



**In the Matter of:**

**JEFFREY L. BERTACCHI,**

**ARB CASE NO. 05-155**

**COMPLAINANT,**

**ALJ CASE NO. 2003-WPC-11**

**v.**

**DATE: April 13, 2006**

**CITY OF COLUMBUS – DIVISION OF  
SEWERAGE & DRAINAGE,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**E. Dennis Muchnicki, *Muchnicki Law Office, Dublin, Ohio*; Michael D. Kohn,  
Kohn, Kohn & Colapinto, LLP, Washington, D.C.**

*For the Respondent:*

**Bradd N. Siegel, Christopher R. Schraff, Porter, Wright, Morris & Arthur  
LLP, Columbus, Ohio**

**FINAL DECISION AND ORDER  
DISMISSING COMPLAINT AND APPEAL**

On August 25, 2005, a United States Department of Labor Administrative Law Judge issued a Recommended Decision and Order (R. D. & O.) in this case arising under the Federal Water Pollution Control Act (WPCA).<sup>1</sup> The Respondent, City of Columbus, Division of Sewerage and Drainage, filed a timely petition requesting this Board to review the R. D. & O.<sup>2</sup>

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<sup>1</sup> 33 U.S.C.A. § 1367 (West 2001).

<sup>2</sup> The Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the WPCA to the Administrative Review Board. Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review

On March 13, 2006, the parties filed a Joint Motion to Dismiss Appeal. The Joint Motion states that they have reached a private settlement and have agreed that the terms of their agreement, rather than the R. D. & O. should govern the disposition of the Complainant's claims. Accordingly, the parties jointly requested the Board to dismiss Jeffrey Bertacchi's complaint and this appeal. Citing *Biddle v. United States Dep't of the Army*, ARB No. 97-034, ALJ No. 1993-WPC-15 (Sec'y Mar. 29, 1995<sup>3</sup>), the parties assert, "[B]ecause this is a Federal Water Pollution Control Act case, the parties' settlement does not need to be reviewed or approved by the Board or the Department of Labor."<sup>4</sup>

Unlike the whistleblower protection provisions of the Clean Air Act,<sup>5</sup> the Safe Drinking Water Act,<sup>6</sup> and the Toxic Substances Control Act,<sup>7</sup> the WPCA's whistleblower protection provision does not provide for the termination of a proceeding "on the basis of a settlement entered into by the Secretary." Therefore, as the Board held in *Marcus v. Environmental Prot. Agency*,<sup>8</sup>

The TSCA, SDWA and CAA require that the Secretary must enter into or otherwise approve a settlement. See 15 U.S.C. § 2622(b)(2)(A); 42 U.S.C. § 300(j)-9(i)(2)(B)(i); 42 U.S.C. § 7622(b)(2)(A). However, the WPCA, CERCLA, and SWDA contain no such requirement. See *Sayre v. Alyeska Pipeline Service Co.*, ALJ Case No. 97-TSC-6, ARB Case Nos. 99-091, 99-092, Order Approving Settlement and Dismissing Case, slip op. at 2 n.1 (neither the WPCA nor the SWDA contains a requirement that the Secretary approve settlements); *Biddy v. Alyeska Pipeline Service Co.*, ALJ Case No. 95-TSC-7 (ARB Aug. 1, 1996) slip op. at 2 n.1 (same).

Federal Rule of Civil Procedure 41(a)(1)(ii) is applicable to cases in which the parties have reached a settlement under the WPCA and wish to voluntarily dismiss their

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Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. §§ 24.1, 24.8.

<sup>3</sup> The correct date of issuance is March 24, 1995.

<sup>4</sup> Joint Motion to Dismiss Appeal at 1.

<sup>5</sup> 42 U.S.C.A. § 7622(b)(2)(A) (West 2003).

<sup>6</sup> 42 U.S.C.A. § 300(j)-9(i)(2)(B)(i) (West 2003).

<sup>7</sup> 15 U.S.C.A. § 2622(b)(2)(A) (West 1998).

<sup>8</sup> ARB No. 99-027, ALJ Nos. 96-CAA-3, 7, slip op. at 2 n.2 (Oct. 29, 1999).

appeal.<sup>9</sup> Therefore, in accordance with the Joint Motion to Dismiss Appeal, we **DISMISS** Bertacchi's complaint and this appeal with prejudice.

**SO ORDERED.**

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

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>9</sup> *Biddle*, slip op. at 1. This rule provides in pertinent part, “[A]n action may be dismissed by the plaintiff without order of court . . . (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.”