



Issue Date: 08 May 2007

CASE NO.: 2007-PSI-00001

In the matter of:

MIKE MASON,
Complainant,

vs.

**NABORS ALASKA DRILLING, INC.,
BP EXPLORATION (ALASKA), INC.,
and BP PIPELINES (ALASKA), INC.,**
Respondents.

**ORDER APPROVING SETTLEMENT AGREEMENT AND RELEASE,
DISMISSING CASE AGAINST RESPONDENT NABORS ALASKA DRILLING,
INC., AND DISMISSING COMPLAINT WITH PREJUDICE**

This case was assigned to me on November 22, 2006. It follows a complaint filed under the Pipeline Safety Act of 2002 (PSI), Section 23 of the Toxic Substances Control Act of 1976 (TSCA), Section 322 of the Clean Air Act (CAA), Section 507 of the Federal Water Pollution Control Act (FWPCA), and Section 7001 of the Solid Waste Disposal Act of 1976 (SWDA) which was filed by Complainant against Respondents.

On January 29, 2007, I issued an order dismissing Respondent BP Pipelines (Alaska), Inc. with prejudice from this action based on a stipulation from all parties. On April 18, 2007, I issued an order approving a settlement and release agreement and dismissing Respondent BP Exploration (Alaska), Inc. with prejudice. At that time, the lone remaining Respondent in this case was Nabors Alaska Drilling, Inc.

On May 1, 2007, Respondent Nabors Alaska Drilling, Inc. and Complainant filed a Joint Notice of Settlement, Joint Motion for Approval of Settlement and Joint Request for Expedited Dismissal of Nabors Alaska Drilling, Inc. as Respondent, together with a copy of a fully executed Settlement Agreement and Release as of April 30, 2007 ("Agreement") which, along with other things, dismisses with prejudice the pending case in its entirety.

I find that the Agreement is fair and reasonable on its face with the exception of limited language contained in paragraph 8 of the Agreement. Paragraph 8 provides that Complainant:

agrees that from the date of this Agreement forward, he will not cause, initiate, maintain, prosecute, or file any charge, complaint, action, suit proceeding, or claims against Nabors or any of the Nabors Release parties, *or cooperate with any*

other person concerning any of the same before any governmental agency, court, legislative body or Board of Directors committee . . .

(Emphasis added). I find that the inclusion of the phrase “or cooperate with any other person concerning any of the same” in Paragraph 8 of the Agreement is void as contrary to public policy and unenforceable to the extent that it could be construed as restricting Complainant from communicating voluntarily with, and providing information to, any Federal or state governmental agencies, courts, or legislative bodies. *See Brown v. Holmes & Narver, Inc.*, 90-ERA-26 (Sec’y May 11, 1994) (similar restrictive language found void).

In Paragraph 14, the parties agreed to sever any part of the Agreement found to be illegal or invalid and that severance shall not affect the validity of the remaining provisions of the Agreement. The severance provision permits me to approve the remainder of the Agreement without the offending language from Paragraph 8. *See id.* I find that the Agreement, as construed in this decision, is a fair, adequate and reasonable settlement.

I find that the parties are represented by counsel and have been advised by said counsel concerning the Agreement and my disapproval of the offending language in Paragraph 8. I further find that Complainant is deemed to have waived any further proceedings before the U.S. Department of Labor regarding the matters which are the subject of the Agreement. Finally, I further find that this Order shall have the same force and effect as one made after a full hearing on the merits.

Accordingly, **IT IS HEREBY ORDERED** that the Settlement Agreement and Release, as construed in this Order, is **APPROVED**, and the complaint which composes OALJ Case No. 2007-PSI-00001, is **DISMISSED** *with prejudice*.

IT IS FURTHER ORDERED that the Settlement Agreement and Release is designated “CONFIDENTIAL COMMERCIAL INFORMATION” under 20 C.F.R. 70.26 and shall be afforded the protections thereunder.

A

GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California