**U.S. Department of Labor**

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)

**Issue Date: 11 February 2013**

CASE NO.: 2011-SWD-00002

In the Matter of:

RUTH ANN WEIDEL,
Complainant,

v.

U.S COAST GUARD,
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND DISMISSING COMPLAINT**

This case arises under the employee protection provisions of various environmental statutes [specifically, the Solid Waste Disposal Act (SWDA), 42 U.S.C. §6971, the Clean Air Act (CAA), 42 U.S.C. §7622, the Safe Drinking Water Act (SDWA), 42 U.S.C. §300j-9(i), the Water Pollution Control Act (WPCA), 33 U.S.C. §1367, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund), 42 U.S.C. §9610)] with implementing regulations appearing at 29 C.F.R. Part 24, as amended, 76 Fed. Reg. 2808 (Jan. 18, 2011). The parties have been engaged in settlement negotiations and provided me with a courtesy copy of the settlement agreement, signed by all parties [hereafter "Settlement Agreement"], as an attachment to an email to my law clerk on November 13, 2012. Subsequently, the parties provided a copy of a Memorandum of Amendment [hereafter "Amendment"] to the Settlement Agreement addressing the attorney fee issue. The Settlement Agreement and Amendment are incorporated by reference herein.

***Background***

Initially, the parties submitted only an information copy of the settlement. By Notice of November 29, 2012, Complainant took the position that there had been no formal motion for dismissal and asked that this matter not be dismissed until certain "conditions precedent" in the Settlement Agreement have been completed in January 2013 (thus negating any suggestion that the parties had implicitly requested approval of the agreement). In response, the Coast Guard indicated that both parties had come to an agreement concerning the dismissal of all matters filed by Complainant against the Coast Guard and agreed that they have a right to seek enforcement of the Settlement Agreement.

On December 18, 2012, noting that the Settlement Agreement would not be enforceable until approved, I issued an Order Requiring Submission of Settlement Agreement for Approval. That Order discussed the settlement provisions of the pertinent statutes (as is more fully set forth below), advised that the case would proceed to a hearing if the settlement agreement were not approved, commented that Complainant's suggestion that the settlement be completed before its approval was "both impractical and inconsistent with the regulations," and required that, "within thirty (30) days of the date of this Order, the parties shall jointly or separately file an executed settlement agreement for approval." Respondent promptly complied and filed "Respondent's Motion for Approval of the Executed Settlement Agreement" on January 13, 2013. Along with the motion, however, Respondent attached an addendum to the Settlement Agreement, entitled "Memorandum of Amendment." The Memorandum of Amendment changed the provision directing that attorney fees be paid to the firm of Kohn, Kohn & Colapinto, LLP and provided instead that payment be made to Richard Renner, individually. The Memorandum of Amendment was only signed by counsel for the Coast Guard and it only provided a place for Complainant to sign and no space for her attorney to sign. On January 18, 2013, Complainant submitted "Complainant Ruth Ann Weidel's Status Report on Approval of Settlement." Attached to the report was a facsimile copy of the Memorandum of Amendment bearing Complainant's signature, as well as that of the Coast Guard's counsel, but it was not signed by counsel for Complainant. In the "Status Report," Complainant sought to have this matter held in abeyance until the Settlement Agreement was implemented.

On January 22, 2013, I issued an "Order to Show Cause Why Settlement Agreement Should Not be Disapproved and the Case Should Not be Noticed for A Hearing." That Order provided the parties 30 days to show why the Settlement Agreement should not be disapproved. The Order indicated that this case would be noticed for a hearing absent remedial action by the parties (1) reflecting that the parties had, in fact, reached an agreement and sought approval and (2) making the agreement complete by inclusion of the signatures of Mr. Renner and the law firm of Kohn, Kohn, and Colapinto on the Settlement Agreement.

In response to the Order, the parties filed a Joint Response to the Show Cause Order.[1] In the Joint Response, the parties jointly moved for approval of the Settlement Agreement and Amendment. On the attorney fee issue, counsel for Complainant signed the agreement, as directed to do; however, the parties advised that approval by Kohn, Kohn & Colapinto would be impractical as Complainant's counsel is engaged in litigation concerning his discharge from the firm.

***Discussion***

Settlements in certain environmental whistleblower cases, and specifically cases brought under the Clean Air Act and the Safe Drinking Water Act, must be filed with the presiding administrative law judge and reviewed to determine whether they are fair, adequate and reasonable. 29 C.F.R. §24.111(d)(2). *Compare Hoffman v. Fuel Economy Contracting,* 1987-ERA-33 (Sec'y Aug. 4, 1989) (Order) (requiring that settlements in whistleblower cases brought under the Energy Reorganization Act be reviewed to determine whether they are fair, adequate

[1] Respondent filed a "Notice of Status and Compliance with the Executed Settlement Agreement in this Matter" on January 30, 2013 which is moot in view of the Joint Response filed on February 6, 2013.

and reasonable) *with Indiana Dept. of Workforce Development v. U.S. Dept. of Labor*, 1997-JTP-15 (Admin. Review Bd. Dec. 8, 1998) (holding ALJ has no authority to require submission of settlement agreement in Job Training Partnership case when parties have stipulated to dismissal under Rule 41(a)(1)(A)(ii), FRCP, and contrasting ERA cases.) As amended in January 2011, the regulations applicable to environmental whistleblower cases distinguish between types of environmental cases in determining whether a settlement needs to be approved by an administrative law judge prior to dismissal. Specifically, section 24.111 provides, in relevant part:

> (c) At any time before the Assistant Secretary's findings or order become final, a party may withdraw its objections to the Assistant Secretary's findings or order by filing a written withdrawal with the ALJ. . . . If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings or order, and there are no other pending objections, the Assistant Secretary's findings and order will become the final order of the Secretary. . . .If the objections are withdrawn because of settlement under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, or the Toxic Substances Control Act, the settlement must be submitted for approval in accordance with paragraph (d) of this section.
>
> (d). . . .
>
> (2) *Adjudicatory settlements under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, and the Toxic Substances Control Act.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement must be filed with the administrative law judge or the ARB, as the case may be.
>
> (e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the ARB will constitute the final order of the Secretary and may be enforced pursuant to Sec. 24.113 [providing for enforcement through a civil action brought in the United States district court for the district in which the violation was found to have occurred].

29 C.F.R. §24.111.

To the extent that the Settlement Agreement may be deemed to relate to matters under laws other than the environmental statutes listed above, I have limited my review to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondents violated those environmental statutes. *See, e.g., Poulos v. Ambassador Fuel Oil Co., Inc.*, 1986-CAA-1 (Sec'y Nov. 2, 1987). Also, to the extent that provisions of the agreement may make reference to future claims, they are construed as relating solely to the right to sue in the future on claims or causes of action arising out of facts occurring before the date of the agreement. *See generally McCoy v. Utah Power*, 1994-CAA-0001 (Sec'y. Aug. 1, 1994).

On the attorney fee issue, I find that the agreed upon fee of $20,000 is reasonable and appropriate. Also, I have approved of the provision in the Amendment requiring payment to

Richard Renner, Esq. (who is attorney of record in this matter but was associated with the firm of Kohn, Kohn & Colapinto at the time he initially entered his appearance). In doing so, I take no position on whether and to what extent the law firm of Kohn, Kohn & Colapinto may have an interest in, or entitlement to, all or part of the attorney fees. That is a matter that Mr. Renner must work out with his former law firm, consistent with his employment agreement with the firm.

Having reviewed the terms of the Settlement Agreement and Amendment, I find that the settlement is fair, reasonable, and adequate, and that it should be approved. Under 29 C.F.R. §24.111(e), this Decision and Order will become the final order of the Secretary of Labor and is enforceable as such. Accordingly,

**ORDER**

**IT IS HEREBY ORDERED** that the Settlement Agreement and Amendment be, and hereby are, **APPROVED**, and the parties shall comply with its terms to the extent that they have not already done so; and

**IT IS FURTHER ORDERED** that this action be, and hereby is **DISMISSED WITH PREJUDICE**.

Digitally signed by Pamela Lakes
DN: CN=Pamela Lakes,
OU=Administrative Law Judge, O=Office
of Administrative Law Judges,
L=Washington, S=DC, C=US
Location: Washington DC

PAMELA J. LAKES
Administrative Law Judge

Washington, D.C.