

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:

Bluestone Coke, LLC
3500 35th Avenue North
Birmingham, Alabama 35207

Respondent.

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

Docket No. RCRA-04-2023-2106

**COMPLAINANT'S MOTION TO
AMEND COMPLAINT**

Pursuant to 40 C.F.R. § 22.14(c), Complainant, the Deputy Director of the Enforcement and Compliance Assurance Division of Region 4 of the United States Environmental Protection Agency (the EPA), by and through the undersigned, respectfully requests that the Presiding Officer grant Complainant leave to amend the Complaint, Compliance Order, and Opportunity to Request a Hearing that was filed on April 10, 2024 (the Complaint) on or before February 5, 2025.

40 C.F.R. Part 22 allows a complainant to amend its complaint “upon motion granted by the Presiding Officer.” 40 C.F.R. § 22.14(c). The regulations do not place any specific limitations on this Tribunal’s authority to grant such a motion.

As was noted in the Motion for Extension of Time filed jointly on December 6, 2024, the Parties to this action have been engaged in substantive settlement negotiations for several months. Since then, Bluestone Resources, Inc., the parent company of Respondent, Bluestone Coke, LLC, created and partially funded a trust (the Trust) on Respondent’s behalf which is intended to ultimately, after further planned installment payments over three years, provide the financial assurance, with adjustments for inflation, that is currently required pursuant to the August 11, 2016

Administrative Order on Consent, Docket No. RCRA-04-2016-4250 (the 2016 Order).

Because of this breakthrough, the Parties are now in the process of drafting a Consent Agreement and Final Order with which they hope to resolve the action initiated by the Complaint for injunctive relief under Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a). The Complaint also sought the imposition of civil penalties under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), however, the amended complaint proposed herein would no longer seek that relief.

Respondent has represented to Complainant that it is in a troubled financial state (See the previously submitted Exhibits RX06, RX07, and RX08). To the extent funds are limited, Complainant's first priorities are that Respondent perform all corrective action work required under the 2016 Order and that Respondent fund the Trust. As Complainant noted in its December 6, 2024 Amended Rebuttal Prehearing Exchange, however, the documentation that Respondent provided to demonstrate its financial state is insufficient to allow Complainant to perform a proper ability-to-pay analysis—both because those documents are unaudited and because they commingle the financial data of Respondent with its parent and other affiliated entities.

Complainant therefore respectfully requests that this Tribunal grant it leave to amend the Complaint such that it no longer seeks the imposition of civil penalties under Section 3008(h) of RCRA, 42 U.S.C. § 6928(h)¹. If this motion is granted and a settlement is reached between the Parties, Complainant intends to file the First Amended Complaint, Compliance Order, and Opportunity to Request a Hearing that is attached hereto as Exhibit A. For this Tribunal's

¹ Complainant would also use any opportunity to amend as a chance to correct the two scrivener's errors in the Complaint that were identified on pages 13 and 32 of Complainant's Prehearing Exchange.

convenience, a redline comparison of the Complaint and the proposed amendment is attached hereto as Exhibit B.

Complainant intends to file any permissible amendment to the Complaint with this Tribunal immediately before it files any Consent Agreement and Final Order with the Regional Judicial Officer for Region 4 of the EPA. Complainant further intends that both such filings would occur on or before **February 5, 2025**, as that is the deadline for dispositive motions in this case that was set by the Presiding Officer's Order Imposing Sanctions and Scheduling Order of October 24, 2024.

In accordance with the Presiding Officer's Prehearing Order of July 11, 2024, undersigned counsel for Complainant discussed this motion with counsel for Respondent on January 17, 2025. Counsel for Respondent represented to Complainant at that time Respondent is in support of this motion.

Dated: January 17, 2025

Respectfully Submitted,

Kate Forrest
Attorney Adviser
RCRA/FIFRA/TSCA Law Office
U.S. Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

The undersigned certifies that on January 17, 2025, I electronically filed the foregoing **COMPLAINANT'S MOTION TO AMEND COMPLAINT** 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: January 17, 2025

Kate Forrest
Attorney Adviser
RCRA/FIFRA/TSCA Law Office
U.S. Environmental Protection Agency, Region 4