

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

gh PACKAGE PRODUCT TESTING AND
CONSULTING, INC.,

Plaintiff,

v.

PETER M. BUTTIGIEG, Secretary, U.S.
Department of Transportation, in his official
capacity

-and-

TRISTAN BROWN, Acting Administrator,
Pipeline and Hazardous Materials Safety
Administration, U.S. Department of
Transportation

-and-

U.S. DEPARTMENT OF
TRANSPORTATION,

Defendants.

Civil Case No. 1:23-cv-00403-MRB

Hon. Michael R. Barrett
U.S. District Court Judge

Hon. Karen L. Litkovitz
U.S. Magistrate Judge

STIPULATED DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), the parties enter this stipulated dismissal of the case.

1. On November 10, 2022, the Pipeline and Hazardous Materials Safety Administration (PHMSA)—an agency within Defendant U.S. Department of Transportation (DOT)—brought an administrative enforcement action against Plaintiff based on three allegations of regulatory violations set forth in the Notice of Proposed Violation (NOPV). *See* ECF 1-7.

2. Pursuant to 49 C.F.R. § 107.319, an administrative law judge (ALJ) appointed himself to hear DOT's administrative proceeding against Plaintiff on May 17, 2023. *See* ECF 1-8.
3. On June 26, Plaintiff filed this lawsuit challenging DOT's ability to subject Plaintiff to the administrative proceeding. ECF 1.
4. On August 28, Plaintiff filed a preliminary injunction (PI) motion to halt DOT's administrative proceeding, arguing that such proceeding is unconstitutional and illegitimate. ECF 18.
5. The parties agreed to joint briefing of Plaintiff's PI motion and DOT's motion to dismiss (MTD). DOT filed its combined PI opposition and MTD brief on September 18, 2023. ECF 21-1.
6. Before the PI and MTD briefing in this case had concluded, on November 6, PHMSA issued a letter stating that it was withdrawing the underlying NOPV against Plaintiff and that "no further action will be taken regarding the three alleged violations set forth in the [NOPV]." ECF 24-1.
7. On November 20, PHMSA filed a motion to dismiss with prejudice the administrative proceeding with the presiding ALJ under 49 C.F.R. § 107.319(c)—which incorporates Fed. R. Civ. P. 41(a)(1)'s voluntary-dismissal standard—and § 107.323(a)—which provides for an ALJ decision based on "consideration of all matters of record."
8. Plaintiff filed a response with the ALJ arguing that voluntary dismissal under Rule 41(a)(1) is not appropriate because Plaintiff has already filed an answer and because PHMSA rejected Plaintiff's terms for stipulated dismissal. ECF 28-1, PageID.#348.
9. On November 21, 2023, the ALJ issued an order holding (1) that there was "no basis for dismissal of the case pursuant to 49 C.F.R. § 107.319(c)," but (2) that "dismissal under 49 C.F.R. § 107.323(a) is warranted by the record." The ALJ dismissed the NOPV based on its review of the record, holding that "[b]y its decision to take no further action on the allegations," PHMSA had "in effect failed to meet its burden" to prove the facts alleged. *Id.*, PageID.348-49. The parties understand and agree that the ALJ's order dismisses the NOPV with prejudice because the ALJ decided the case

after consideration of all matters in the record of the proceeding and concluded that PHMSA “failed to meet its burden.” *Id.*, PageID.349.

10. The parties’ 20-day deadline to appeal the ALJ’s order expired on December 11, 2023. The ALJ’s order is therefore final. PHMSA further agrees that it will take no further action regarding the three alleged violations set forth in the dismissed NOPV.

11. The parties thus stipulate to the dismissal of this litigation challenging PHMSA’s ability to subject Plaintiff to an administrative proceeding based on allegations in the now-dismissed NOPV. The parties agree that each party shall bear their own fees and costs.

December 19, 2023

Respectfully Submitted,

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Assistant Branch Directors

/s/James R. Powers (per email authorization)

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CERTIFICATE OF SERVICE

I hereby certify that, on December 19, 2023, a true and correct copy of the foregoing was filed electronically through the Court's CM/ECF system, to be served on counsel for all parties by operation of the Court's electronic filing system.

/s/ David T. Bules

David T. Bules