COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **12-MSRC-189**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING COMPLAINANT

FINAL ORDER FOR
DAVID S. BARKER

DAVID S. BARKER
AND ANTHONY G. COLLINS RESPONDENTS

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This matter came before the Mine Safety Review Commission (hereinafter "Commission") for a hearing. At the call of the hearing the Office of Mine Safety & Licensing made a motion for default, and the members of the Commission having reviewed the Complaint filed on November 20, 2012 and making a determination of probable cause in the matter herein, and the Commissioners being sufficiently advised; and,

WHEREAS that pursuant to KRS 13B.080(6):

> If a party properly served . . . fails to attend or participate in a pre-hearing conference, . . . the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate, or may conduct the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order and shall be processed as provided in KRS 13B.110.

WHEREAS the respondents have been properly served and notified of the Complaint, the Probable Cause and did not appear to defend or

participate; therefore,

IT IS HEREBY ORDERED that a Final Order for default is entered against DAVID S. BARKER.

IT IS HEREBY ORDERED that this Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by any Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13);

IT IS FURTHER ORDERED the Respondent's certificates are **REVOKED** for a period of no less than **(1) year** from the date of this Order;

IT IS FURTHER ORDERED, that Respondents are ineligible for any other or additional certifications for a period of no less than one (1) year from the date of this Order;

IT IS FURTHER ORDERED, that upon his written application to the Mining Board for reinstatement after the revocation period ordered herein, the Respondent shall provide to the Mining Board; (1) an evaluation from a certified addiction counselor or other addiction treatment professional with a drug abuse assessment and proof that the Respondent has successfully completed any recommended treatment and (2) a negative fourteen panel drug test compliant with KRS 351.182 and KRS 351.183 within thirty (30) days prior to application for reinstatement.

IT IS FURTHER ORDERED, that pursuant to KRS 351.194(8) and KRS 13B.140(1), **an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order**. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

This is a **Final Order** this the 9TH day of May 2013.

Hon. William D. Donan, Chair
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 10th day of May 2013:

DAVID S. BARKER
18183 HWY 38
EVARTS, KENTUCKY 40829

ANTHONY G. COLLINS
P.O. BOX 359
CUMBERLAND, KENTUCKY 40823

And by messenger mail to:

HON. CARRIE SLAYTON
OFFICE OF GENERAL COUNSEL
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ **564- 2356**
FAX 502/ 564 - 9212
Counsel for OMSL

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601

Bryon Alan Thompson

Bryon Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission