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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

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF JANUARY 14, 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 Joe 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 Childers made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Patrick 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 **12/10/09** were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was so Ordered. Chair Childers signed the minutes.

□ **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-250 Jason B. Combs, 08-MSRC-265 Christopher R. Smith, 08-MSRC-266 Carlos B. Asher, 09-MSRC-033 Nathan J. Draeger, 09-MSRC-067 Brayant Lee Anglin, were each called in turn. The respondents 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. Commissioner Donan made a motion to **grant** the motion which was seconded as appropriate by Commissioner Sanders and approved unanimously and was so Ordered upon the signature of Childers.
- 09-MSRC-011 Keith Adams was called and appeared. He admitted violating the settlement agreement but had extenuating circumstances, thus OMSL agreed to an amended **settlement agreement** in regard to his certifications. That Motion was seconded as appropriate and **approved** unanimously.
- 08-MSRC-170 Tim Cornett was called, and the Commission was informed that he needed to be continued whereupon OMSL moved to **continue** to the February meeting for good cause shown. This Motion was seconded as appropriate and **approved** unanimously.

□ **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 09-MSRC-274 Jeffrey Belcher, 09-MSRC-275 Larry Cornett Jr., 09-MSRC-277 David Lee Childers, 09-MSRC-279 Joseph Burkhart and 09-MSRC-280 Toney Adams were 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 so Ordered. Chair Childers signed the Orders.

- 07-MSRC-243 Jared Stanley was called and OMSL requested a **continuance**. The motion for Continuance was made and was seconded appropriately. Chair Childers signed the Orders.
- 09-MSRC-270 Nathan F. Smith, 09-MSRC-273 Christopher Carroll and 09-MSRC-276 Denzil Moore were each called in turn. These Petitioners requested a hearing and were given notice of the same but failed to appear as ordered. Thus OMSL moved for a **Show Cause** Order as to why their certifications should not be revoked for a period of not less than one year. 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 so Ordered. Chair Childers signed the Orders.
- 09-MSRC-278 Ralph Hurley and 09-MSRC-281 Charles B. Partin were called. At the call of each hearing the Petitioner presented negative tests or valid prescriptions for the drug alleged to be the basis for his suspension for all relevant times. OMSL had no evidence to the contrary. Thus informed the Commission **sustained the appeals** and Ordered immediate **reinstatement** of his certificates. The motion to accept that motion was made and was seconded appropriately. Chair Childers signed the Order.

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

- The Commission called 10-MSRC-004 Wayland C. Mayhew and he was present for the hearing. Mayhew requested a **settlement agreement** as tendered by OMSL. Commissioner Donan made a motion to **grant** the OMSL Motion which was seconded by Commissioner Sanders. The motion carried unanimously, and were so Ordered. Chair Childers signed the Order.

**The 11:00 a.m. Docket for Motions to Reconsider:**

*None submitted for this meeting.*

**11:00 a.m. Appeal of Penalty Assessment**

*None submitted for this meeting.*

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

- The case of 08-MSRC-105 McCarty, Hall & Howard, represented by Hon. Shelton, and Hon. Smock for OMSL was called for a **hearing**. The hearing was continued because a **settlement** was pending.

**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:**

*None submitted for this meeting.*

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday February 11, 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 **submitted** for a ruling.
- 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 one (41) cents per mile.
- **Training**
  - **Required Hearing Officer Training:** Next training is in June.
- **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**
  - *None submitted for this meeting*
- **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 February 11, 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 February 11, 2010. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

  
 Hon. William D. Donan  
 Mine Safety Review Commission

2/11/10.  
 Date