



In the Matter of:

**ANDREW V. NOWAK,**

**ARB CASE NO. 97-071**

**COMPLAINANT,**

**ALJ CASE NO. 96-CAA-9**

**v.**

**DATE: April 1, 1997**

**ENVIRONMENT DEPARTMENT OF  
THE STATE OF NEW MEXICO,**

**RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1/</sup>

### **ORDER**

This case arises under the Clean Air Act (CAA), 42 U.S.C. § 7622 (1988). The parties submitted a Settlement Agreement seeking approval of the settlement and dismissal of the complaint. The ALJ issued a Recommended Decision and Order (R. D. and O.) on March 4, 1997 approving the settlement.

The request for approval is based on an agreement entered into by the parties, therefore, we must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 29 C.F.R. § 24.6. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

**The Board requires that all parties requesting settlement approval of cases arising under the employee protection provisions of the CAA provide the settlement documentation for any other alleged claims arising from the same factual circumstances**

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<sup>1/</sup> On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions. Final procedural revisions to the regulations implementing this reorganization were also promulgated on that date. 61 Fed. Reg. 19982.

**forming the basis of the federal claim, or to certify that no other such settlement agreements were entered into between the parties.** *Biddy v. Alyeska Pipeline Service Company*, ARB Case Nos. 96-109, 97-015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3. **Therefore, prior to approving the settlement, the parties are directed to provide the specified additional settlement documentation or certification.**

The parties are required to file a joint response to this Order within ten (10) days. If the parties cannot agree upon a joint response, Complainant's counsel is to submit the required information within ten (10) days from the issuance of this Order. Respondent may submit a response within fifteen (15) days of the issuance of this Order.

**SO ORDERED.**

**DAVID A. O'BRIEN**

Chair

**KARL J. SANDSTROM**

Member

**JOYCE D. MILLER**

Alternate Member