U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

SHARYN ERICKSON,	**ARB CASE NOS. 03-002**
	03-003
COMPLAINANT,	**03-004**
	ALJ CASE NOS. 1999-CAA-2
	2001-CAA-8
v.	**2001-CAA-13**
	2002-CAA-3
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4, ATLANTA, GA.,	**2002-CAA-18**
	DATE: AUG 17 2005
RESPONDENT.	

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

SUPPLEMENTAL BRIEFING ORDER AND NOTICE OF OPPORTUNITY TO FILE AMICUS CURIAE BRIEF

These cases concern complaints Sharyn Erickson filed with the Secretary of Labor pursuant to the whistleblower protection provisions of the Clean Air Act (CAA), 42 U.S.C.A. § 7622 (West 2003); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.A. § 9610 (West 1995); the Solid Waste Disposal Act (SWDA), 42 U.S.C.A. § 6971 (West 2003); the Toxic Substances Control Act (TSCA), 15 U.S.C.A. § 2622 (West 1998); the Federal Water Pollution Control Act (FWPCA), 33 U.S.C.A. § 1367 (West 2001); and the Safe Drinking Water Act (SDWA), 42 U.S.C.A. § 300j-9 (West 2003). (Referred to collectively as the "environmental whistleblower protection provisions").

Erickson, EPA, and the EPA Inspector General petitioned this Board to review a Recommended Decision and Order in which a Labor Department Administrative Law Judge concluded that EPA and the Inspector General violated the environmental whistleblower protection provisions and awarded Erickson compensatory and exemplary damages and other relief. *Erickson v. EPA*, ALJ Nos. 1999-CAA-2; 2001-CAA-8; 2001-CAA-13; 2002-CAA-3; 2002-CAA-18 (Sept. 24, 2002).

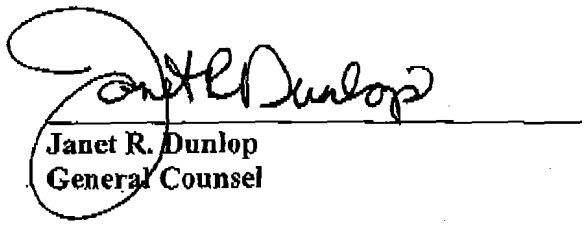
On June 30, 2005, we issued a Final Decision and Order in which we held that Congress did not abrogate state sovereign immunity in the environmental whistleblower

protection provisions. *Powers v. Tennessee Dep't of Env't*, ARB Nos. 03-061, 03-125, ALJ Nos. 2003-CAA-8, 2003-CAA-16 (ARB June 30, 2005, amended and reissued August 16, 2005). In light of our decision in the *Powers* case, we afford the parties the opportunity to brief the issue whether sovereign immunity bars any or all of Erickson's environmental whistleblower complaints against EPA and the EPA Inspector General. We enclose copies of the *Powers* errata order and reissued decision with this order.

We also invite the Solicitor of Labor to submit an amicus curiae brief on the question.

Briefs, not to exceed 20 double-spaced pages, must be filed with the Board on or before **September 13, 2005.** Given the length of time the case has been pending, we will grant requests for extensions of time only under the most extraordinary circumstances.

FOR THE ADMINISTRATIVE REVIEW BOARD



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