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COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS

WILLIAM D. DONAN, CHAIR
STEPHEN A. SANDERS
J. DUNCAN PITCHFORD

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF DECEMBER 8, 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 William D. Donan, Commissioner Stephen A. Sanders and Commissioner J. Duncan Pitchford 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 was present and also staff attorneys for OGC; Smock, Thompson, 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 **11/10/11** 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:**
 - 09-MSRC-280 Toney Adams, 10-MSRC-205 Dennis Matthews and 11-MSRC-001 Jeffrey Hardin were called and did not appear or participate. OMSL by counsel moved for **permanent revocation** as a sanction for failing to comply with the terms of their probation as agreed in a previous settlement agreement adopted as a Final Order. A motion for approval was made and was seconded for each. The motions carried unanimously, and were ratified by the Chair.
 - 10-MSRC-014 Jeremy McCoy appeared and requested an **amendment to his previous settlement agreement**. A Motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
 - 10-MSRC-126 Shannon Williams and 10-MSRC-170 Charles Fox were called and did not appear. OMSL moved for a **Show Cause** hearing for January. A motion for approval was made and was 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 11-MSRC-228 Bronell L. Sturgill, 11-MSRC-247 Justin T. Baker, 11-MSRC-248 Shawn M Lewis, 11-MSRC-249 Carvin Collins, 11-MSRC-250 William M Whitfield, 11-MSRC-251 Christopher Bryan Geary, 11-MSRC-252 Shane Alexander, 11-MSRC-254 Ronnie Quinton, 11-MSRC-255 Toy Coots, 11-MSRC-256 Austin Reuber, 11-MSRC-258 Cecil Ricky Jones, 11-MSRC-259 Jeffrey Walker, 11-MSRC-260 Perry Taylor, 11-MSRC-262 Charles D. Hoskins, 11-MSRC-263 Ronnie A. Ashby, 11-MSRC 267 Michael Danny Deboard, 11-MSRC-269 Larry Poore, 11-MSRC-270 Eric Phelps, 11-MSRC-271 Jordan Shepherd, 11-MSRC-272 Josh Honeycutt and 11-MSRC-273 Johnathon Patterson 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.

- 11-MSRC-231 Kelly Morgan, 11-MSRC-233 Phillip Walls and 11-MSRC-240 Benjamin Jason Adkins 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-261 John Crawford and 11-MSRC-265 Jody Roberts were each 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-266 Jeremy Durall was called. He presented evidence that demonstrated that more likely than not the suspension was in error. He 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.
- 11-MSRC-229 Rodney D. Smith was called and upon the motion of OMSL the suspension was **withdrawn** on the basis of **mistaken identity**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-230 Bryan K Whitten was called for a hearing he requested for relief from the DNR Commissioner's initial denial. He did not appear or defend. OMSL moved for dismissal of his petition and a denial. The DNR Commissioner's determination to **deny certification was overruled**. 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 B Ratliff and 11-MSRC-268 Aaron Tucker were called and did not appear. OMSL moved to **continue**. 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:

- *None submitted for this meeting.*

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

- 11-MSRC-190 Shaun Pugh appeared and tendered a settlement agreement for incorporation as MSRC's Final Order. 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 Petition for Roof Control Violation Orders:

- 11-MSRC-281 Coal Creek Mining, LLC was called. OMSL indicated a settlement was pending and requested a continuance to January. 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 Motions to Modify prior Orders:

- 09-MSRC-045 Jamie D. Fannin, was called and did not appear to make his motion, no action was taken.
- 09-MSRC-215 Bradley Wireman, was called and appeared and requested a **modification of a prior settlement** which included enhanced drug testing and probation. 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:

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 on Thursday January 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 2012 at the KY History Center. **Initial Hearing Officer training** will be in **March 2012**.
- **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 January 12, 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 January 12, 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

12/12/12
Date