



Issue Date: 27 January 2016

CASE NO. 2013-TSC-00001
2013-CAA-00003

In the Matter of

MICHAEL J. MADRY,
Complainant,

v.

EMLAB P&K, LLC,
Respondent.

ORDER APPROVING SETTLEMENT AND DISMISSING

The parties have settled this Toxic Substances Control Act whistleblower case. They filed proposed settlement papers for review and approval on December 4, 2015. The parties also filed a motion to seal the settlement papers; I will address that motion in a separate order. I will approve the settlement with some caveats.

First, some of the provisions in the settlement agreement extend to claims beyond the scope of the Act. I limit my review to the Toxic Substances Control Act claim only; anything beyond that exceeds this Office's jurisdiction and the scope of my review. For example, some language in the agreement purports to settle, release, or otherwise address claims or potential claims that go beyond the scope of the Toxic Substances Control Act. This order does not extend to any scope of release beyond claims for violations of the Toxic Substances Control Act based on conduct through the date of the agreement.

Second, whatever the parties might agree concerning confidentiality, the records of this Office are subject to the Freedom of Information Act. If a request is received for access to the settlement agreement under FOIA, the Department of Labor will provide the litigants with pre-disclosure notification and an opportunity to respond before any disclosure is made. *See* 29 C.F.R. § 70.26. I will affix a statement to the settlement agreement to notify the FOIA office of this requirement. Nothing about this is a finding that the settlement agreement or any portion of it 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 agreement to any person requesting it under FOIA.

Third, the parties choose Arizona law to control any dispute between them concerning the Agreement. *See* ¶12. As I construe this provision, it is not intended to and does not limit the authority of any federal court or the Secretary of Labor. It is an agreement between the parties,

limited in its application to themselves. For the federal courts and the Secretary, the law and regulations of the United States control.¹

That said, the proposed settlement agreement is fair and reasonable as to the claim under the Toxic Substances Control Act. It adequately protects Complainant, and none of its terms is against public policy. The proposed settlement is therefore APPROVED, and the parties are ORDERED to comply with its terms. *See* 29 C.F.R. § 24.111(d)(2). This matter is DISMISSED.

The parties and counsel must now comply with the post-hearing requirements for document handling stated in the protective order of October 9, 2015. A copy of this order will be served on counsel for Dr. Kot.

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge

¹ *See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).