



Issue Date: 18 July 2007

CASE NO: 2006-SDW-00007

In the Matter of:

MICHAEL GRITZUK,
Complainant

v.

CITY OF PHOENIX,
Respondent

ORDER DISMISSING APPEAL & REMANDING TO ADMINISTRATOR

On April 11, 2007, counsel for Respondent advised that this matter had been resolved and requested that the undersigned dismiss the case. Pursuant to the Safe Drinking Water Act of 1974 and the implementing regulations, the undersigned is required to review any settlement agreement and, if appropriate, enter an Order Approving Settlement. See 42 U.S.C. § 300j-9(i)(2)(B)(i); 29 C.F.R. §§ 27.6(f)(1), 24.7(d), 18.9(e)(11), and 24.8(a). In response to the undersigned's Order Requiring Submission of Settlement Agreement of May 15, 2007, counsel for Respondent has questioned whether any such settlement agreement must be submitted for review and approval.

The Safe Drinking Water Act ("SDWA") provides for three outcomes for a whistleblower claim, such that the Secretary of Labor upon investigation may find for the complainant, dismiss the complaint, or enter a settlement agreement. See 42 U.S.C. §300j-9i(2)(B)(i) (SDWA); see also *Beliveau v. Naval Undersea Warfare Center*, 1997-SDW-1, 4, and 6 at 2 (Nov. 30, 2000). This provision reflects Congressional intent for parties wishing to settle the dispute to submit the settlement agreement to the Secretary for approval. See *id.*; see also *Beliveau v. U.S. Dept. of Labor*, 170 F.3d 83, 86 (1st Cir. 1999). The SDWA provides no exception for cases in which the complainant and the company reached an independent settlement. See *id.*

Accordingly, this settlement must be submitted to the administrative law judge to determine if it is fair, adequate and reasonable. See *Beliveau*, 1997-SDW-1, 4, and 6 at 2. The parties also must provide settlement documentation for any other claims arising from the same factual circumstances forming the basis of the federal claim, or a certification that the parties entered into no other such settlement agreements. See *id.*, citing *Biddy v. Alyeska Pipeline Service Co.*, ARB Nos. 96-109, 97-015, ALJ No. 1995-TSC-7 (ARB Dec. 3, 1996), slip op. at 3.

On June 1, 2007, the undersigned issued Second Order Requiring Submission Of Settlement Agreement. While Claimant's counsel responded on June 11, 2007, advising again that the settlement had been concluded and referring the response to the Second Order Requiring Submission Of Settlement Agreement to Respondent's counsel, no response has been sent to date by Respondent.

Accordingly, this appeal is administratively **DISMISSED** based on the parties' representation that a settlement has been consummated. This matter is **REMANDED** to the Administrator to determine whether to pursue review of the settlement agreement or to seek enforcement of the Administrator's original Notice of Determination and Order to Abate in view of the dismissal of the appeal, pursuant to 29 C.F.R. § 24.4(d)(2) and 42 U.S.C. § 300j-9(i)(4).

A

Russell D. Pulver
Administrative Law Judge