



Issue Date: 22 December 2020

CASE NO.: 2020-CAA-00002

In the Matter of:

JUN CHEN,

Complainant,

vs.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT,

Respondent.

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

This proceeding arises under the employee whistleblower protections of the Clean Air Act (“CAA”), 42 U.S.C. § 7622, and is not currently set for hearing. On December 18, 2020, the parties, through counsel, submitted *Joint Motion Seeking Approval of Settlement Agreement*. A copy of the parties’ Settlement Agreement was also filed for my approval. The Settlement Agreement was signed on December 18, 2020, by Burke Dunphy, attorney for the Respondent, and Peter Rogosin, lay representative for the Complainant.

The regulation at 29 C.F.R. § 24.111(d)(2) provides that at any time after the filing of objections to the Assistant Secretary’s findings preliminary order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge. Under 29 C.F.R. § 24.111(e), any settlement that the administrative law judge approves constitutes the final order of the Secretary.

The Settlement Agreement provides that Complainant will release Respondent from claims arising under the CAA as well various other laws. 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 the Complainant’s complaint under the CAA. *Mann v. Schwan’s Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 4 (ARB Dec. 31, 2008).

The Settlement Agreement also includes 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 2 (ARB July 22, 2013). The Department of Labor has 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; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). The parties agree to maintain the agreement confidential, which I construe to mean they object to any disclosure under FOIA. The Settlement Agreement shall be sealed or marked with a notice that the parties object to disclosure and seek the procedures of 29 C.F.R. § 70.26 prior to any release of information.

As construed, and after carefully considering the terms of the Settlement Agreement, I find that the terms and conditions appear to be fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. *See Carciro v. Sodexo Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010). I also find that Complainant and Respondents were ably represented.

Based on the foregoing, the Settlement Agreement is **APPROVED** and shall be the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 24.111(e). The complaint in this matter is **DISMISSED** with prejudice.

SO ORDERED.

SUSAN HOFFMAN
Administrative Law Judge