



Issue Date: 12 July 2019

CASE NOS.: 2018-SDW-00001
2018-STA-00045

In the Consolidated Matter of:

GARY GRAUBERGER,
Complainant,

v.

THOMAS PETROLEUM AKA MAXUM,
Respondent.

DECISION AND ORDER
APPROVING SETTLEMENT

This matter involves the employee protection provisions of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300j-9(i), and its implementing regulations issued at 29 C.F.R. Part 24, and the Surface Transportation Assistance Act (“STAA”), 49 U.S.C. § 31105, and its implementing regulations found at 29 C.F.R. Part 1978. The matter is currently stayed while the parties participated in the settlement judge program. Attorney Francis Flaherty represents Complainant. Attorney Christopher Pastore represents Respondent. On July 10, 2019, the parties submitted a Confidential Settlement Agreement and General Release of All Claims (“Settlement Agreement”) that resolved all issues pending for hearing in this matter.

At any time after the filing of objections to the Assistant Secretary’s findings, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge (“ALJ”). 29 C.F.R. §§ 24.111(d)(2), 1978.111(d)(2). A copy of the settlement will be filed with the ALJ. *Id.* Any settlement approved by the ALJ will constitute the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §§ 24.113 or 1978.113. 29 C.F.R. §§ 24.111(e), 1978.111(e).

The Settlement Agreement includes a general release of liability which resolves matters and potential matters under a multitude of state and federal laws other than SDWA and STAA. My authority over settlement agreements is limited to the statutes that are within my jurisdiction, and I have restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this SDWA and STAA case. *Mann v. Schwan’s Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 3 (ARB Dec. 31, 2008). Accordingly, my approval extends only to the terms of the Settlement Agreement pertaining to Complainant’s SDWA and STAA cases.

The Settlement Agreement also included a confidentiality provision agreed to by the parties. The files maintained by this Office, including this Settlement Agreement, are subject to disclosure under the provisions of the Freedom of Information Act (“FOIA”), unless an exemption applies. 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 3 (ARB July 22, 2013). The Department of Labor has implemented regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. 29 C.F.R. Part 70; *McDowell v. Doyon Drilling Servs., Ltd.*, ARB No. 97-053, ALJ NO. 96-TSC-00008, slip op. at 2 (ARB May 19, 1997). The parties agree that the Settlement Agreement is confidential, which I construe to mean they object to any disclosure under FOIA. I order that the Settlement Agreement be placed in a sealed and separate envelope, clearly marked with notice that the parties object to disclosure and seek the procedures of 29 C.F.R. Part 70 prior to any release of information.

Paragraph 16 contains a choice of law provision stating that the Settlement Agreement shall be governed by and interpreted under the laws of the State of Nevada. The choice of law provision shall be construed as not limiting the authority of the Secretary of Labor or any federal court. *See Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7, slip op. at 4 (ARB Jan. 31, 2011).

As construed, and after carefully considering the terms of the Settlement Agreement, I find that the terms and conditions are fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. *See Carciero v. Sodexho Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010).

The terms and conditions of the Settlement Agreement are incorporated by reference into this Decision and Order and are hereby adopted and approved. The parties are ordered to carry out the provisions of the Settlement Agreement.

The parties having resolved all the issues pending for hearing, the matter is now fully concluded. All dates are vacated. The matter is closed.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge