



Issue Date: 22 September 2006

In the Matter of:

JAMES J. BOBRESKI,
Complainant

Case No.: 2001-CAA-00006

v.

DISTRICT OF COLUMBIA WATER AND
SEWER AUTHORITY,
Respondent

**ORDER APPROVING SETTLEMENT
AND DISMISSING CASE WITH PREJUDICE**

This case arises under the Clean Air Act, 42 U.S.C. § 7622; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9610; the Federal Water Pollution Control Act ("FWPCA") (also known as the Clean Water Act, "CWA"), 33 U.S.C. § 1367; the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300j-9; the Solid Waste Disposal Act ("SWDA") (also known as the Resource Conservation and Recovery Act, "RCRA"), 42 U.S.C. § 6971; and, the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2622; and the implementing regulations at 29 CFR Part 24. On September 14, 2006, the parties filed a Joint Motion to Approve Settlement Agreement and Dismiss With Prejudice, and represent that the Settlement Agreement constitutes the complete settlement documentation for each claim filed by the Complainant in this action.

The Administrative Review Board requires that all parties requesting settlement approval provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that the parties have not entered into other such settlement agreements. *See Biddy v. Alyeska Pipeline Serv. Co.*, ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. at 3 (ARB Dec. 3, 1996). Here, the parties have certified that the agreement constitutes the entire settlement agreement with respect to the Complainant's claims. *See Settlement Agreement*, paragraphs 4 and 12.

Paragraph 5 of the Settlement Agreement provides that the parties agree to keep the existence and terms of this agreement, and the negotiations leading thereto, completely confidential except as set forth therein. The Administrative Review Board has ruled that "[t]he parties' submissions, including the agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act." *Coffman v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip. op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by

requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 CFR Part 70 (2003).¹

Paragraph 14 provides that the agreement shall be governed and construed under the laws of the District of Columbia. This choice of law provision is construed as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Phillips v. Citizens' Ass'n for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).

I have carefully reviewed the settlement agreement and have determined that it is fair, adequate, reasonable, and voluntary, and it is hereby APPROVED and the proceeding in this matter is DISMISSED with prejudice.

SO ORDERED.

A

ALICE M. CRAFT
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Order Approving Settlement will automatically become the final order of the Secretary of Labor unless, pursuant to 29 CFR § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C., 20210. Such a petition for review must be received by the Administrative Review Board within ten (10) business days of the date of this Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 CFR §§ 24.7(d) and 24.8.

¹ “Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly. 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).” *Coffman*, slip. op. at 2, n.2.