



**Issue Date: 07 February 2019**

Case No.: 2018-TSC-00005

*In the Matter of:*

**STEVEN TORCHIA,**  
Complainant,

v.

**BAERLOCHER USA, LLC,**  
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT  
AND CANCELLING HEARING**

This proceeding arises under the employee-protection provisions of the Toxic Substances Control Act (“TSCA” or “Act”), 15 U.S.C. § 2622, as amended, and the procedural regulations found at 29 C.F.R. Part 24. On October 31, 2016, Steven Torchia (the “Complainant”) filed a complaint against Baerlocher USA, LLC (the “Respondent”) alleging retaliation in violation of the TSCA. By letter dated May 30, 2018, the Regional Supervisory Investigator, U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting as the agent for the Secretary of Labor, issued an order dismissing the complaint. On June 29, 2018, the Complainant filed an objection and requested a hearing pursuant to 29 C.F.R. § 24.106.

On October 3, 2018, I issued a Notice of Hearing and Pre-Hearing Order setting a hearing date of March 27, 2019. On January 28, 2019, counsel for the Complainant filed a letter indicating that the parties had reached a settlement in this matter.<sup>1</sup> Thereafter, by letter dated February 5, 2019, the Complainant’s counsel filed a signed copy of the Settlement Agreement and General Release (“Settlement”).<sup>2</sup>

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<sup>1</sup> 29 C.F.R. § 24.111 provides that a case may be settled after objections to the Secretary’s Findings are issued “if the participating parties agree to a settlement and the settlement is approved by the ALJ.” Furthermore, it provides that a “copy of the settlement must be filed with the administrative law judge or the ARB, as the case may be.” 29 C.F.R. § 24.111(d)(2).

<sup>2</sup> The parties have agreed that the terms of the Settlement are confidential. Consistent with 20 C.F.R. § 70.26 (2017) and Executive Order 12,600, “Predisclosure Notification Procedures for Confidential Commercial Information” (Exec. Or. 12,600, 52 Fed. Reg. 23781, 3 C.F.R., 1988 Comp., 235), the materials contained in the Settlement will be placed in a sealed envelope marked “Confidential Settlement Materials – Confidential Commercial Information. See 20 C.F.R. § 70.26.” Moreover, in this Decision and Order, the undersigned has refrained from referencing any specific terms or dollar amounts contained in the Settlement Agreement. In general, confidential commercial information will be disclosed under the Freedom of Information Act (“FOIA”) only in accordance with 20 C.F.R. § 70.26 and Executive Order 12,600. Pursuant to 20 C.F.R. § 70.26(a), a submitter of confidential commercial information must use good-faith efforts to designate any portions of its submission that it considers to be protected

The Settlement resolves the controversy arising from the Complainant's complaint under the TSCA. Both the Complainant and the President/CEO of Baerlocher USA signed the Settlement. Moreover, the Settlement provides that the Complainant will release the Respondent from claims arising under the TSCA and a simultaneously filed civil complaint. However, this Decision and Order is limited to whether the terms of the Settlement fairly, adequately, and reasonably settle the Complainant's allegations under the TSCA.<sup>3</sup>

The Settlement provides that the Respondent shall make a payment to the Complainant in the agreed-upon amount and that the Complainant will effectuate the dismissal of this matter. Having reviewed the Settlement in full and noting that both parties are represented by counsel, I find that the Settlement's terms are fair, adequate, reasonable, and consistent with public policy. Therefore, I hereby approve the Settlement. Upon issuance of this Decision and Order, the parties shall implement the terms of the Settlement. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits and may be enforced pursuant to 29 C.F.R. § 24.113.

Accordingly, it is hereby **ORDERED** that the Settlement Agreement and General Release is hereby **APPROVED** pursuant to 29 C.F.R. § 24.111.

Moreover, the hearing scheduled to begin on March 27, 2019, in Cincinnati, Ohio, is **CANCELLED**.

**SO ORDERED.**

JOHN P. SELLERS, III  
ADMINISTRATIVE LAW JUDGE

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from disclosure under Exemption 4. The Department of Labor ("Department") will provide a submitter with prompt written notice of a FOIA request that seeks its confidential commercial information whenever required under 20 C.F.R. § 70.26(d), except as provided in 20 C.F.R. § 70.26(g), in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information under paragraph 20 C.F.R. § 70.26(e). *See* 20 C.F.R. § 70.26.

<sup>3</sup> As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order (Nov. 2, 1987), "the Secretary's authority over the settlement agreement is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute." Consequently, my review of the Settlement is limited to determining whether its terms are a fair, adequate, and reasonable settlement of the Complainant's complaint under TSCA.