



In the Matter of:

**HENRY IMMANUEL,**

**ARB CASE NO. 98-109**

**COMPLAINANT,**

**(Formerly ARB CASE NO. 96-022)**

**v.**

**ALJ CASE NO. 95-WPC-3**

**WYOMING CONCRETE  
INDUSTRIES, INC.,**

**DATE: April 20, 1998**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

### **REMAND ORDER**

On March 24, 1998, the United States Court of Appeals for the Fourth Circuit remanded this case under the employee protection provisions of the Water Pollution Control Act, 33 U.S.C. §1367 (1988), to the Department of Labor with instructions to remand the matter to the Administrative Law Judge (ALJ) for further proceedings consistent with its opinion, attached hereto.<sup>1/</sup> Although the court of appeals agreed with the ALJ and the Board that the ALJ did not have authority to issue subpoenas to require the attendance of witnesses as requested by Immanuel, it held that the ALJ erred when he failed to compel the appearance of witnesses within the control of Wyoming Concrete as authorized by ALJ procedural regulations at 29 C.F.R. §18.29(a)(3) (1997).

Accordingly, we **VACATE** our May 28, 1997 Final Decision and Order of Dismissal in this case and **REMAND** this matter to the ALJ for a supplementary hearing involving witnesses within

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<sup>1/</sup> *Immanuel v. U.S. Dept. of Labor*, No. 97-1987 (4th Cir. Mar. 24, 1998).

the control of Wyoming Concrete as requested by Immanuel. The ALJ shall then issue a new recommended decision and order. *See* 29 C.F.R. Part 24, 63 Fed. Reg. 6,614 (Feb. 9, 1998) (procedures for handling discrimination complaints under federal employee protection statutes).

**SO ORDERED.**

**KARL J. SANDSTROM**  
Member

**PAUL GREENBERG**  
Member