

**U.S. Department of Labor**

Office of Administrative Law Judges  
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Covington, LA 70433

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**Issue Date: 25 August 2020**

**Case No.: 2019-PSI-00004**

In the Matter of

**LOTTIE FANESTIEL**  
**Complainant**

**v.**

**KINDER MORGAN, INC. and**  
**KINDER MORGAN LIQUID TERMINALS, LLC.**  
**Respondents**

APPEARANCES: Dennis Clifford, Esq.  
For Complainant

Scott R. McLaughlin, Esq.  
John T. Hays, Esq.  
For Respondents

BEFORE: Hon. Tracy A. Daly  
Administrative Law Judge

**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT**  
**AND SEALING SETTLEMENT DOCUMENTS**

**1. Nature of Motion.** Pursuant to 29 C.F.R. § 18.71(a), the parties submitted a motion requesting the undersigned approve a proposed Settlement Agreement in this matter. As part of the motion, the parties requested the terms of the Settlement Agreement be sealed.

**2. Procedural History and Findings of Fact.**

a. This case arises pursuant to a complaint alleging violations under the employee protective provisions of the Pipeline Safety Improvement Act of 2002, 49 U.S.C. § 60129 (“PSIA” or “the Act”) and the implementing regulations at 29 C.F.R. Part 1981. The Act includes a whistleblower protection provision with a Department of Labor complaint procedure.

b. On February 2, 2018, pursuant to the PSIA, Complainant filed a retaliation complaint with the Occupational Safety and Health Administration (OSHA) against Respondent for suspending and terminating her employment.

c. On August 21, 2019, the Secretary, acting through the Acting Regional Administrator, issued findings and an order and concluded that Respondent violated the PSIA. Among other relief, the Secretary ordered Respondent to immediately reinstate Complainant to her prior position with all rights, seniority, and benefits that Complainant would have enjoyed had she not been discharged.

d. Complainant and Respondent - both of whom are represented by counsel - objected to the Secretary's findings and requested a hearing before the Office of Administrative Law Judges (OALJ). The undersigned issued a Notice of Hearing on November 20, 2019, and an Order Rescheduling Hearing on May 8, 2020, rescheduling the hearing to January 25, 2021.

e. On June 24, 2020, the parties attempted to file a "Joint Notice for Approval of Settlement and Dismissal of Complainant's Complaint" for the undersigned's approval. However, the parties' improperly submitted this notice by fax without permission. As a consequence, the undersigned rejected the filing, and the parties were required to properly refile the documents via the DOL OALJ email filing process which the parties satisfied on July 10, 2020.

f. The parties requested approval of a Settlement Agreement marked as Exhibit "A." Exhibit "A" contains specific financial information pertaining to the terms of payment to Complainant that the parties believe to be confidential. The parties requested it not be filed in the public record.

g. On July 29, 2020, the undersigned issued an Order Directing Parties to Supplement Settlement Agreement with additional argument and citation to legal authority in support of their request to seal Exhibit A.

h. On August 12, 2020, the parties filed a Joint Motion to Approve Settlement Agreement in response to the undersigned's order. In this Joint Motion, the parties again requested approval of the Settlement Agreement attached as Exhibit A and acknowledged that such Agreement constitutes the Secretary's findings and final order pursuant to 29 C.F.R § 1981.111. Further, the parties also confirmed their agreement that any prior findings and orders in this matter should be withdrawn.

### **3. Applicable Law and Analysis.**

At any time after the filing of objections to the Assistant Secretary's findings and preliminary order, the case may be settled. If the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. 29 C.F.R. § 1981.111(d)(2).

Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1981.111(e).

The undersigned reviewed and fully considered the parties' Settlement Agreement and all the terms contained therein. The undersigned concludes all the terms in the Settlement Agreement are fair, adequate, reasonable, and not contrary to public policy.

**4. Ruling and Terms of Order.** The parties' Joint Motion is granted and the Settlement Agreement is **APPROVED**.

a. The formal hearing currently scheduled in this case is cancelled.

b. The Settlement Agreement shall be enforced pursuant to 29 C.F.R. § 1981.113. The parties shall implement the terms as stated in the Settlement Agreement to the extent not otherwise accomplished.

c. This Order shall have the same force and effect as one made after a full hearing on the merits.

d. Pursuant to the agreement of the parties, as set forth in paragraph 1 of the parties' Settlement Agreement, this case is dismissed with prejudice.

e. The parties agreed to keep the specific terms of the Settlement Agreement confidential pursuant to 29 C.F.R. § 70.26. Accordingly, Exhibit A of the Settlement Agreement shall be sealed and remain confidential. The undersigned will issue a companion Sealing Order setting out the manner and scope of the specific terms of the Settlement Agreement that will be sealed.

**SO ORDERED** this day at Covington, Louisiana.

**TRACY A. DALY**  
**ADMINISTRATIVE LAW JUDGE**