

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT, KENTUCKY 40601
TELEPHONE: (502) 573-0316
FAX: (502) 573-0344

COMMISSIONERS

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

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JUNE 10, 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, Russell and Richardson who were representing the Office of Mine Safety and Licensing. Amy Denham was present from OMSL. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The **minutes** for the meeting on **5/13/10** 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:**

 - 10-MSRC-038 Michael Bryant was called. This miner did not appear or participate and no one on his behalf filed any response. Thus OMSL moved for **permanent revocation** based upon noncompliance with either 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 motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
 - 10-MSRC-004 Walon C. Mayhew, and 09-MSRC-146 Glen T. Booth were each continued to allow collection of further proof. 09-MSRC-059 Toy D. Strong, was **continued** to allow submittal of one missing drug test which was submitted after the meeting and in that case he was excused from appearing on July 8, 2010 and the Motion for Sanction withdrawn. Appropriate motions were made and seconded and the Orders were signed by the Chair. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
 - 10-MSRC-069 Chad Bowling and 09-MSRC-025 Ryan David Hughes were called and 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.
- **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-068 Jeff Shelton, 10-MSRC-073 Gary Cochran, 10-MSRC-085 Roy Daniel Thomas and 10-MSRC-089 Randy Wood 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-088 Danny H. Stewart requested a continuance. OMSL did not oppose the motion for **continuance**. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-077 John Mark Sammons was called but failed to appear or contest and no one appeared on his behalf thus OMSL moved for **revocation**. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was ratified by the Chair.
- 08-MSRC-201 Ronnie Slone and 10-MSRC-084 James Ray Maggard were called and no one appeared, thus OMSL moved for a **show cause** order. 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-091 Roger Webb, was called and after review was **reinstated** by prevailing on his appeal because no violation of law was found. 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-096 Terry L. Bartley, 10-MSRC-097 Jamie Anderson, 10-MSRC-098 Mitchell Higgins, 10-MSRC-099 Phillip Clark, 10-MSRC-100 William E. Hosman, 10-MSRC-101 Joey Benjamin Taylor, 10-MSRC-102 Steve W. Haynes and 10-MSRC-103 Vernon Fugate 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** each motion as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- 10-MSRC-104 Billy Sturgill was called. OMSL moved for a **continuance**. 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-095 Jim Hensley was called. He appeared and 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-055 Jerry D. Elliot failed to appear. 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-231 Joe A. Howard and 09-MSRC-132 Johnny Brown both appeared and each met his burden of proof to amend a prior Order to incorporate 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:

- 10-MSRC-020 Alvin Noble, Noah Vance and D&D Mining, Inc. was called and OMSL moved to continue as to Vance to September 9, and as to the others to July 8 to allow for settlement or case preparation. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 06-MSRC-015 Moore & Rutherford, previously a MSHA Section 110(c) type abeyance, was called and OMSL moved for **settlement** as to both. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.

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 scheduled for this meeting.

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday July 8, 2010, and the possibility of one or more traditional type hearings.

□ **Status Report & Abeyances;**

08-MSRC-124 Cyfers & Williamson, active MSHA Section 110(c) investigation, **continued to December 9, 2010.**

□ **Appeals**

- 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 remains forty three (43) cents per mile.

□ **Training**

- **Required Hearing Officer Training:** Next training is the 25th of this month.

❑ **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-093 Billy W. Hamilton, 10-MSRC-094 David Evans & Melvin Smith, 10-MSRC-105 Frasure Creek & Sonny Salyers, 10-MSRC-106 Glen D. May, 10-MSRC-108 Shannon Owens, 10-MSRC-111 Viper Coal, 10-MSRC-112 Jerry B. Combs and 10-MSRC-113 Tacket, Cantrell, Page & Coal Diggers 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.

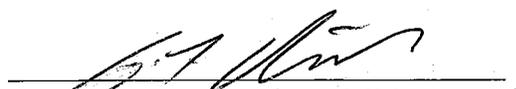
❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.

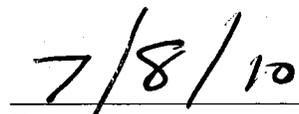
❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday July 8, 2010.**

❑ **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 July 8, 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


Date