

Lewis v. EPA, 2003-CAA-5 & 6, ARB No. 04-1117
(March 30, 2007)

Footnote 1

The Clean Air Act, 42 U.S.C.A. § 7622(a) (CAA) (West 2003); the Safe Drinking Water Act, 42 U.S.C.A. § 300j-9(i)(1)(A) (SDWA) (West 2003); the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. § 9610(a) (CERCLA) (West 2005); the Toxic Substances Control Act, 15 U.S.C.A. § 622(a) (TSCA) (West 1998); the Federal Water Pollution Prevention and Control Act, 33 U.S.C.A. § 1367(a)(FWPPCA) (West 2001); and the Solid Waste Disposal Act, 42 U.S.C.A. § 6971(a) (SWDA) (West 2001). Regulations implementing these statutes are found at 29 C.F.R. Part 24 (2006). The Administrative Law Judge (ALJ) assumed that all of the statutes applied. Recommended Decision and Order (R. D. & O.) at 52. Though neither the parties nor the ALJ addressed the issue, federal agencies such as the EPA are immune from suit unless Congress unequivocally waives that immunity. We have recently decided that among these six environmental whistleblower statutes, Congress waived federal sovereign immunity only with respect to the employee protections of the SWDA and CAA. *See Erickson v. U.S. Env'tl. Prot. Agency*, ARB Nos. 03-002 – 004, 03-064; ALJ Nos. 99-CAA-2, 01-CAA-8, 13, 02-CAA-3, 18, slip op. at 10-12 (ARB May 31, 2006). EPA has not argued against coverage under either of these statutes, nor has Lewis specifically argued for such coverage. Our decision would be the same regardless of which of the two statutes is assumed to apply. Therefore, for purposes of this decision we will assume coverage under the CAA.