



In the Matter of:

**DONNA L. TRUEBLOOD,**

**ARB CASE NOS. 03-082  
03-083**

**COMPLAINANT,**

**v.**

**ALJ CASE NOS. 2002-WPC-3  
2002-WPC-4  
2002-WPC-5  
2002-WPC-6  
2003-WPC-1**

**VON ROLL AMERICA, INC.,  
d/b/a WTI or WASTE TECHNOLOGY, INC.,**

**and**

**DATE: April 30, 2003**

**HERITAGE ENVIRONMENTAL SVCS., INC.,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

Richard R. Renner, Esq., *Tate & Renner, Dover, Ohio*

***For the Respondent Von Roll America, Inc., d/b/a WTI or Waste Technology, Inc.***

Donald R. Keller, Esq., *Briker & Eckler, LLP, Columbus, Ohio*

***For the Respondent Heritage Environmental Svcs., Inc.***

John T. Neighbours, Esq., Stuart R. Buttrick, Esq., *Baker & Daniels, Indianapolis, Indiana*

**ORDER OF REMAND AND DENYING  
RESPONDENTS' MOTIONS TO STRIKE AND TO VACATE**

On April 23 and 24, 2003, Respondents Von Roll America, Inc., and Heritage Environmental Services, respectively, filed Motions to Strike Preliminary Order Issued April 17, 2003 or, in the Alternative, Motion to Vacate Preliminary Order. The Preliminary Order in question was issued by the Administrative Law Judge (ALJ) in this case on April 17, 2003, pursuant to the whistleblower protection provision at 42 U.S.C.A. § 5851 (West 1995).

Complainant filed a Memorandum in Opposition to Respondent Von Roll America's Motions to Strike and Vacate Preliminary Order on April 24, 2003.

Subsection 5851(b)(2)(A) directs that, upon conclusion of a hearing and issuance of a Recommended Decision that the complaint has merit, the Secretary shall issue a preliminary order providing certain relief such as immediate reinstatement. By implementing regulation, the Secretary has delegated her authority under § 5851(b)(2)(A) to the administrative law judges. 29 C.F.R. § 24.7(c)(2) (2002) ("In cases brought under the Energy Reorganization Act, when an administrative law judge issues a recommended order that the complaint has merit, . . . the [ALJ] shall also issue a preliminary order providing relief [which] shall constitute the preliminary order of the Secretary and shall be effective immediately, whether or not a petition for review is filed.").

The ALJ below issued a Preliminary Order in this case after the respondents' petitions for review of the ALJ's Recommended Decision and Order were filed with this Board. No rule of procedure addresses the question whether the administrative law judge retains jurisdiction sufficient to issue a Preliminary Order after petitions for review of the Recommended Decision and Order have been filed with the Board.

Accordingly, we **REMAND** this case to the administrative law judge for issuance of the Preliminary Order in this case. The Respondents may refile their petitions for review of the Recommended Decision and Order within ten days of the date of the Preliminary Order issued on remand.

Respondents' Motions to Strike and to Vacate are **DENIED AS MOOT**.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**