



In the Matter of:

JAMES W. CUTBIRTH,

ARB CASE NO. 98-011

COMPLAINANT,

ALJ CASE NO. 97-SWD-1

v.

DATE: May 21, 1998

CHAMPION INTERNATIONAL CORP.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL ORDER OF DISMISSAL

This case arises under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)^{1/}, 42 U.S.C. §9610 (1988) and the implementing regulations at 29 C.F.R. Part 24 (1996). The parties have submitted a Motion to Dismiss with Prejudice stipulating resolution of their dispute and requesting dismissal of the complaint. The Motion to Dismiss with Prejudice appears to meet the terms of Fed. R. Civ. P. 41(a)(1)(ii), which has been held applicable in these circumstances. *Bauer v. Power Resources, Inc.*, Case No. 94-ERA-10, Sec. Order, June 24, 1994, slip op. at 1-2; *Galata v. Tennessee Valley Authority*, Case No. 91-ERA-

^{1/} This complaint was originally filed under CERCLA as well as the Toxic Substances Control Act (TSCA), 15 U.S.C. §2622 (1988), Solid Waste Disposal Act (SWDA), 42 U.S.C. §6971 (1988), and Water Pollution Control Act (WPCA), 33 U.S.C. §1367 (1988). On May 9, 1997, the ALJ issued an Order Denying Summary Dismissal finding that Complainant's actions could be deemed protected activity only under CERCLA and limited the scope of discovery as well as the evidence at the hearing to CERCLA. Complainant has not challenged the dismissal of his TSCA, SWDA, and WPCA claims. Therefore, this order is granted pursuant only to Complainant's surviving claim under CERCLA.

0028, Sec. Order, May 20, 1992, slip op. at 2; *Nolder v. Raymond Kaiser Engineers, Inc.*, Case No. 84-ERA-5, Sec. Order, June 28, 1985, slip op. at 6-7. Accordingly, the complaint in this case is DISMISSED.

SO ORDERED.

KARL J. SANDSTROM

Chair

PAUL GREENBERG

Member

CYNTHIA L. ATTWOOD

Acting Member