

**MINE SAFETY REVIEW COMMISSION
MINUTES**

Minutes of the regular meeting of **April 14, 2011**: 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 appointment is pending, Commissioner William D. Donan and Commissioner Stephen A. Sanders were present. Commissioner Donan assumed the role of Acting Chair. 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 Acting Chair.
- **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Russell 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.
- The **minutes** for the meeting on **3/10/11** 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:**

- 08-MSRC-271 Jason Lee Rowe was called and did not appear. OMSL moved to grant its motion for **permanent revocation**. The matter was seconded as appropriate and approved unanimously and was ratified.
 - 10-MSRC-136 Kenneth S. Eldridge was called and presented proof of compliance by submitting all missing tests. OMSL moved to **withdraw**. The matter was seconded as appropriate, carried unanimously and 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 11-MSRC-066 Scotty Cobb, 11-MSRC-068 Burbon D. Thacker, 11-MSRC-072 Michael Jacobs, 11-MSRC-073 Cecil Ousley, 11-MSRC-074 Jonathan Crisp, 11-MSRC-075 Douglas L. Vincent, 11-MSRC-076 Eric D. Fleming, 11-MSRC-077 Terry L. Helton, 11-MSRC-078 Todd Mitchell Hamlin, and 11-MSRC-079 Bradley J. Grant 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.
 - 11-MSRC-028 Michael C. Vanderpool and 11-MSRC-059 John B. West were called and did not appear. OMSL moved for **revocation** 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.
 - 11-MSRC-067 Thomas Compton, 11-MSRC-071 Larry Napier, 11-MSRC-080 Lonnie Williamson and 11-MSRC-082 Andrew Taylor were called and did not appear. OMSL moved to **Show Cause**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
 - 11-MSRC-062 Nicholas L. Hall, 11-MSRC-064 Jason Johnson, 11-MSRC-065 John T. Adkins Jr., 11-MSRC-069 Brian D. Baldwin and 11-MSRC-070 Jerry C. Ison were called. Each presented evidence that demonstrated that more likely than not the suspension was in error. They moved to have their appeals **sustained**. 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:

- 11-MSRC-050 Orville Bentley was called but did not appear. OMSL moved for **revocation**. 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 Reciprocity actions regarding Virginia Drug Sanctions:

None submitted for this meeting.

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

- 08-MSRC-311 Chris Moore appeared and demonstrated just cause for re-starting prior probationary terms for enhanced and extended testing. The Commission **granted** modification of his settlement agreement in his Final Order.
- 10-MSRC-119 Steve Alan Ford was called and counsel requested a **continuation** to June 9 because of a scheduling conflict. The Commission **granted** the motion.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

11:00 a.m. 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:

- 10-MSRC-094 Evans & Smith and 10-MSRC-083 Waugh Bartley & Mock appeared and each tendered a settlement agreement. After questioning the parties and reviewing the proposal the Commission granted a motion for approval and incorporated the **settlement** as it’s Final Order.

- 10-MSRC-113 Coal Diggers Inc., was called. Respondent Tackett tendered a settlement agreement. After questioning the Respondent and reviewing the proposal the Commission granted a motion for approval and incorporated the **settlement** as it's Final Order. No one appeared on behalf of Coal Diggers and a motion for **default** was made by OMSL. This was so moved and approved by the Commission.
- 10-MSRC-111 Viper Coal was called. The concluding testimony was taken and this was submitted for the record.

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 May 12, 2011, 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 seven (47) cents per mile.

□ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in **June 24, 2011** 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**

11-MSRC-081 Timothy A. Hurd was called for a determination of Probable Cause. After review the Commission moved for a finding and this was **found**, seconded and approved.

- **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 May 12, 2011.**

- **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 May 12, 2011. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

 Acting Chair
 Mine Safety Review Commission

 Date