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GOVERNOR



LEONARD K. PETERS  
SECRETARY

COMMONWEALTH OF KENTUCKY  
**ENERGY AND ENVIRONMENT CABINET**

MINE SAFETY REVIEW COMMISSION  
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COMMISSIONERS  
WILLIAM D. DONAN, CHAIR  
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**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF **AUGUST 9, 2012**: 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, 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:** Freddy Lewis, OMSL Director, Hon. Mike Haines, Energy and Environment Cabinet General Counsel were present and also staff attorneys for OGC; Huffman, Long, Girard, Smock and Russell 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 **07/12/12** 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:**

- The Commission discussed the KRS 351.120(12) appeal from a suspension for alcohol and substance abuse policy violations of 11-MSRC-245 Jim C. Blackwell. The Petitioner did not appear and no one entered an appearance on his behalf or otherwise attempted resolve the allegations. OMSL moved for a **Permanent Revocation**. A motion was made to **grant** which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-054 Mark D. Wilson was called and requested a **modification of the prior Settlement Agreement** to extend testing and complete counseling. OMSL did not object. A motion was made to grant and seconded. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-250 William Whitfield was called. OMSL made a motion to **withdraw** its motion for sanctions after proof of prescriptions were presented. A motion was made to grant and seconded. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-134 James D. Cornett was called. He did not appear but was missing one test and a statement regarding the completion of counseling. The Commission determined that a **Show Cause** for October 11 was appropriate along with a **suspension** of his certificates. A motion was made to grant and seconded. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-072 Michael Jacobs was called and appeared. He claimed impossibility of performance and requested an extension of time to complete testing. He was ordered to take **seven more monthly tests**. A motion was made to grant and seconded. The motion carried unanimously, and was 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 12-MSRC-106 Billy Brashears, 12-MSRC-110 Edward L. Mullins, previous 09-MSRC-188, 12-MSRC-111 Anthony Scott Dennis

and 12-MSRC-116 James Hatfield who were both called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. A motion was made to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.

- 12-MSRC-115 Bert Davisson and 12-MSRC-117 Donnie James Maxie were called and requested a hearing and presented evidence, testimony and documentation that demonstrated that more likely than not the determination of **suspension was in error**. Each moved to **sustain** his appeal. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-118 Jason Phillips and 12-MSRC-155 Christopher Lovell, were each called and did not appear. OMSL moved to **Show Cause** for not less than one year. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-099 James B Oaks, 12-MSRC-108 Randall Z. Wagers were each called in turn regarding a Show Cause issued at the last meeting for their failure to appear or participate in the hearing they requested. No one appeared at this meeting, thus OMSL moved for **1 year revocation**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-253 Ryan Ratliff was called and OMSL stated that he was in rehabilitation and should be **continued** six months. A motion was made to **grant**, which was seconded as appropriate. The motion carried 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:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) potential revocations from suspensions for alcohol and substance abuse policy violations of 12-MSRC-130 Jeffery A. Sparks, 12-MSRC-136 Michael J. Rhodes, 12-MSRC-141 Freddie R. McCown, 12-MSRC-149 Chris B. Crawford and 12-MSRC-152 James W. Clevidence who were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. A motion was made to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.

- 12-MSRC-121 Zachary Stevens, 12-MSRC-126 Douglas S. Koon, 12-MSRC-127 Ernest Howard, Jr., 12-MSRC-128 Walter D. Brown, 12-MSRC-129 Nathan D. Cunningham, 12-MSRC-131 Jason B. Stumbo, 12-MSRC-132 Jason B. Brown, 12-MSRC-133 Dewey M. Estep, 12-MSRC-134 Donald L. Belcher, 12-MSRC-135 Thomas Chase Daniels, 12-MSRC-137 Willis Little, Jr., 12-MSRC-138 Bradley D. Meade, 12-MSRC-139 Tommie Slone, 12-MSRC-140 Jennifer D. Wheat, 12-MSRC-142 Cola Vance, Jr., 12-MSRC-144 Jessie Joseph, 12-MSRC-145 Bobby W. Helton, 12-MSRC-146 Brandon G. Lowery, 12-MSRC-147 Jim D. Barlowe, 12-MSRC-148 Richard A. Chapman, 12-MSRC-149 Chris B. Crawford, 12-MSRC-150 Brack L. Meade, 12-MSRC-151 Russell L. Bowling, 12-MSRC-153 Christopher C. Bush were each called in turn regarding the Show Cause issued for each of their cases for their failure to request a hearing. No one appeared at this meeting, thus OMSL moved for **1 year revocation**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-066 William Nathan Hall, 12-MSRC-119 David B. Miller, 12-MSRC-120 Jason S. Cooper, 12-MSRC-122 Davin Day, 12-MSRC-123 Matthew A. Bevins, 12-MSRC-124 Charles Scott, 12-MSRC-125 Hi J. Carter II and 12-MSRC-143 James D. Francis were each called in turn. Good reasons were presented for each as a cause for a **continuance**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

**The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:**

- None submitted for this meeting

**The 11:00 a.m. Docket for Petition for Roof Control Violation Orders:**

- None submitted for this meeting.

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

- 11-MSRC-194 Jamie S. Lester was called upon a motion to **waive the 30 day suspension** because of a delay in recertification by the Mining Board. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

**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-123 Carlos Combs, Terry Dishner & Cumberland River Coal** Company was called. The Commission and the Parties determined that the hearing should be on February 14, 2013 with a discovery deadline of January 1.
- 12-MSRC-112 **K & D Mining, Inc.** and **12-MSRC-105 Napier** et al. were called. Counsel for OMSL stated a Complaint would be filed soon in K & D and Napier was submitted for a ruling on a motion to dismiss.
- 10-MSRC-208 **Webster County Coal** was called and submitted on the pleadings on file with no hearing.
- 10-MSRC-020 **Noah Vance** was called for a pre-hearing. The Commission determined that due to a possible settlement this matter should be set for a Status Report on October 11.
- 11-MSRC-166 **Chad B. Jarrell**, non-licensed facility drug suspension and 11-MSRC-167 **James D. Francis**, non-licensed facility drug suspension (Same person as above in 12-MSRC-143) were called and the matters were continued pending settlement or other resolution.
- 12-MSRC-104 **Kelly & Clark**, *Pro Hac Vice* admission was issued.

**The 1:00 p.m. Docket for “traditional” type cases:**

- None submitted for this meeting.

**Old Business**

**Ratification of Final Order:**

*None submitted for this meeting.*

**Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting and the possibility of one or more traditional type hearings.

□ **Status Report & Abeyances;**

*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.

**New Business**

□ **Office & Administrative;**

□ The General Counsel advised that the **mileage** remains forty eight (48) cents per mile.

□ **Training**

□ **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June 22, 2012** at the KY History Center.

□ **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**

12-MSRC-154 Norris, Massingale, Miniard, Davis, Stanton, Cox, Bailey & Caudill was submitted but the Commission determined that it should be held in abeyance for a necessary amendment regarding penalty.

□ **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 11, 2012.**

- **Adjournment:** Commissioner and Chair 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 October 11, 2012. 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

11 Oct 2012  
Date