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GOVERNOR



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SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS

WILLIAM D. DONAN, CHAIR
J. DUNCAN PITCHFORD
DAVID BRIAN SLOAN

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF AUGUST 8, 2013: 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:** The Chair and Commissioner William D. Donan, and Commissioner J. Duncan Pitchford and Commissioner David B. Sloan 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 were present and also staff attorneys for OGC; Ottley, Girard, Smock, Patrick and Russell who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland.
- The **minutes** for the meeting on **7/8/13** 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:**

- None submitted for this meeting.

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

- 13-MSRC-084 Russell D Bean Jr., 13-MSRC-087 Cordero Hardrick, 13-MSRC-088 Travis Pennington and 13-MSRC-089 Eric A. Smith were each called. Each one appeared. OMSL moved to enter a **settlement** agreement as to each. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-262 Charles Hoskins was called and OMSL moved to **continue** to October 10. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-093 Nathan S. May was called and he appeared and requested a hearing. At the hearing he demonstrated that more likely than not the test originating the suspension was in error. A motion was made to **sustain** his appeal. The motion carried unanimously, and was ratified by the Chair.

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

- 13-MSRC-096 Earl Lawson was called. He did not appear or participate in any way and thus OMSL moved for a **3 year revocation**. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-082 Allen Williamson, was revoked last month but was in treatment and his therapist made a late request for extension of time and he requested the Commission **rescind** order of July 11 revoking him for 3 years. A motion was made to rescind, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

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

- 13-MSRC-085 Boyd Williams, 13-MSRC-090 Roger Blair and 13-MSRC-091 Joshua Wagers demonstrated that they completed counseling and had a clean drug test and moved to be **reinstated**. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

Petition for Order in roof control violation

- 13-MSRC-092 Liggett Mining Inc., OMSL moved for an Order deeming Liggett liable for a roof control violation by virtue of the fact that they did not appeal and thus owed an assessed penalty of \$900. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

The Docket for “traditional” type cases:

- 08-MSRC-124 Cyfers & Williamson was called and OMSL presented a settlement and made a motion to approve it as part of the Final Order. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-123 Combs, Dishner & Cumberland River Coal, was called and OMSL presented a settlement and made a motion to approve it as part of the Final Order. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-104 James E. Kelly & Israel Clark, was called for a presentation of a settlement but the details were not yet finalized and thus it was continued to October 10 for ratification of the settlement. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-105 Napier, Sizemore and Lunsford, hearing for Napier, likely default, Sizemore was called for presentation of a settlement. (Lunsford settled previously.) OMSL reported that the settlement was likely but that more time was needed for signature and finalizing the language. OMSL moved for a continuance to November 14. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-112 K&D Mining was called for a pre-hearing, whereupon OMSL stated they would be filing a Complaint, and in fact did so by August 30.

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.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** remains forty seven (47) cents per mile.

❑ **Training**

- ❑ **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June, 2014** at the KY History Center and in **March 2014** for Commissioner Sloan.

- ❑ **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**

- Probable cause was found for 13-MSRC-086 Andrew J. Johnson and 13-MSRC-095 Ronald Scott & Jeremiah Jones. A motion was made which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair as to each case.

❑ **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 October 10, 2013.**
- **Adjournment:** Commissioner and Chair Donan 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 October 10, 2013. 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

10 Oct 2013

Date