



**In the Matter of:**

**CARL E. HAGER,**

**ARB CASE NO. 05-145**

**COMPLAINANT,**

**ALJ CASE NO. 2004-WPC-004**

**v.**

**DATE: December 31, 2007**

**NOVEON HILTON-DAVIS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

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

*For the Respondent:*

**Cecil Marlowe, Esq., *Lubrizol*, Wickliffe, Ohio**

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

On August 19, 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 Complainant, Carl E. Hager, 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 Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. §§ 24.1, 24.8.

On December 7, 2007, the parties filed a Joint Motion to Dismiss Appeal with Prejudice. 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 request the Board to dismiss Hager's complaint and this appeal.<sup>3</sup>

Unlike the whistleblower protection provisions of the Clean Air Act,<sup>4</sup> the Safe Drinking Water Act,<sup>5</sup> and the Toxic Substances Control Act,<sup>6</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 Protection Agency*, the WPCA does not require the Secretary to approve settlement agreements.<sup>7</sup>

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 appeal.<sup>8</sup> Therefore, in accordance with the Joint Motion to Dismiss Appeal, we **DISMISS** Hager'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>3</sup> Joint Motion to Dismiss Appeal at 1; *Biddle v. U.S. Dep't of the Army*, 1993-WPC-015 (Sec'y Mar. 24, 1995).

<sup>4</sup> 42 U.S.C.A. § 7622(b)(2)(A) (West 2003).

<sup>5</sup> 42 U.S.C.A. § 300(j)-9(i)(2)(B)(i) (West 2003).

<sup>6</sup> 15 U.S.C.A. § 2622(b)(2)(A) (West 1998).

<sup>7</sup> ARB No. 99-027, ALJ Nos. 1996-CAA-003, 007, slip op. at 2 n.2 (Oct. 29, 1999).

<sup>8</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."