Bluestone has complied with all of the requirements of this Consent Decree, including the payment of the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Bluestone may serve upon the Board and GASP a Request for Termination, stating that Bluestone has satisfied those requirements, together with all necessary supporting documentation.

Following receipt of Bluestone's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Bluestone has satisfactorily complied with the requirements for termination of this Consent Decree. If the Board, after consultation with GASP, agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

ARTICLE TWENTY-THREE

Forbearance Agreement

The parties have entered into a Forbearance Agreement, and the parties agree to make a good faith effort to have this Agreement filed under seal with this Court. The Forbearance

Agreement is fully incorporated herein as part of this Consent Decree. If the Court does not allow this Agreement to be filed under seal, such a decision shall not affect the enforceability of this Agreement or the Consent Decree, or otherwise alter the fact that this Agreement is fully incorporated into the Consent Decree.

ARTICLE TWENTY-FOUR

Notices

Unless otherwise specified, whenever notifications, reports, plans, submissions, data, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the Board or the Health Department by mail:

Jason Howanitz, P.E.
Principal Air Pollution Control Engineer
Jefferson County Department of Health
1400 Sixth Avenue South
Birmingham, AL 35233

AND

Wade Merritt
Spain & Gillon, LLC
505 20th Street North
Suite 1200
Birmingham, AL 35203

As to the Board or the Health Department by email:

Jason Howanitz, P.E.
Jefferson County Department of Health
jason.howanitz@jcdh.org

AND

Wade Merritt
Spain & Gillon, LLC
WMerritt@spain-gillon.com

As to Bluestone by mail:

Don Wiggins
Bluestone Coke
3500 35th Ave N.
Birmingham, AL 35207

AND

Rob Fowler
302 South Jefferson Street
Roanoke, VA 24011

As to Bluestone by email:

Don Wiggins
dwiggins@bluestonecoke.com

AND

Rob Fowler
rfowler@bluestone-coal.com

As to GASP by mail:

Michael Hansen
GASP
2320 Highland Ave. S., Ste 270
Birmingham, AL 35205

AND

Sarah Stokes
Southern Environmental Law Center
2829 2nd Ave. S.
Suite 282
Birmingham, AL 35233

As to GASP by email:

Michael Hansen
Executive Director, GASP
mhansen@gaspgroup.org

AND

Sarah Stokes
Southern Environmental Law Center
sstokes@selcal.org

Any party may, by written notice to the other parties, change its designated notice recipient or notice address provided above.

Notices and reports submitted pursuant to this Consent Decree shall be deemed submitted upon mailing or emailing, unless otherwise provided in this Consent Decree or by mutual agreement of the parties in writing.

This Order disposes of the entire case. However, the Court will retain jurisdiction of this case to the extent necessary to enforce the terms of this CONSENT DECREE AND FINAL ORDER.

Costs are taxed as paid.

DONE and ORDERED this 14th day of December, 2022.

/s/ PAT BALLARD
CIRCUIT JUDGE
