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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

SOUTHWESTERN PORTLAND CEMENT  
COMPANY,  
RESPONDENT

Civil Penalty Proceeding

Docket No. LAKE 81-117-M  
A/O No. 33-00161-05011F

Fairborn Plant Mine

DECISION

The Secretary has filed a motion to withdraw its penalty proposal and dismiss this case. His motion is not filed because there is some infirmity in the case, but because Respondent has tendered the full amount of the proposed assessment and "withdrew its Notice of Contest of the Civil Penalty ...." The Secretary relies on the Commission's decision in Secretary of Labor v. Mettiki Coal Corp., Docket No. YORK 80-140 (Oct. 16, 1981).

I am not sure what the Commission intended by its Mettiki opinion, but there are clearly some things that it did not intend. It did not intend to indicate that the fact that the amount of the penalty the Respondent proposed to pay was the same as the "proposed assessment" was of great significance. And it did not hold that the parties could circumvent the Commission's settlement procedures by trying to accomplish by motion to withdraw what they could not do by a motion to approve settlement. Regardless of the form, this is in essence a settlement and the same standards apply.

In the instant case there was a fatal accident but it appears from the special assessment and the accident report that Respondent was in no way responsible. It appears to be a "no fault" violation and the nominal \$200 assessment seems reasonable. I would have approved this amount if the motion had been for settlement approval and I will approve it by granting the motion.

The motion to withdraw is granted and the case is DISMISSED.

Charles C. Moore, Jr.  
Administrative Law Judge