

COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. 12-MSRC-095

COMMONWEALTH OF KENTUCKY,  
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

VS.

SETTLEMENT AGREEMENT

KENNETH L. BYRD

RESPONDENT

\*\*\*\*\*

Come the Complainant, the Kentucky Office of Mine Safety & Licensing ("OMSL"), and Respondent Kenneth L. Byrd ("Byrd"), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration of the final resolution of this action against him, and waiving service of process, probable cause determination, and the right to a hearing so as to expedite this Settlement Agreement, Byrd hereby admits that he was responsible for roof control plan violations on or about August 23, 2011, at Dodge Hill Mine 1 in violation of KRS 352.201 and related regulations, as alleged in OMSL's Complaint. Therefore, Byrd hereby agrees to the following:

1. The probation of his underground mine foreman certificate (#A-337-10), assistant mine foreman certificate (#B-32-07), and his underground miner and temporary surface miner certificates for a period of one (1) year, effective upon the signing of this Settlement Agreement by both parties.

2. During this one-year probationary period, Byrd shall comply with all state and federal mine safety laws and regulations. The willful violation by Byrd of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his said certificates for the remainder of the probationary period.

3. Byrd further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1(13).

4. Byrd states that he has carefully read this Settlement Agreement, that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

5. OMSL and Byrd acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

*Kenneth L. Byrd*

KENNETH L. BYRD  
1518 T.P. Lockett Road  
Morganfield, KY 42437

4-19-12  
DATE

*Freddie Lewis for Freddie Lewis*

FREDDIE LEWIS, Executive Director  
KY Office of Mine Safety & Licensing  
P.O. Box 2244  
Frankfort, Kentucky 40602

5/8/12  
DATE

COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. **12-MSRC-095**

COMMONWEALTH OF KENTUCKY,  
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

**FINAL ORDER**

**KENNETH L. BYRD &  
NATHAN E. WRIGHT**

**RESPONDENTS**

\* \* \* \* \*

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondents Byrd and Wright and the members of the Commission having reviewed the Settlement Agreement filed on or after May 10, 2012 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**.

A copy is attached hereto;

3. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions

during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.

4. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
5. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
6. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 10<sup>TH</sup> day of May 2012.



Hon. William D. Doan, Chair  
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 17<sup>th</sup> day of May 2012:

NATHAN E WRIGHT  
3719 STATE RTE 1508  
STURGIS, KY 42459

KENNETH L BYRD  
1518 T P LUCKETT RD  
MORGANFIELD KY 42437

And by messenger mail to:

HON. **STEPHEN P. THOMPSON**  
OFFICE OF GENERAL COUNSEL  
#2 HUDSON HOLLOW  
FRANKFORT KY 40601  
502/ **564- 2356**  
FAX 502/ 564 - 9212  
Counsel for OMSL

And the original shall be kept on file:

Mine Safety Review Commission  
132 Brighton Park Blvd.  
Frankfort Ky 40601



Bryon Alan Thompson  
Hearing Officer & General Counsel  
Mine Safety Review Commission