

STEVEN L. BESHEAR  
GOVERNOR



LEONARD K. PETERS  
SECRETARY

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
FRANKFORT, KENTUCKY 40601  
TELEPHONE: (502) 573 - 0316  
FAX: (502) 573-0344

BRYON ALAN THOMPSON  
GENERAL COUNSEL

COMMISSIONERS

WILLIAM D. DONAN, CHAIR  
J. DUNCAN PITCHFORD  
DAVID BRIAN SLOAN

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF NOVEMBER 8, 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, 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 New.
- The **minutes** for the meeting on **10/11/12** 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:**

*None submitted for this meeting.*

- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – 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-171 Jonathan Lee Harvey and 12-MSRC-176 Joel D. Lovell 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-169 Michael R. Daugherty and 12-MSRC-172 Chris Olgesby were both called in turn and requested a hearing and presented evidence, testimony and documentation that demonstrated that more likely than not the determination of **suspension was in error**. They moved to **sustain** thier appeals. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
  - 12-MSRC-173 Jimmy Herrington, and 12-MSRC-178 David A Prow, whom both had prescriptions were called in turn and OMSL presented evidence, testimony and documentation that demonstrated that more likely than not the determination of **suspension was in error**. OMSL moved to **withdraw and dismiss** the action. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
  - 12-MSRC-174 David Wayne Ashley and 12-MSRC-177 Clinton Ruble 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-157 Patrick Drake, (“old law”) and 12-MSRC-161 Kevin R. Davidson (“new law”) 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 and 3 year revocations** respectively. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 12-MSRC-170 Hope C. Sisk was **continued** to December 13 to allow her time to obtain and submit a **hair follicle test**. Additionally 12-MSRC-175 Jason P. Parsons was also continued to December 13 upon his request. 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 – one year revocations:**

- 12-MSRC-120 Jason S. Cooper was called. Good reasons were presented for discovery as a cause for a **settlement agreement**. 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. failed to appeal or chose drug treatment cases – 3 year revocation**

- 12-MSRC-180 Farrand Tanner, 12-MSRC-181 Matthew Carey, 12-MSRC-182 Eric Caudill, 12-MSRC-183 Eugene Ray, 12-MSRC-184 Bruce Chappell, 12-MSRC-185 Thomas E. Ray and 12-MSRC-186 Michael Yates 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.

**11:00 a.m. completed treatment & clean test drug cases, reinstate**

- 12-MSRC-179 Troy McElwain presented proof of compliance with the statute regarding **reinstatement after treatment**. OMSL moved that he be reinstated. 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:**

- None submitted for this meeting.

**11:00 a.m. Appeal of Penalty Assessment**

- None submitted for this meeting.

**The 11:00 a.m. Docket for “traditional” type cases:**

- 12-MSRC-008 **Blankenship** was called regarding a **settlement**. OMSL presented the settlement and moved for approval. This was so moved, seconded and passed unanimously.
- 2-MSRC-114 **John W. Mayo** was called and OMSL requested that this remain set for a **hearing on December 13**. This was so moved, seconded and passed unanimously.

**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 pending number of cases set for the next meeting and the possibility of one “traditional” type hearing.

**☐ 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 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. The Commission took up 12-MSRC-105 Ralph Napier, Mark Sizemore & Mitchell Lundsford, determined that the motion to dismiss on latches/statute of limitation shall be denied and set for a hearing and so moved, seconded and approved unanimously. The Commission took up 10-MSRC-208 Webster County Coal, submittal on record for a Final Order and determined that the motion to dismiss shall be granted and so moved, seconded and approved unanimously.

### **□ 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 December 13, 2012.**
- **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 December 13, 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

13 DEC 2012

Date