

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
WILLIAM D. DONAN, CHAIR
DAVID BRIAN SLOAN
W. BRYAN HUBBARD

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF AUGUST 14, 2014: 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:**, Commissioner David B. Sloan, W. Bryan Hubbard and the Chair and Commissioner William D. Donan attended. 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 Sloan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously.
- **Welcome Guests:** the Office of General Counsel staff attorneys were present; Ottley, Girard, Smock, Slayton and Russell who were representing the Division of Mine Safety. The OGC was assisted by Kari Sutherland.
- The **minutes** for the meeting on **7/10/14** were discussed. Commissioner Sloan made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

□ **OMSL Motions for Sanctions, Permanent or three (3) 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:**

- 12-MSRC-049 Michael Peters, 12-MSRC-111 Anthony Scott Dennis and 12-MSRC-116 James E. Hatfield were called upon a motion for permanent revocation by DMS/OGC for failure to comply with the testing protocol under prior agreed orders. No one appeared nor was any responsive pleading of record. DMS/OGC so moved, which was seconded and passed unanimously with the Chair signing the Final Order.
- 12-MSRC-106 Bill C. Brashears, 12-MSRC-171 Jonathan Lee Harvey and 12-MSRC-040 Alex Harvey were called upon a motion for 3 year revocation by DMS/OGC for failure to comply with the testing protocol under prior agreed orders. No one appeared nor was any responsive pleading of record. DMS/OGC so moved, which was seconded and passed unanimously with the Chair signing the Final Order.
- 12-MSRC-091 Timothy S. Cavanaugh, 12-MSRC-093 Corey Chaney and 13-MSRC-139 Stevie Clark were called and DMS/OGC moved for continuances to perfect service. DMS/OGC so moved, which was seconded and passed unanimously with the Chair signing the Final Order.

□ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – revocations:**

- 14-MSRC-086 James Russell was called after requesting an appeal from a second offense. He appeared, admitted the violation but gave proof of treatment and subsequent clean tests. MSRC determined that a Final Order with enhanced testing would allow him to go back to work on probation. Commissioner Sloan so moved, which was seconded and passed unanimously with the Chair signing the Final Order.
- 14-MSRC087 Jason Pease was called but did not appear. OGC/DMS stated that he alleged having a prescription. DMS/OGC moved for a Show Cause Order for September, which was seconded and passed unanimously with the Chair signing the Final Order.

9:00 a.m. failed to appeal or chose drug treatment cases – “new law” 3 year revocation

- 14-MSRC-099 Chad A. Blankenship, 14-MSRC-100 Ricky S. Slone, 14-MSRC-101 Marvin Bailey, 14-MSRC-102 Justin Baldwin 14-MSRC-104 Darian K. Hill, 14-MSRC-105 Vincent Justice Jr., 14-MSRC-106 Roy D. Mayes and 14-MSRC-107 Jason D Fletcher failed to appear, defend or participate upon the call of each of their cases. OMSL requested a **3 year revocation** except where otherwise noted for 5 years for second offenses. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 14-MSRC-103 Daniel L. Walters was revoked at this meeting prior to determining that he filed an appeal request contemporary with this action and thus the revocation was rescinded with the hearing set for the September 11, 2014 meeting. This file was consolidated with 14-MSRC-109 by the General Counsel.

9:00 a.m. completed treatment & clean test drug cases, reinstate

- 14-MSRC-095 James Tyler Shaffer, 14-MSRC-096 James J. Brock, 14-MSRC-097 Benjamin J. Perry, 14-MSRC-098 Willie Dillingham and 14-MSRC-111 Robert L Rhoades demonstrated completion of counseling and gave a clean drug test and DMS/OGC moved for **reinstatement**. A motion was made, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

Petition for Order in roof control violation

- *None submitted for this meeting.*

Non-licensed facility drug cases

- *None submitted for this meeting.*

The Docket for “traditional” type cases:

- 14-MSRC-064 Hamilton, Collins & Couch was called and DMS/OGC moved for settlement regarding Collins. A motion was made, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 14-MSRC-033 Mayo Resources was called and DMS/OGC moved for settlement A motion was made, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

Old Business

□ Ratification of Final Order:

- None submitted for this meeting.

□ 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. 07-MSRC-100 **Hendrickson Equipment** & James Hylton is submitted for a ruling. **13-MSRC-080 Ousley/Tram** was filed but the parties are discussing settlement.

New Business

□ Office & Administrative;

- The General Counsel advised that the **mileage** is forty eight (48) cents per mile until September.
- **Training:** The statutorily required mine site visits were postponed until the Commissioner Hubbard is available.
- **Required Hearing Officer Training:** Next required Hearing Officer Training is in June 2015 at the KY History Center. Initial Hearing Officer Training is in March 2015 for Commissioner Hubbard.
- **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 September 11, 2014.**
- **Adjournment:** Commissioner Sloan made a motion to adjourn, which was seconded and the motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday September 11, 2014. 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 Chair
Mine Safety Review Commission

Sept 11, 2014
Date