

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 **MAY 13, 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 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. Mining Board Member Jim Vicini appeared to observe.
- ❑ The **minutes** for the meeting on **3/11/10** 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:**

- 06-MSRC-090 Anthony Bledsoe, 08-MSRC-162 Buford McIntosh, 08-MSRC-261 Ronald Holcomb, 08-MSRC-283 Lonnie J. Johnson, 08-MSRC-284 Justin Varney, 08-MSRC-285 William A. Looney, 08-MSRC-306 Donald J. Dye, 08-MSRC-308 Brian C. Couch, 08-MSRC-315 William D. Ray, 09-MSRC-053 Jimmy D. Hamilton, 09-MSRC-059 Toy D. Strong, 09-MSRC-075 Douglas Gray, 09-MSRC-079 Loy B. Coots, 09-MSRC-117 Jeffrey Phillips, 09-MSRC-132 Johnny Brown, 09-MSRC-203 Jason Bush and 09-MSRC-229 Christopher A. Dixon 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 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 motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- 08-MSRC-229 Joey K. Scott was called and a motion was made by OMSL to **continue** for good cause shown. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 08-MSRC-211 Shane Martin was 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 motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 09-MSRC-134 James Travis Gay, 08-MSRC-267 Roland Mullins and 08-MSRC-273 Billy Carl Ingram 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.

□ **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-069 Chad Bowling, 10-MSRC-070 Jackie Parrott, 10-MSRC-071 Clyde Daniels, Jr., 10-MSRC-072 Frank Mitchell, 10-MSRC-074 Gary Mullins, 10-MSRC-075 Michael Howard, 10-MSRC-078 Timothy Reed, 10-MSRC-081 Odell K. Martin, 10-MSRC-082 Randall D. Stump, and 10-MSRC-086 Jarrod Ramage were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. Commissioner Childers recused as to Thacker citing a conflict. 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.
- 08-MSRC-201 Ronnie Slone, and 10-MSRC-068 Jeff Shelton requested a continuance. OMSL did not oppose the motion for **continuance**. 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-013 Michael A. Clifton, 10-MSRC-039 Kevin E Smith, 10-MSRC-049 Gary E. Shackelford, and 10-MSRC-054 Sammie L. Hobson were called and each failed to appear or contest and no one appeared on anyone's behalf thus OMSL moved for **revocation**. 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-073 Gary Cochran and 10-MSRC-077 John Mark Sammons, 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-076 Lillo David Howard was called and after review was **withdrawn** by agreement 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-62 James Brant Tabor was called. He did not appear or defend and no one appeared on his behalf. OMSL moved to **revoke**. 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-079 Tim Collett 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.

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

- 07-MSRC-039 Michael Faustich appeared and meet his burden of proof of providing drug tests and demonstrating compliance. A motion was made to **grant** the return of his certifications, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 10-MSRC-066 Mickey L. Groves, 09-MSRC-231 Joe A. Howard and 10-MSRC-059 Greg L. Caudill failed to appear. Thus they did not meet their 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-234 Charlie Quinn 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:

09-MSRC-229 Mills, Castle & Wells; Richard Wells appeared and moved to enter a **settlement agreement** in the matter. 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 June 10, 2010, and the possibility of one or more traditional type hearings.

□ **Status Report & Abeyances;**

08-MSRC-124 Cyfers & Williamson, MSHA Section 110(c), **continued to June 10**, for further review.

□ **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 now forty three (43) 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**

10-MSRC-080 Ronnie D. Terry, 10-MSRC-083 Waugh, Bartley & Mock and 10-MSRC-087 Randall E Miller 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.

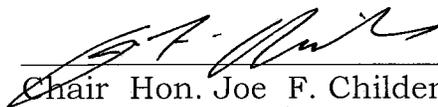
□ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.

□ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday June 10, 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 June 10, 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

June 10 '10
Date