



Issue Date: 03 April 2015

CASE NO. 2013-CER-00001

In the Matter of

LELAND PEDERSEN,
Complainant,

v.

ASRC ENERGY SERVICES, INC.,
Respondent.

**ORDER APPROVING SETTLEMENT, DISMISSING
CLAIM, SEALING SETTLEMENT DOCUMENTS, AND FILING
REDACTED SETTLEMENT DOCUMENTS**

This claim arises under the whistleblower protection provisions of the Pipeline Safety Improvement Act, 49 U.S.C. § 60129; the Safe Drinking Water Act, 42 U.S.C. § 300j-9(i); the Solid Waste Disposal Act, 42, U.S.C. § 6971; the Federal Water Pollution Control Act, 33 U.S.C. § 1367; the Toxic Substances Control Act, 15 U.S.C. § 2622; and the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9610. On March 20, 2015, the parties filed in a sealed envelope a proposed settlement agreement to resolve the case. They also filed in a sealed envelope a second and related “side-agreement.” Finally, they filed (unsealed) redacted versions of both agreements. They request that this Office approve the settlement and seal the unredacted original settlement documents, leaving open in the record only the redacted versions.

I find the proposed settlement proper, and I approve it with caveats.¹

First, language in the agreement purports to settle, release, or otherwise address claims or potential claims that go beyond the scope of the statutes involved in this action. I limit my review to the asserted whistleblower claims only; anything beyond that exceeds this Office’s jurisdiction.

Second, the parties agree that Respondent will not withhold payroll taxes from the settlement amount. The tax characterization and treatment of the settlement is outside the jurisdiction and expertise of this Office, and I do not review it.

¹ Settlements under the Safe Drinking Water Act, the Toxic Substances Control Act, and the Pipeline Safety Improvement Act require the approval of the administrative law judge. *See* 29 C.F.R. §§ 24.111(d)(2), 1981.111(d)(2). Parties settling under the remaining statutes at issue here are “encouraged to submit their settlements for approval.” 29 C.F.R. § 24.111(a).

Third, I am aware of the parties' separate "side-agreement," entitled "Settlement Agreement & General Release." But the settlement document submitted for this Office's review is the "Negotiated Settlement Agreement and General Release between Leland Pedersen and ASRC Energy Service Alaska, Inc.," dated March 11, 2015. It is that agreement that I am reviewing and approving, while simultaneously being informed of the existence and terms in the side-agreement. As to the side-agreement, I find only that nothing in it vitiates the actual settlement agreement that I am reviewing and approving.²

Fourth, while I will order the original, unredacted settlement agreements to be sealed as the parties request, I have previously informed the parties and now restate that the records of this Office are subject to the Freedom of Information Act and are generally public. This Office will place the settlement agreements in a sealed envelope within the public file.³ The envelope will have a copy of this Order affixed. In the event a request is made for access to the settlement agreement, the Department of Labor will provide the parties with pre-disclosure notification and an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. Nothing about this procedure, however, is a finding that the settlement agreements or any portion of them is exempt from disclosure under the Freedom of Information Act, nor does it indicate that the Department of Labor ultimately will decline disclosure of the settlement agreements to any person requesting it.

Order

The proposed settlement agreement is fair and reasonable as to the claims under Pipeline Safety Improvement Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act, and the Comprehensive

² The side-agreement contains a choice of law provision that chooses Alaska law as controlling "except to the extent federal law controls." To the extent that this relates to the several whistleblower claims asserted in Complainant's complaint, federal law controls. In the view of the administrative law judge, the parties' compliance with the settlement agreement is a requirement of this Order. Enforcement of this Order is a matter of federal law. *See* the various whistleblower statutes at issue.

³ *See* 29 C.F.R. § 18.56.

Environmental Response Compensation and Liability Act. None of the terms is against the public interest. The proposed settlement agreement is APPROVED, and the parties are ORDERED to comply with its terms.

This matter is DISMISSED with prejudice.

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge