

FILED UNDER SEAL

FEDERAL MINE SAFETY AND
HEALTH REVIEW COMMISSION

POCAHONTAS COAL CO., LLC,)	
)	
Petitioner,)	
)	
v.)	Docket Nos. WEVA 2014-395-R
)	WEVA 2014-1028
SECRETARY OF LABOR,)	WEVA 2014-854
MINE SAFETY AND HEALTH)	
ADMINISTRATION (MSHA),)	
)	
Respondent.)	
)	

SECRETARY'S RESPONSE IN SUPPORT OF POCAHONTAS' MOTION TO
WITHDRAW PETITION FOR DISCRETIONARY REVIEW

The Secretary supports Pocahontas' July 9, 2018 motion to withdraw its appeal in the above-captioned with the following additional facts:

First, Pocahontas has long since paid in full the proposed penalties with respect to both of the Section 104(e) withdrawal orders before the Commission in this case, *i.e.*, Order No. 3576153 (\$5,600) and Order No. 9001636 (\$764).

Second, the agreement between Pocahontas and the Secretary, a copy of which was attached to Pocahontas' motion to withdraw its appeal, does not reduce or otherwise affect any other contested penalties.

Third, for the same reasons the Commission lacks jurisdiction to review the issuance of a notice of pattern-of-violations, as discussed in *Pocahontas Coal*

Company, 38 FMSHRC 176 (2016), the Commission lacks jurisdiction to review the termination of a notice of pattern-of-violations such as that contemplated by the above-referenced agreement between the parties.

CONCLUSION

Accordingly, the Secretary requests that the Commission grant Pocahontas' motion to withdraw its petition for discretionary review in the above-captioned case.

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CERTIFICATE OF SERVICE

I certify that on July 17, 2018, I served a copy of the foregoing response to motion to withdraw petition for discretionary review via electronic mail on:

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