DATE: March 4, 1997

CASE NUMBER 96-CAA-9

In the Matter of

ANDREW V. NOWAK,

COMPLAINANT,

v.

ENVIRONMENT DEPARTMENT OF
THE STATE OF NEW MEXICO,

RESPONDENT.

RECOMMENDED DECISION AND ORDER APPROVING SETTLEMENT

The above-captioned matter arises under 42 U.S.C. §7622, the employee protection provision of the Clean Air Act. On February 10, 1997 the parties filed a proposed settlement agreement that, if approved by the Secretary of Labor, would resolve all disputed issues, except for attorney's fees, and allow for the dismissal of this matter with prejudice. On March 3, 1997 the parties filed an addendum which amended the agreement to resolve all disputes concerning attorney's fees.

As required by the relevant regulations and statutory provisions, I have carefully reviewed the entire agreement, including the amended provisions concerning attorney's fees. After doing so, I have concluded that the terms of the agreements are, in fact, fair, adequate and reasonable. I therefore recommend that the agreement be approved.

It is noted that paragraph 9 of the agreement provides that the agreement may be enforced through binding arbitration. Such a provision is appropriate in this case because the Eleventh Amendment may preclude the Complainant from seeking to enforce the agreement in a Federal District Court under the provisions of 42 U.S.C §7622(e). See Seminole Tribe of Florida v. Florida, ___U.S.___, 116 S.Ct. 1114 (1996); Wilson-Jones v. Caviness, 99 F.3d 203 (6th Cir. 1996). Moreover, I do not interpret the agreement's arbitration provision as limiting the authority of the Secretary of Labor to seek enforcement of the agreement under the provisions of 42 U.S.C §7622(d). See Rondinelli v. Consolidated Edison Co. of New York, Inc., Case No. 91-CAA-3, Final Order Approving Settlement. April 9, 1992.

Finally, it is noted that although the settlement agreement contains a confidentiality provision, the agreement also expressly acknowledges that the information covered by the provision may be subject to disclosure under the Freedom of Information Act or other laws.

Accordingly, it is recommended:

1. That the Secretary of Labor or his designees on the Administrative Review Board approve the settlement agreement;

2. That the claim of Andrew V. Nowak against the above-referenced respondent be dismissed with prejudice; and

3. That the settlement agreement be given such restricted handling as may be necessary to comply with the provisions of 29 C.F.R. §70.26.

_____

Paul A. Mapes
Administrative Law Judge

NOTICE: This Recommended Decision and Order and the administrative file in this matter have been forwarded for review by the Administrative Review Board, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. See 29 C.F.R. Parts 24 and 1978, 61 Fed. Reg. 19982 (May 3, 1996).