



Issue Date: 19 June 2014

Case No.: 2014-TSC-2

In the Matter of:

GEORGE ELMARAGHY,
Complainant,

v.

OHIO EPA,
Respondent.

**ORDER APPROVING SETTLEMENT AGREEMENT AND
DISMISSING COMPLAINTS**

This proceeding arises under Section 2622 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622; Section 7622 of the Clean Air Act (CAA), 42 U.S.C. 7622; Section 1367 of the Federal Water Pollution Prevention and Control Act (“FWPCA”), 33 U.S.C. §1367; Section 300j-q(i) of the Public Health Service Act (PHSA”), 42 U.S.C. §300j-q(i); Section 6971 of the Solid Waste Disposal Act (“SWDA”), 42 U.S.C. §6971, Section 5851 of the Energy Reorganization Act (“ERA”), 42 U.S.C. §5851 and Section 9610 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. 89610. Also, the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges found at 29 CFR Part 18A. In this case, the Complainant requested a hearing by the Office of Administrative Law Judges (“OALJ”) because he objected to the findings of the Occupational Safety and Health Administration (“OSHA”) determining that his claims were either untimely or that Respondent was not an “Employer” for purposes of the statute. On June 5, 2014, I received a “Withdrawal and Request to Dismiss Charges” with an attached “Agreement of Settlement and Release.”

The applicable provisions in the federal regulations concerning the CAA, TSCA, SWDA and ERA provide that any settlement must be submitted to the Administrative Law Judge for approval. (*See* 24 C.F.R. § 24.111(c) and (d)(2); 42 U.S.C. §7622(b)(2)(A); 15 U.S.C. §2622(b)(2)(A); 29 C.F.R. § 24.111(d)(2); and 42 U.S.C. § 5851). Moreover, a settlement does not become effective until its terms have been reviewed and determined to be fair, adequate, reasonable, and in the public interest. (*i.e. see Collins v. Village of Lynchburg, Ohio*, ARB No. 10-097, ALJ No. 2006-SDW-003, slip op. at 2-3 (ARB June 19, 2010) (*citing Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2-3 (ARB May 30, 2006)).

Before addressing the approval of the settlement, there are two clarifications regarding its terms that I must note: choice of law, and the settlement of matters beyond the scope of the Acts.

First, the parties choose Ohio law to control any dispute between them concerning the Agreement. *See* ¶18. 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

Second, some language in the Agreement purports to settle claims and make agreements beyond the scope of the Acts. I limit my review to the Acts enumerated above; anything beyond that exceeds the undersigned's jurisdiction.

The parties "Withdrawal and Request to Dismiss Charges" and attached "Agreement of Settlement and Release" and "Letter of Understanding - Calculation of Pay Range Adjustment April 1, 2014" submitted to me on June 5, 2014 are, by reference, fully incorporated herein. Based on the information provided to me, I find that the proposed settlement is fair, adequate, and reasonable (I have no basis to determine its impact on public interest), and I will approve it and dismiss the instant claims.

Accordingly, **IT IS HEREBY ORDERED** that the parties will carry out the requirements of the "Agreement of Settlement and Release" and "Letter of Understanding - Calculation of Pay Range Adjustment April 1, 2014" and further, the parties "Withdrawal and Request to Dismiss Charges" is hereby **APPROVED** and the proceedings in this matter are **DIMISSED** with prejudice.

PETER B. SILVAIN, JR.
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).