



In the Matter of:

**TRINA ALLEN,**

**ARB CASE NO. 98-073**

**COMPLAINANT,**

**ALJ CASE NO. 89-0FC-1**

**v.**

**DATE: September 28, 1998**

**EG&G DEFENSE MATERIALS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

### **ORDER DENYING INTERLOCUTORY APPEAL**

Respondent EG&G Defense Materials, Inc. (EG&G) has filed a Notice of Appeal or Request for Review of an Order Granting Complainant's Motion for Default Judgment issued by the Administrative Law Judge (ALJ) on January 26, 1998, in this case arising under the Toxic Substances Control Act, 15 U.S.C. §2622 (1994), the Clean Air Act, 42 U.S.C. §7622 (1994), the Solid Waste Disposal Act, 42 U.S.C. §6971 (1994), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9610, the Safe Drinking Water Act, 42 U.S.C. §300j-9(i) (1994) and the Federal Water Pollution Control Act 33 U.S.C. §1367 (1994). In his January 26, 1998 Order the ALJ entered default judgment pursuant to 29 C.F.R. §18.5(b) and provided the parties time within which to litigate issues related to damages. Respondent filed the instant Notice of Appeal, objecting to both the ALJ's ruling under Section 18.5(b) and his issuance of an order purporting to be a final decision. Respondent requests that the Notice of Appeal be interpreted to preserve its rights to appeal the ALJ's decision. On February 19, 1998, the ALJ issued an Erratum to reflect that his January 26, 1998 order was a recommended decision.

Respondent's request amounts to an interlocutory appeal, and the Secretary has held that such appeals are disfavored. *Carter v. B & W Nuclear Technologies, Inc.*, Case No. 94-ERA-13, Sec. Ord. Denying Interlocutory Appeal, Sept. 28, 1994. In *Carter* the Secretary explained that:

The Courts as well as the Secretary have held that there is "a strong policy against piecemeal appeals." *Admiral Insurance Co. v. United States District Court for the District of Alabama*, 881 F.2d 1486, 1490 (9th Cir. 1989); *Marchese v. City*

*of Easton*, Case No. 92-WPC-00005, Sec. Ord., March 10, 1994, slip op. at 3-4. . . . [T]he Secretary has refused to accept interlocutory appeals. See *Marthin v. TAD Technical Services Corp.*, Case Nos. 94-WPC-1, 2, 3, Sec. Ord. Denying Interlocutory Appeal, Aug. 22, 1994, slip op. at 1-2; *Marchese*, at 3-4; *Porter v. Brown & Root, Inc.*, Case No. 91-ERA-4, Sec. Ord. to Show Cause, Sept. 23, 1993; *Manning v. Detroit Edison Corp.*, Case No. 90-ERA-28, Sec. Ord. Denying Permission to File Interlocutory Appeal, Aug. 23, 1990; *Corder v. Bechtel Energy Corp.*, Case No. 88-ERA-9, Sec. Ord., Oct. 3., 1988, slip op. at 2; *Shusterman v. Ebasco Services, Inc.*, Case No. 87-ERA-27, Sec. Ord. Denying Remand, July 2, 1987, slip op. at 2.

*Carter*, slip op. at 2-3. We decline to depart from the usual practice of avoiding piecemeal appeals.

Respondent's request is denied and this case is dismissed without prejudice.

**SO ORDERED.**

**PAUL GREENBERG**

Member

**CYNTHIA L. ATTWOOD**

Acting Member