



In the Matter of:

DOANN HAMILTON,

ARB CASE NO. 11-010

COMPLAINANT,

ALJ CASE NO. 2009-CER-003

v.

DATE: February 28, 2011

**PBS ENVIRONMENTAL BUILDING
CONSULTANTS, INC. dba PBS
ENGINEERING & ENVIRONMENTAL,**

and

D.B. WESTERN, INC.,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**Paul M. Igasaki, *Chief Administrative Appeals Judge*, and Luis A. Corchado,
*Administrative Appeals Judge***

**FINAL DECISION AND ORDER GRANTING
WITHDRAWAL OF OBJECTIONS**

The Complainant, Doann Hamilton, filed a complaint alleging that the Respondents violated the employee protection provisions of the Comprehensive Environmental Response, Compensation and Liability Act,¹ the Federal Water Pollution Control Act,² the Toxic Substances Control Act,³ and the Solid Waste Disposal Act,⁴

¹ 42 U.S.C.A. § 9610 (Thomson/West 2005) (CERCLA).

² 33 U.S.C.A. § 1367 (West 2001)(WPCA).

³ 15 U.S.C.A. § 2622 (Thomson Reuters 2009)(TSCA).

(collectively “the environmental acts”), and their implementing regulations⁵ when PBS Environmental Building Consultants Inc. (PBS) terminated her employment in retaliation for engaging in protected whistleblowing activity.

Hamilton filed a complaint with the Department of Labor’s Occupational Safety and Health Administration (OSHA). OSHA investigated the complaint, and issued a finding dismissing it.⁶

Hamilton objected to OSHA’s findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).⁷ On October 19, 2010, the ALJ issued a Decision and Order Awarding Complainant Reinstatement, Damages and Attorney Fees.

PBS filed a petition requesting the Administrative Review Board to review the ALJ’s D. & O.⁸ The Board accepted the case for review and issued a briefing order. PBS did not file a brief in support of its petition for review, but instead on January 24, 2011, filed a Stipulated Dismissal of Petition for Review.

The implementing regulations of the environmental statutes at issue here provide two options for a respondent to terminate a case pending at the Board prior to final adjudication.⁹ First, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the Board. In that case the findings or order becomes

⁴ 42 U.S.C.A. § 6971 (Thomson/West 2003)(SWDA).

⁵ 29 C.F.R. Part 24 (2009). These regulations have been amended since Hamilton filed her complaint, but the regulations relevant to this decision remain unchanged. *See* Procedures for the Handling of Retaliation Complaints under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as Amended, 76 Fed Reg. 2808 (Jan. 18, 2011).

⁶ Decision and Order Awarding Complainant Reinstatement, Damages and Attorney Fees (D. & O.) at 1.

⁷ *See* 29 C.F.R. § 24.106(a).

⁸ *See* 29 C.F.R. § 24.110(a). The Secretary of Labor has delegated her authority to make final agency decisions in cases arising under the environmental acts at issue here to the Administrative Review Board. Secretary’s Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010). After issuing a show cause order, the ALJ, with Hamilton’s agreement, dismissed D.B. Western as a party. D. & O. at 2.

⁹ 29 C.F.R. § 24.111(c), (d)(2).

the final order of the Secretary.¹⁰ Second, the parties may enter into an adjudicatory settlement.¹¹ If the parties enter into a settlement, the regulations require the parties to file a copy of the settlement with the Board for its review.¹²

PBS did not state in its stipulation requesting dismissal, under which of these two options it was proceeding. Therefore the Board ordered PBS to notify the Board upon which provision it is relying. On February 23, 2011, PBS filed Respondent PBS Engineering + Environmental's Notice of Withdrawal of Objections. In this notice, PBS states that it has withdrawn its objections to the findings and conclusions of the ALJ's D. & O. Accordingly, as provided in 29 C.F.R. § 24.111(c), we **GRANT** PBS's notice of withdrawal of objections to the ALJ's D. & O., and the D. & O. thereby becomes the final decision of the Secretary of Labor in this case.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

¹⁰ 29 C.F.R. § 24.111(c).

¹¹ 29 C.F.R. § 24.111(d)(2).

¹² See e.g., *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1154 (5th Cir. 1991); *Jones v. EG&G Defense Materials, Inc.*, ARB No. 01-039, ALJ No. 1995-CAA-003, slip op. at 2 (ARB Mar. 13, 2001). We note that although the parties in cases arising under the WPCA, CERCLA, and SWDA are encouraged, but not required, to submit settlements of cases arising under those statutes to the Board for approval, the Board must approve settlements in cases, like this one, that arise under the TSCA. *Bertacchi v. City of Columbus – Div. of Sewerage & Drainage*, ARB No. 05-155, ALJ No.2003-WPC-011, slip op. at 6 (ARB Apr. 13, 2006); *Marcus v. Env't'l. Prot. Agency*, ARB No. 99-027, ALJ Nos. 1996-CAA-003, -007, slip op. at 2 n.2 (ARB Oct. 29, 1999).