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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
STEPHEN A. SANDERS
J. DUNCAN PITCHFORD

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **SEPTEMBER 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 **8/11/11** 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-311 Chris Moore, 10-MSRC-043 Jared Blalock and 10-MSRC-129 Larry J. Feltner 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 his probation as agreed in a previous settlement agreement adopted as a Final Order. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
 - 11-MSRC-128 Jacolby Qualls was called and no one appeared or responded on his behalf. OMSL moved for a **Show Cause** Order. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
 - 09-MSRC-263 Herman D. Grubbs, 10-MSRC-014 Jeremy McCoy and 10-MSRC-205 Dennis Matthews were called and OMSL moved for a **continuance**. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
 - 08-MSRC-211 Shane Martin was called and he presented proof sufficient for OMSL to **withdraw** its motion for sanctions. 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-144 Jonathan M. Nelson, 11-MSRC-160 Bryan C. Robbins, 11-MSRC-161 Travis Brock, 11-MSRC-162 Kenny Fleming, 11-MSRC-163 William Clay Dragoo and 11-MSRC-164 Chance M. Puckett 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-142 Robert T. Bailey was 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-143 Joseph Adkins, 11-MSRC-149 Daryl Edward Adkins, 11-MSRC-158 Michael B. Jobe 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-159 Casey Dean Turner 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.

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:

- *None submitted for this meeting.*

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

- 11-MSRC-122 Michael Helton, 11-MSRC-125 Greg Lovan, and 11-MSRC-129 Adam K. Hardin to waive remainders of their suspensions to allow for Mining Board meeting rescheduling were called so that OMSL may move to **waive the suspension** because of administrative delay. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-008 Gary Goins Jr. was called. No one participated or otherwise appeared regarding the request to modify a prior order. A motion to **deny** was made, seconded and approved.

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:

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 October 6, 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**

11-MSRC-166 Chad B. Jarrell, 11-MSRC-167 James D. Francis, 11-MSRC-168 Jordan D. Wilkins and 11-MSRC-169 Daniel Nantz & Jacky D. Beatty were each called for a **Probable Cause** determination. Probable Cause was found as to each. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

□ **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 6, 2011.**

□ **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 6, 2011. 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

Date