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ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **MAY 9, 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, 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, Huffman, Long, 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, Mary McCoy, and Tara Lewis. New OGC staff attorney Kari Slayton was introduced.
- ❑ The **minutes** for the meeting on **4/11/13** 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:**
 - 11-MSRC-262 Charles D. Hoskins, was called and requested to be **continued** to Aug 8th. 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-120 Jason Cooper, was permanently revoked in March but requested reconsideration to be heard in April and it was continued at his request to this meeting. He failed to appear and thus no action was taken. Since a final order was entered more than 30 days ago the matter is no longer within this Commissions jurisdiction.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – revocations:**
 - 11-MSRC-253 Ryan B. Ratliff, 12-MSRC-014 Daniel Sargent and 13-MSRC-040 Alex Harvey were called. They appeared and requested a **settlement**. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
 - 13-MSRC-037 Chris Smith appeared and demonstrated that the prior suspension was in error and moved to have his appeal **sustained**. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
 - 12-MSRC-072 Randal A. Snyder was called regarding a Show Cause issued at the last meeting for his failure to appear or participate in the hearing he requested. No one appeared at this meeting, thus OMSL moved for **permanent revocation** because this was his second offense. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
 - 13-MSRC-041 Danny W Brown was called and previous to the meeting his attorney requested a continuance. The Commission **continued** his case to June 13. 13-MSRC-038 Nicholas K Mills was called and appeared and was continued to July 11 with conditions that he test and complete rehab prior to that meeting. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 13-MSRC-039 Joshua E. Slaton was called and he did not appear. OMSL moved to **Show Cause** for the June 13 meeting. A motion was made to grant, which was seconded as appropriate. 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-042 Anthony Taylor, 13-MSRC-043 Mark Pennycuff, 13-MSRC-047 Justin K. Bryant, 13-MSRC-048 David Hutton, 13-MSRC-049 Larry Goins, 13-MSRC-50 Joshua D. Tackett, and 13-MSRC-051 Steven Gregory were each called in turn. They 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-044 Earl Lawson was listed in error. He chose the treatment option and has more time than originally calculated to finish. No action was taken in that regard.

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

- 13-MSRC-045 James Copeland demonstrated that he 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.

The Docket for “traditional” type cases:

- 08-MSRC-124 Cyfers & Williamson a MSHA 110 c was called and OMSL stated the matter would be settled by agreement. The Commission **continued** the matter to July 11 to allow time for circulation of the agreement. The motion carried unanimously, and was ratified by the Chair.
- 09-MSRC-071 Robert Salyer “Cloverlick” and 12-MSRC-114 Mayo were called and OMSL made a motion to **settle**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-119 Riverview was called and **continued** to October 11 however OMSL stated a settlement was pending and was likely to be entered well before that date. The motion carried unanimously, and was ratified by the Chair.

- 12-MSRC-12-MSRC-105 Ralph Napier, Mark A. Sizemore & Michael “Tom” Lunsford were called. Sizemore appeared and moved to **set aside the Final Order** because of the failure of service and it was granted. Lunsford moved for a **settlement** and it was granted. The case remains on the docket for August 8 as to the rest of the Respondents.
- 12-MSRC-188 Scott T Brooks, was called and OMSL moved for a default. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-189 David S. Barker & Anthony G. Collins, (Slayton) was called. Collins was **dismissed** and Barker was a **default** upon the appropriate motion by OMSL. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-190 Jeremy J. Bryant, Randall K. Johnson & Jacky D. Branham (Slayton) was called. OMSL moved for **default**. The motion carried unanimously, and was ratified by the Chair.

Old Business

□ Ratification of Final Order:

- 12-MSRC-154 Norris, Massingale, Miniard, Davis, Stanton, Cox, Bailey & Caudill, was concluded by issuing a Final Order.
- 12-MSRC-156 Robert V. Brandenburg, Clark Burnett, Earnest D. Caldwell, Jeff I. Craig, Christopher D. Napier And George A. Saylor was concluded by issuing a Final Order.

□ 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 being briefed.

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 21, 2013** 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**
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 June 13, 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 June 13, 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

6/13/13
 Date