

U.S. Department of Labor

Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)



Issue Date: 22 February 2012

CASE NO.: 2011-CAA-00005

In the Matter of:

ALAN NORTHCUTT,
Complainant,

vs.

PIONEER HI-BRED INTERNATONAL,
Respondent.

**ORDER GRANTING REQUEST TO WITHDRAW HEARING REQUEST AND
DISMISSING CASE**

This case arises under the employee protection provisions of the Safe Drinking Water Act of 1974 ("SDWA"), 42 U.S.C. § 300j-9(i), the Federal Water Pollution Control Act Amendments of 1972 ("FWPCA"), 33 U.S.C. § 1367, the Clean Air Act Amendments of 1977 ("CAA"), 42 U.S.C. § 7622, the Solid Waste Disposal Act of 1976 ("SWDA"), 42 U.S.C. § 6971, and the Toxic Substances Control Act of 1976 ("TSCA"), 15 U.S.C. § 2622. The Complainant filed an initial complaint on September 2, 2010, with the Occupational Health and Safety Administration ("OSHA") alleging that he was terminated by the Respondent after objecting to the application of toxic pesticides in an unsafe and excessive manner, endangering drinking water supplies, the lack of a backflow preventer, and inadequate containment and training.

On January 28, 2011, the Assistant Regional Administrator for Enforcement Programs for the Occupational Health and Safety Administration ("OSHA") issued a letter advising the Complainant that OSHA had completed its investigation and that his complaint had been dismissed because he failed to cooperate in the investigation. On May 2, 2011, the Complainant filed objections to the dismissal of his complaint and asked for a hearing before the OALJ on his complaint, stating that he initially did not respond to the OSHA investigator because he was out of the country, and after he contacted the investigator following his return, he misunderstood the investigator's response and did not respond to the Respondent's statement of position because he thought he had missed the deadline and could no longer respond.

After this case was initiated before the OALJ, the Complainant asked that the scheduling of a hearing be delayed to give him an opportunity to ask OSHA to reopen the investigation into his complaint. I memorialized his request in an order on May 31, 2011, and ordered him to file a report every 30 days on the status of his request to OSHA.

On February 21, 2012, the Complainant advised me that OSHA had rendered a final decision regarding his request to reopen the investigation and had declined to do so. The Complainant further stated that he had to reluctantly request dismissal of his request for a hearing because without an investigative record to draw on, he does not have the resources to pursue this matter.

The Complainant has the right to withdraw his objections to the Administrator's findings at any time before they become final. 29 C.F.R. § 24.111(c). Under the provisions of 29 C.F.R. § 24.105(c), the Administrator's findings and dismissal of the complaint did not become final because the Complainant filed an objection and a request for a hearing on those findings. However, they will become final if his request for a hearing is withdrawn.

Accordingly, it is ORDERED that:

1. The Complainant's request to withdraw his request for a hearing before the OALJ is GRANTED.
2. The Determination made by OSHA on January 28, 2011, is the final decision of the Secretary of Labor.
3. This matter is DISMISSED WITH PREJUDICE.

A

JENNIFER GEE
Administrative Law Judge