



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

**In the Matter of:**

**Bluestone Coke, LLC,**

**Respondent.**

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**Docket No. RCRA-04-2023-2106**

**ORDER GRANTING UNOPPOSED MOTION TO AMEND THE COMPLAINT**

I am in receipt of Complainant's January 17, 2025, Motion to Amend the Complaint ("Motion"). The Motion represents that Respondent's parent company has recently created and partially funded a 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 central to the parties' dispute. Mot. 1; Compl., Compliance Order, & Opportunity to Request a Hr'g ¶¶ 80–91 (Apr. 10, 2024) (the "Complaint"). The Motion further represents that the parties have since arrived at a tentative agreement to settle this matter. Mot. 1. Citing these developments, Respondent's proclaimed financial difficulties, and Complainant's prevailing interest in obtaining Respondent's compliance, Complainant requests leave to amend the Complaint to remove its claim for civil penalties. Mot. 2. Complainant has provided a proposed First Amended Complaint to this effect and requests leave to file the final amended Complaint on or before February 5, 2025. Mot. 2–3; Mot. Exs. A, B. Complainant states that Respondent supports the Motion. Mot. 3.

This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules") set forth at 40 C.F.R. Part 22. The Rules provide that after an answer has been filed, "the complainant may amend the complaint only upon motion granted by the Presiding Officer." 40 C.F.R. § 22.14(c). As the Environmental Appeals Board ("EAB") has observed, the Rules do not set a standard by which to evaluate such a motion to amend. *Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002). "In the absence of administrative rules on this subject," the EAB has found it "helpful to consult the Federal Rules of Civil Procedure as they apply in analogous situations." *Id.*

Federal Rule of Civil Procedure 15 states that "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The Supreme Court has interpreted this language as encouraging a liberal approach to the amendment of pleadings. *Foman v. Davis*, 371 U.S. 178, 181–82 (1962) ("Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded."). In turn, the EAB "has on several occasions followed the liberal pleading policy enunciated by the Federal Rules and *Foman*." *Carroll Oil Co.*, 10 E.A.D. at 649. However, the Board has also reiterated *Foman*'s caution that

“the decision whether to grant or deny a motion to amend is ‘of course . . . within the discretion of the [court].’” *Id.* (citing *Foman*, 371 U.S. at 182). And the Board has recognized the constraints, delineated in *Foman*, that counsel against freely permitting amendments: undue delay by the movant; bad faith or dilatory motive; repeated failure to cure deficiencies through prior amendments; undue prejudice to the nonmoving party; or futility of the amendment. *Id.* at 649–50.

Here, Respondent purportedly supports the Motion and there is no evidence in the record of any undue delay, bad faith, or other basis for denying the Motion. Therefore, the Motion is hereby **GRANTED**. Complainant shall file and serve its final amended Complaint no later than **February 5, 2025**. Upon filing, the amended Complaint will become the governing complaint in this matter. Consistent with the Rules, Respondent may file an answer to the amended Complaint within 20 days from the date of service. See 40 C.F.R. § 22.14(c). If Respondent elects not to file an answer to the amended Complaint within this timeframe, the “Answer by Respondent to Complaint, Compliance Order, and Opportunity to Request a Hearing” filed by Respondent on June 27, 2024, will be deemed to be the governing answer to the amended Complaint.

**SO ORDERED.**

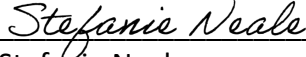
  
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Michael B. Wright  
Administrative Law Judge

Dated: January 23, 2025  
Washington, D.C.

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

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order Granting Unopposed Motion to Amend the Complaint**, dated January 23, 2025, and issued by Administrative Law Judge Michael B. Wright, was sent this day to the following parties in the manner indicated below.

  
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Stefanie Neale  
Attorney Advisor

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

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*Counsel for Respondent*

Dated: January 23, 2025  
Washington, D.C.