

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS

JOE F. CHILDERS, CHAIR
WILLIAM D. DONAN
STEPHEN A. SANDERS

BRYON ALAN THOMPSON
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF APRIL 8, 2010: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Joe F. Childers, Commissioner William D Donan and Commissioner Stephen A. Sanders were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Patrick, Moscoe and Richardson who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The **minutes** for the meeting on **3/8/10** were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

□ **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

- 08-MSRC-009 Daren K. Adams, 08-MSRC-202 Markus D. Richardson, 08-MSRC-299 Arthur Richardson, 08-MSRC-311 Chris Moore, 09-MSRC-064 Paul Sparkman, 09-MSRC-078 Owen L. Tharp, 09-MSRC-143 Richard Rice and 09-MSRC-244 Willis R. Dillman were each called in turn. These miners did not appear or participate and no one on their behalf filed any response. Thus OMSL moved for **permanent revocation** based upon noncompliance with the required submittals, drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- 08-MSRC-162 Buford McIntosh, 08-MSRC-229 Joey K. Scott and 09-MSRC-076 James Jarrett Jr., were each called in turn and a motion was made by OMSL to **continue** each for good cause shown. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- 08-MSRC-249 Lloyd Collins, Jr. III, 09-MSRC-034 Gary Nunley, and 09-MSRC-052 Stanley Baker Jr., were each called in turn. Each gave proof of extenuating circumstances and other reasons to allow entry of an **Amended Settlement Agreement** for enhanced testing to insure future compliance and rehabilitation. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- 09-MSRC-072 Jamie Johnson and 09-MSRC-191 Jason Conn demonstrated compliance with the terms of the settlement agreement they entered and thus OMSL moved for a **withdrawal** of the Motion for Sanction. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- 08-MSRC-273 Billy Carl Ingram and 09-MSRC-117 Jeffrey Phillips, received notice of the hearing but failed to appear. Thus OMSL moved for the entry of a **Show Cause Order** for them to appear at the next meeting. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.

□ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 10-MSRC-038 Michael Bryant, 10-MSRC-040 Brian Watts, 10-MSRC-041 Phillip Rice, 10-MSRC-042 Brenda L. Barger, 10-MSRC-043 Jared Blalock, 10-MSRC-045 March Gist and 10-MSRC-052 Jeremy Mefford were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-013 Michael A. Clifton, 10-MSRC-039 Kevin E Smith, 10-MSRC-049 Gary E. Shackelford and 10-MSRC-054 Sammie L. Hobson, were each called and they failed to appear or contest and no one appeared on their behalf thus OMSL moved for **Show Cause**. Commissioner Donan made a motion to **grant**, which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-044 James Lucas Alley, 10-MSRC-050 Terry C. Thacker, 10-MSRC-051 Charles L. Moore and 10-MSRC-053 Johnathan Mullins were called for a hearing and upon testimony and proof their **appeals were sustained**. A motion was made to grant the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 10-MSRC-027 Michael J. Bruce, 10-MSRC-028 Randall Gross, 10-MSRC-029 Ronnie Hackney, 10-MSRC-030 Anthony D. Prater, 10-MSRC-032 Gregory Lee Rohr, 10-MSRC-033 Larry Hunley, 10-MSRC-034 John R. Conley, 10-MSRC-55 Jerry D. Elliot, 10-MSRC-56 Henry Yonts, 10-MSRC-57 Kenneth Collins, 10-MSRC-58 Robert L. Hays, 10-MSRC-59 Greg L. Caudill, 10-MSRC-60 Michael Venable, 10-MSRC-61 Timothy E. Hawkins, 10-MSRC-63 Gary L. Hays, 10-MSRC-64 Mark A. Neal, 10-MSRC-65 Billy R. Perkins, 10-MSRC-66 Mickey L. Groves and 10-MSRC-67 Gene J. Slone were each called in turn. They did not appear or defend and no one appeared on their behalf. OMSL moved to **revoke** as to each. A motion was made to **grant** the motion as above which was

seconded as appropriate and approved unanimously and was ratified by the Chair.

- 10-MSRC-062 James Brant Tabor was called. OMSL moved for a **continuance** to achieve service and for other reasons. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 10-MSRC-011 Glen Dale Merritt Jr., appeared and Hon. Robert Carlton represented him by phone. They requested a **Settlement Agreement**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for Motions to Modify prior Orders:

- 10-MSRC-037 Devan R. Nantz, appeared but failed to meet his burden of proof that the prior order was in error. The Commission declined to consider of any modification of a prior order to revoke for not less than one year. A motion was made to **deny**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 08-MSRC-189 Jason Dwayne Collins failed to appear despite earlier statements wherein he expressed a great desire to be reinstated. Thus he did not meet his burden of proof. Commissioner Donan made a motion to **deny**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 09-MSRC-147 James D. Branham appeared and met his burden of proof to amend a prior Order into terms of an amended **settlement** that required expanded drug testing. Commissioner Donan made a motion to grant, which was seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

The 11:00 a.m. Docket for “traditional” type cases:

None submitted for this meeting.

Petitions for an Order filed by OMSL in roof control cases:

None submitted for this meeting.

The 1:00 p.m. Docket for “traditional” type cases:

None submitted for this meeting.

Old Business

□ **Ratification of Final Order:**

The Final Order in 09-MSRC-070 Brown was issued by the Commission.

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday May 13, 2010, and the possibility of one or more traditional type hearings.

□ **Status Report & Abeyances;**

None submitted for this meeting.

□ **Appeals**

□ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed the matter has been **dismissed** for a lack of prosecution.

□ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

- **Office & Administrative;**
 - The General Counsel advised that the **mileage** is now forty three (43) cents per mile.
- **Training**
 - **Required Hearing Officer Training:** Next training is on **June 25**.
- **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.
- **Probable Cause Determinations**

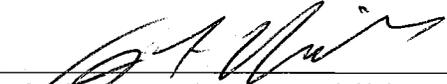
10-MSRC-046 Jerry D. McReynolds, Virginia drug violation, 10-MSRC-047 Jeffery Cocker, Virginia drug violation, and 10-MSRC-048 John C. Skroch, Virginia drug violation, were each presented for a Probable Cause Determination. Commissioner Donan made a motion to grant as to each, which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.
- **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.
- **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday May 13, 2010**.

- **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday May 13, 2010. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Hon. Joe F. Childers
Mine Safety Review Commission

5/13/10

Date