STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
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COMMISSIONERS

DENISE MOORE DAVIDSON,
CHAIR
WILLIAM D. DONAN
JOE CHILDERS

BRYON ALAN THOMPSON
GENERAL COUNSEL

MINE SAFETY REVIEW COMMISSION
MINUTES

MINUTES OF THE REGULAR MEETING OF JANUARY 8, 2009: 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 Denise Moore Davidson, William D Donan and Commissioner Joe Childers 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 by Commissioner Donan. 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; Lentz, Thompson, Morrison, Geisler, 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, Tara New.

- The **minutes** for the meeting on **12/11/08** were discussed. Commissioner Childers made a motion for approval, which was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered. Chair Davidson 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:**

  - 06-MSRC-070 Richard F. Bray, 07-MSRC-015 Michael Ray King, 08-MSRC-243 James C. Price were called in turn. None of these respondents appeared or participated and no one on their behalf filed any response. OMSL moved for **one (1) year revocation** as to each based upon noncompliance with the required submittals for reinstatement by the Mining Board; one of the terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order for each. Commissioner Childers made a motion to **grant** the motions which were seconded by Commissioner Donan. The motions carried unanimously, and were so Ordered upon the signature of Davidson.

  - 08-MSRC-032 Jason B. Pauley, 08-MSRC-176 Matthew M. Wolford were called in turn. Neither of these respondents appeared or participated and no one on their behalf filed any response. OMSL moved for **permanent revocation** as to each 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 for each. Commissioner Childers made a motion to **grant** the motions which were seconded by Commissioner Donan. The motions carried unanimously, and were so Ordered upon the signature of Davidson.

  - 08-MSRC-195 Jordan K. Price was called and he appeared and requested a hearing. OMSL based its motion for sanctions upon his apparent failure to submit drug tests. Hacker demonstrated that he obtained tests elsewhere, and thus OMSL moved to **withdraw** its motion. That Motion was seconded as appropriate and approved unanimously.

  - 08-MSRC-117 Benjamin M. Wagner was called and he appeared to defend. Commissioner Childers recused citing a conflict. He requested an Amended Settlement Agreement that enhanced the original terms of the **settlement** and would extend the terms of the testing. OMSL agreed to settlement. That 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 08-MSRC-284 Justin Varney, 08-MSRC-285 William A. Looney, 08-MSRC-299 Arthur Richardson, 08-MSRC-303 Ryan W. Sexton, 08-MSRC-304 Gary D. Wright, 08-MSRC-305 Michael Bentley, 08-MSRC-309 Shane Blackburn, 08-MSRC-310 Walter G. Napier, 08-MSRC-311 Chris Moore, 03-MSRC-312 Teddy B. Johnson II, 08-MSRC-317 and, Eric S. Cantrell, were called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. Commissioner Childers cited a conflict regarding Richardson, Sexton, Bentley, Cantrell and Johnson. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission called also the KRS 351.120(12) Petition for Appeal of, 08-MSRC-263 Gary Dean Adams and Jr., 08-MSRC-302 John C. Thomas, neither of these Petitioners appeared participated or defended upon the call of the hearing and did not request a continuance or other disposition prior to the hearing. Each were duly notified and scheduled for the hearing *they* requested for this meeting. **No one appeared** and they were Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Childers made the motion for Show Cause which was seconded by Commissioner Donan. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission also considered 07-MSRC-243 Jared Stanley, represented by Hon. Randy Clark. OMSL moved as to each for a **continuance** to the next meeting to allow further discovery. Commissioner Childers made the motion approve Petitioner's continuances which were seconded by Commissioner Donan. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- 08-MSRC-251 Greg Hylton, 08-MSRC-268 Jonathan Joseph, 08-MSRC-272 Randall Miller, 08-MSRC-282 Jeremy S. Childers, were each set for a Show Cause and did not appear, participate or defend upon the call of the hearing and did not request a continuance or other disposition prior to the hearing. Therefore a motion for an Order to **Revoke** their certifications for not less than one year was made by OMSL. Commissioner Childers recused as to Hylton. Respondent's motions were seconded appropriately. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- 08-MSRC-301 Hubert Brock, Jr., 08-MSRC-293 Robert D. Cable, and 08-MSRC-300 Ronnie Hackney were called and each requested a **hearing**. They demonstrated that they were not in violation of the alcohol and substance abuse policy. Brock's appeal was sustained because his confirmatory test taken immediately after the initial screening was negative. The others demonstrated valid prescriptions. OMSL stated it had no evidence to the contrary and its investigation tended to confirm those statements of fact. Commissioner Childers recused citing a conflict in all three cases. Commissioner Donan moved to **sustain his appeal**, Commissioner Davidson seconded and the motion carried unanimously. Chair Davidson signed the Order.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were <u>not</u> appealed – "simple" revocations:

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-286 John W. Robinette, 08-MSRC-287 Bryan G. Johnston, 08-MSRC-288 Rexford T. Music, 08-MSRC-290 Brian H. Matney, 08-MSRC-292 David W. Barrett, 08-MSRC-294 Daniel L. Brandenburg, 08-MSRC-295 Brian O. Thomas, 08-MSRC-296 Brad S. Whitaker, 08-MSRC-298 William E. Collins, Jr., 08-MSRC-306 Donald J. Dye, and 08-MSRC-307 Lance D. Hyde. Commissioner Childers made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded by Commissioner Donan. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- When called, 08-MSRC-291 John D. Potter, 08-MSRC-297 consolidation of 08-MSRC-313 James E. Napier II and 08-MSRC-308 Brian C. Couch appeared and OMSL indicated **settlement** was requested by the Respondents and appropriate under the circumstances and moved to withdraw its motion to revoke. Commissioner Childers recused as to Couch. Commissioner Donan made a motion to **grant**, the OMSL Motion to settle as to each which was seconded appropriately. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Order.

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

- The Commission then called 08-MSRC-038 Randolph Hardin., who requested reconsideration from one year revocation because he was unable to travel and complete the pre-reinstatement terms because of home incarceration and was thus prohibited from compliance with the previous pre-reinstatement requirements of the Settlement Agreement. OMSL had no proof to the contrary and indicated its investigation was consistent with his testimony. Commissioner Davidson cited a conflict and recused. Commissioner Donan made a motion to **grant**, the Motion for Reconsideration and **Reinstatement** which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Donan signed the Order.

- The Commission then called 08-MSRC-270 Joey Johnson. He requested reconsideration to grant credit for suspension time served when his reinstatement stalled because language in drug counselor's letter was deemed insufficient by the Mining Board. Commissioner Donan made a motion to **grant**, the Motion which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

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

- At the call of 07-MSRC-143 William H. Harris, Hon. Haines for OMSL, moved to **continue** this matter the March 12, 2009 meeting. Commissioner Donan made a motion to grant which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

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

  None were filed for this meeting.

Old Business

Ratification of Final Order:

None were filed for this meeting.

- **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday February 12, 2009, 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 04-MSRC-002 **Willie "Tick" Sizemore**, et al. and learned that it had been appealed to the **Court of 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 that Hon. Barbara Pauley is filing a **briefing schedule**.

  - The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The matter was **briefed** by Hon. Larry Moscoe.

  - 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 that they were **briefing** the matter.

New Business

- **Office & Administrative;**

  - The General Counsel advised that the **mileage** is reduced to thirty seven (37) cents per mile.

- **Training**

- **Required Hearing Officer Training:** Newly appointed Commissioner Joe F Childers is scheduling his required 40 hour new miner training and his 13B specific training is set for May 20. The required annual training for compliance with the KRS 13B hearing officer statutory requirements for all of MSRC is on Friday June 19, 2009.

- **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the outcome of the cases heard as above and then reconvened to issue determinations.

- **Probable Cause Determinations**

  Probable cause was found as to 08-MSRC-319 Casey Reed.

- **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 12** 2009.

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

The next meeting of the Mine Safety Review Commission will be held on Thursday February 12, 2009. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

2/12/09

Chair Denise Moore Davidson — Date
Mine Safety Review Commission