COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **10-MSRC-072**

FRANK A. MITCHELL **PETITIONER**

FINAL ORDER

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING RESPONDENT

* * * * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Respondent, Office of Mine Safety and Licensing (OMSL) and Petitioner as Certificate holder and the members of the Mine Safety Review Commission (Commission) having reviewed the Settlement Agreement filed on or before May 13, 2010 and of record in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. Any formal hearing and pre-hearing conference scheduled and other pre-hearing orders are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**. A copy is attached hereto;

4. The obligation for compliance with the **submittal of drug test** results to OMSL for reinstatement and other terms if provided in the Settlement Agreement is the **sole responsibility of the Certificate holder** and shall not be delegated to any other person. The Certificate holder shall submit drug tests as **required whether or not he is employed** in coal mining. Failure of or refusal to submit drug testing or other terms in the Settlement Agreement may result in permanent revocation of all certificates by the Commission upon a Motion for Sanctions by OMSL.
5. Failure by the Certificate holder to submit the pre-reinstatement drug test to the Mining Board or other failure to complete the reinstatement process for any reason within ninety (90) days of this Order shall result in revocation for not less than one (1) year from the date of this Order without the necessity of further action or motion by OMSL.
6. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Certificate holder not arising from the factual basis of the original violation and resolved herein.

7. 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 the Certificate holder, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13).
8. This Final Order represents a final disposition of all issues between the Complainant and the Certificate holder, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
9. Appellate rights: 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.

Entered this the 13TH day of May 2010.

JOE F. CHILDERS, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 17th day of May 2010:

FRANK A. MITCHELL
415 4-H CAMP ROAD
DAWSON SPRINGS, KY 42408

And by messenger mail to:

Office of General Counsel
#2 Hudson Hollow
Frankfort, Kentucky 40601
(502) 564-2356
FAX: (502) 564-9212

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

RECEIVED
MAY 14 2010
MINE SAFETY
REVIEW COMMISSION

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
Action No. 10-MSRC-072

FRANK A. MITCHELL **PETITIONER**

v. **SETTLEMENT AGREEMENT**

KENTUCKY OFFICE OF MINE SAFETY & LICENSING **RESPONDENT**

* * * * * * * * * *

Come the parties, Petitioner Frank A. Mitchell (Mitchell), *pro se*, and the Respondent, the Kentucky Office of Mine Safety and Licensing (OMSL), by counsel, and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the final resolution of this action against him, and the cancellation of the hearing (as it pertains to him) that was scheduled for May 13, 2010, the Petitioner hereby admits that he violated his employer's substance abuse policy, which was reported to the Respondent and resulted in the suspension of his underground miner, underground mine foreman, assistant mine foreman and electrical worker certificates on April 6, 2010. His actions constituted a violation of KRS 351.120. Therefore, Mitchell hereby agrees to the following:

1. The suspension of his underground miner and electrical worker certificates until such time as his application for restoration of his certificate is accepted by the Kentucky Mining Board (Board), in accordance with KRS 351.120(13), but in no event shall the suspension end sooner than thirty (30) days after the next scheduled meeting of the Board.

2. The Petitioner's underground miner and electrical worker certificates shall be suspended for a period of thirty (30) days after reinstatement by the Board. Thereafter, said certificates shall be placed in probation for a period of one (1) year, subject to the conditions set forth in Paragraphs 3, 4, 5, 6, 7 and 8, below.

3. The Petitioner's underground mine foreman and assistant mine foreman certificates shall remain suspension for the duration of the suspension/probationary periods.

4. During the suspension/probationary periods set forth in Paragraph No. 2 above, Mitchell shall comply with all state and federal mine safety laws and regulations, including the terms of this Settlement Agreement. The willful violation by Mitchell of any of said laws or regulations, or the terms of this settlement agreement, may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his certificates for the remainder of the probationary period or to permanently revoke them.

5. Mitchell shall submit to an eleven (11) panel drug screen (which includes Suboxone) twice per month every month during the first four (4) months of the suspension and probationary period set forth in Paragraph Nos. 1 and 2, above, and once every thirty (30) days during the remainder of the period. The twice-monthly tests shall be taken on or before the 15th day of each month and on or before the last day of each month and the reports of results made as soon as possible. In all instances, it is the Petitioner's responsibility to have the results of all tests reported to OMSL, at his own expense, through his employer's program or a treatment program. If necessary, the Petitioner can utilize the drug testing program offered by OMSL through its examination system, at his own expense.

6. Mitchell understands and agrees that he shall undergo an evaluation by a certified addiction counselor or other professional familiar with addictive behaviors, to determine if

attendance in rehabilitation, counseling or support group programs is warranted prior to the reinstatement of his certificates. The written determination of said professional shall be submitted to OMSL. If the professional determination concludes that the Petitioner should enroll in rehabilitation, counseling or support group programs, he shall do so prior to the reinstatement and shall continue his participation in same during the probationary period or until such time as his counselors certify to OMSL that he has completed the treatment and counseling.

7. Mitchell understands and agrees that the report of any positive drug test results shall be cause for the permanent revocation of his certificates. During the probationary period set out herein, if the Petitioner is reported by any employer for violating the employer's drug- and alcohol-free policy pursuant to KRS 351.170(2), the parties agree that the Petitioner's mining certifications will be immediately suspended until such time as a Motion for Sanctions can be filed by the OMSL and ruled upon by the MSRC.

8. Mitchell further understands and agrees that he shall not be eligible for certification in any other specialties during the probationary period.

9. Mitchell understands and agrees that in the event that he fails to provide the documents (letter to Mining Board, negative drug screen and drug evaluation) necessary for reinstatement before the Kentucky Mining Board within ninety (90) days of entry of the Final Order upholding the Settlement Agreement, his certificates will be automatically revoked for a period of not less than one (1) year without the necessity of further Motion or action by the OMSL.

Mitchell further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1(5).

Mitchell states that he has carefully read this Settlement Agreement (or that the Settlement Agreement has been read to him); that he has carefully considered the Agreement prior to signing it; and, that he understands and agrees to its terms and provisions.

OMSL and Mitchell acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

Frank A. Mitchell

FRANK A. MITCHELL
415 4-H Camp Road
Dawson Springs, Kentucky 42408

5/13/10
DATE

Franklin Reed for Johnny Greene

JOHNNY GREENE
Executive Director
KY Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

5-13-10
DATE

Maria T. Russell

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