

FEDERAL REPORT



Photo by Bert V. Gould/The Washington Times
William Marcus says at a news conference yesterday he feels "vindicated" by winning a lawsuit against the EPA.

EPA whistleblower wins suit using environment law

By Ruth Larson
THE WASHINGTON TIMES

A decision in an environmental whistleblower case has established that federal employees discriminated against for raising environmental concerns can file suit under environmental laws and avoid the merit-protection process.

"This is a major, landmark decision," said Stephen M. Kohn, attorney for William L. Marcus and chairman of the National Whistleblower Center.

Previously, only private citizens had been able to sue for damages under such environmental statutes as the Safe Drinking Water Act. Such cases are handled not by the Environmental Protection Agency, but by the Labor Department, to prevent possible conflicts of interest.

But when Mr. Marcus, an EPA toxicologist, was fired in May 1992 for criticizing the agency's policies, it represented an opportunity to test the application of environmental statutes to federal employees.

A Labor Department administrative law judge ruled in Mr. Marcus' favor in December 1992, but such rulings do not become final until approved by the secretary of labor. The EPA appealed the ruling, but on Monday, Labor Secretary Robert B. Reich issued a decision supporting the initial ruling.

Mr. Reich ordered the EPA to reinstate Mr. Marcus, 52.

Mr. Marcus, who worked in the EPA's Office of Drinking Water, will

receive two years' back pay and benefits, with interest. Mr. Marcus also will receive legal fees and \$50,000 in compensatory damages.

Mr. Kohn said Mr. Reich's decision "allows federal employees to avoid the difficult merit-systems process in whistleblower cases."

"It offers a choice with more objective findings — for emotional distress, punitive damages, attorney's fees — previously unavailable to most federal employees," he said.

Mr. Marcus and his attorneys said they hoped to reach an agreement in the next 10 days on when he will return to work at EPA.

EPA spokesman John Kasper declined to comment on the case, saying agency attorneys need time to review Mr. Reich's decision.

While at the EPA, Mr. Marcus also testified as a paid expert witness at several civil toxic substances lawsuits. In 1988, the agency's inspector general began investigating Mr. Marcus' outside employment for possible conflicts of interest. Mr. Marcus charged that such scrutiny intensified after he wrote a memo warning of health hazards posed by fluoride in drinking water.

The EPA fired Mr. Marcus on May 13, 1992, citing inspector general reports charging that he improperly used agency information for private gain, engaged in outside employment that posed a conflict of interest and was absent from work without approval.

In his decision, Mr. Reich agreed with the administrative law judge's

finding that many of the EPA's charges were "unsubstantiated."

"Both the recommendation and decision [to discharge Mr. Marcus] were premised on uncritical acceptance of the IG's findings, which is contrary to accepted personnel practice," Mr. Reich wrote.

"The secretary of labor has issued an unprecedented rebuke to the inspector general's office of the Environmental Protection Agency," Mr. Marcus said.

EPA whistleblowers also were the focus of oral arguments Wednesday at the U.S. Court of Appeals for the D.C. Circuit in a case involving First Amendment freedom of speech rights. The case concerns two EPA whistleblowers, William J. Sanjour and Hugh Kaufman, both of whom have been outspoken critics of EPA policies, making frequent appearances before private groups around the country.

Beginning in 1991, the EPA refused to allow the men to accept private compensation for travel expenses, and they were forced to cancel a number of speaking engagements. The men filed suit, charging that other EPA employees who spoke favorably of EPA policies became, in effect, officially sanctioned spokesmen for the agency and were allowed to be reimbursed for their expenses.

The whistleblowers contend that their freedom of speech was infringed upon by the EPA's total discretion over reimbursement based on the content of their speeches.