

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 11, 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 Joe Childers and 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 by Commissioner Sanders. 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, and Tara New.
- The **minutes** for the meeting on **5/14/09** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Sanders. 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:**
 - 07-MSRC-185 Mickey Jackson, 08-MSRC-117 Benjamin Wagner, 08-MSRC-131 Gregory A. Baker, 08-MSRC-152 Freddie Hubbard, 08-MSRC-187 Matthew Yearly, 08-MSRC-240 Johnny Clark, 08-MSRC-309 Shane Blackburn, and 09-MSRC-026 Gary N. Sester, were each called in turn. These respondents did not appear or participate and no one on their behalf filed any response. 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 by Commissioner Sanders. The motion carried unanimously, and was so Ordered upon the signature of Childers.
 - 07-MSRC-225 Jeremy Wade Crain, and 08-MSRC-212 Johnny Younce were each called in turn. Crain did not appear or participate and no one on his behalf filed any response. Younce appeared but did not meet his burden to show cause as to why sanctions should not be imposed. OMSL moved for no less than a **one year revocation** based upon noncompliance with the required submittals, drug testing or evaluation terms for reinstatement by the Mining Board, part 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 by Commissioner Sanders. The motion carried unanimously, and was so Ordered upon the signature of Childers.
 - 07-MSRC-221 Christopher E. Collier was called. OMSL stated they obtained tests and they were negative and thus OMSL moved to **withdraw** its motion for permanent revocation. That Motion was seconded as appropriate and approved unanimously.
 - 07-MSRC-180 Michael B. Peterson, 08-MSRC-106 Christopher Turner, 08-MSRC-048 Jason Lawson, 08-MSRC-055 Vealor M. Brown and 08-MSRC-179 David D. Blair were each called, whereupon OMSL moved to **continue** to the July 9 meeting for good cause shown. This Motion was seconded as appropriate and approved unanimously.

- 08-MSRC-221 Michael Sexton was called and he appeared to defend the OMSL motion for permanent revocation. Each claimed extenuating circumstances and requested an Amended Settlement Agreement that extended and enhanced the original terms of the **settlement**. OMSL agreed to settlement. Those Motions were 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-103 Douglas Owens, 09-MSRC-110 Gary Brock, 09-MSRC-111 Danny R. Spencer, 09-MSRC-113 Joshua Lee Charles, 09-MSRC-115 Isaac W. Potter, 09-MSRC-116 Randal D. Mullins, and 09-MSRC-117 Jeffery Phillips 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. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

 - The Commission called also the KRS 351.120(12) Petition for Appeal of 09-MSRC-112 Christopher Thomas, 09-MSRC-087 Marcus Roberts and 09-MSRC-118 Michael R. Moore none 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 Donan made the motion for Show Cause which was seconded by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

 - 09-MSRC-099 Rocky D. Harless and 09-MSRC-101 Mark West were 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. That motion was seconded appropriately. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.

- 09-MSRC-109 Billy Joe Whitehead was called and OMSL requested a **continuance**. Commissioner Donan made the motion for Continuance

which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.

- 09-MSRC-097 David C. Puente was called. Upon the taking of testimony and evidence, Puente presented a negative or “clean” hair follicle test for all relevant times regarding the allegations supporting his suspension. The Commission then **sustained** his appeal, with the concurrence of OMSL. That motion was seconded appropriately. The motion carried unanimously, and was so Ordered. 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 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; 09-MSRC-104 Johnny L. Estep, 09-MSRC-105 Randy R. Perry, 09-MSRC-106 Edward G. Shepherd, 09-MSRC-107 Doyle Baker, 09-MSRC-108 Stephen S. McCown, 09-MSRC-122 Larry A. Evans, 09-MSRC-123 Brandon Caudill, 09-MSRC-124 Dale Sullivan, 09-MSRC-125 Austin J. Craig, and 09-MSRC-129 Clifton Dale Deaton. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.
- The Commission discussed the KRS 351.120(12) suspension for alcohol and substance abuse policy violations of 09-MSRC-121 Christopher S. Crum, 09-MSRC-126 Harlan D. Mullins, 09-MSRC-127 Timothy N. Jent, 09-MSRC-128 David J. Jenkins and 09-MSRC-130 Michael S. Potter. OMSL requested a **Continuance** to allow time to potentially resolve the allegations. Commissioner Sanders made a motion to **grant**, which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.
- The Commission also called 09-MSRC-093 Timothy Crawford, who indicated that he wished to settle. OMSL tendered a **settlement** and Commissioner Childers moved to approve the settlement after review. Commissioner Donan seconded and then signed the Order.

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

- The Commission then called 06-MSRC-081 Roger D. Little, 06-MSRC-090 Anthony Bledsoe and 08-MSRC-217 Brian Caldwell and subsequently **denied** their reconsiderations because they failed to appear and meet their burden of going forward. So moved Sanders and this was seconded by Commissioner Donan. The motions carried unanimously, and were so Ordered.
- The Commission then called, 07-MSRC-234 Isaac Fields who appeared but requested time to garner the proof necessary to show the prior permanent revocation was in error. The Commission **continued** to July 9 to allow him time. So moved Sanders and this was seconded by Commissioner Donan. The motions carried unanimously, and were so Ordered.

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

- The Commission called 06-MSRC-015 **Moore & Rutherford**, in regard to the status report filed, Federal Investigation MSHA Section 110(c) concluded as to Moore but the status of Rutherford is unknown at this time. OMSL requested a **continuance** to **July 9** to investigate. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- 08-MSRC-124 **Cyfers & Williamson**, MSHA Section 110(c) investigation continues and OMSL requested another **status hearing in December**. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- The Commission called consolidated cases 08-MSRC-231 and 08-MSRC-319 **Reed**. OMSL and Reed by counsel proposed **settlement**, after discussion in executive session the penalty was enhanced. After discussion the parties then accepted the revision and OMSL requested approval. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- 09-MSRC-040 Francis, Lester & Dotson, was called to hear OMSL’s Motion for **default** in regard to **Dotson**. He appeared and filed an answer so Dotson requested the Commission **deny** the motion. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.

- OMSL then presented 09-MSRC-042 Rowe, Ratliff & Johnson, for a **settlement** for **Johnson**. OMSL explained the settlement and then requested approval. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- Finally, the Commission took up 09-MSRC-071 **Robert Salyer**, for a motion to intervene, with terms allowing discovery. This matter was held in **ABEYANCE**, to **August 13, 2009**, to accommodate the schedules of the Parties involved, however discovery by interveners may be held pending ruling, and interveners may attend depositions and ask questions. OMSL did not object to this motion. Commissioner Sanders recused citing a conflict. Childers moved to grant the motion and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.
- **Petitions for an Order filed by OMSL in roof control cases:**

09-MSRC-120 IGC Knott County was called and considered. OMSL requested **ratification**. So moved Sanders and this was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered.

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 July 9, 2009, and the possibility of one or more traditional type hearings.

□ **Status Report & Abeyances;**

Those submitted for this meeting were handled as above in traditional cases.

□ **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 will likely be **settled**.
- 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 reduced to thirty eight (38) cents per mile.
- **Training**
 - **Required Hearing Officer Training:** Newly appointed Commissioner Joe F Donan is obtaining his required 40 hour new miner training and his 13B specific training. The required annual training for compliance with the KRS 13B hearing officer statutory requirements for MSRC Commissioners is on **Friday June 19, 2009**.
- **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Reed case as above and then reconvened to issue its determination.
- **Probable Cause Determinations**

The Commission then considered the following in regard to the issue of Probable Cause so that a finding could be made and a scheduling order issued; 09-MSRC-119 **Saylor, Howard & Robbins**, and 09-MSRC-131 **Mullins, Osborne, Fields & McIntyre**, were presented for a finding of **probable cause** at this meeting. After discussing both in turn, a finding of probable cause was made.

❑ **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 9** 2009.

❑ **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 9, 2009. 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