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COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS

WILLIAM D. DONAN, CHAIR
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF APRIL 10, 2014: 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:** Commissioner David B. Sloan and the Chair and Commissioner William D. Donan attended. 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 Sloan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously.
- **Welcome Guests:** Energy and Environment Cabinet Executive Director Mike Haines was present. Additionally General Counsel staff attorneys for OGC were present; Ottley, Girard, Smock, Slayton and Russell who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland. OMSL was represented by Amy Hislope.
- The **minutes** for the meeting on **2/13/14** 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 three (3) 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:**

- 12-MSRC-069 Bobby R. Kilborne was called and did not appear. OMSL moved for a **3 year revocation**. The motion was made, seconded and approved unanimously.
- 12-MSRC-176 Joel Lovell was called. OMSL moved for a **permanent revocation**. The motion was made, seconded and approved unanimously. *(Subsequently Lovell requested a re-hearing at the May 8 meeting based upon failure of notice.)*
- 13-MSRC-089 Eric A. Smith. OMSL moved for a **continuance** to the May 8 meeting. The motion was made, seconded and approved unanimously.

□ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – revocations:**

- 14-MSRC-001 Stanley Wilson, 14-MSRC-032 Michael Broyles, 14-MSRC-036 Robert Dale Alshire were called for a hearing and they failed to appear, defend or participate in the hearing they requested. Thus OMSL moved to **show cause** for the May 8 meeting. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified.
- 14-MSRC-002 Michael Todd Fuson appeared and requested a hearing and presented evidence and testimony that indicated more likely than not the test that formed the basis of the suspension was in error. A motion was made to **sustain his appeal**, which was seconded as appropriate. The motion carried unanimously, and was ratified.

9:00 a.m. failed to appeal or chose drug treatment cases – “new law” 3 year revocation

- 14-MSRC-024 Joseph Willis, 14-MSRC-025 Charles Gallion, 14-MSRC-026 Dekayvious Duval, 14-MSRC-027 Dustin Robinson, 14-MSRC-028 Brandon Riddle, 14-MSRC-029 Joshua Beals, 14-MSRC-030 Troy Bess, 14-MSRC-031 James Miller, 14-MSRC-034 William Conley, 14-MSRC-038 Christopher R. Kinney, 14-MSRC-039 Rodney Peterson, 14-MSRC-040 Ronald W. Pace, 14-MSRC-041 Ricky Gray, 14-MSRC-044 Brandon S. Massengill, 14-MSRC-045 James Turner, 14-MSRC-046 Dustin

Michael Eddings (2nd violation; **5 years**), 14-MSRC-048 Joel Day (finished treatment and counseling but revoked due to a drug test more than 30 days old and subsequently reinstated after submitting a current test), 14-MSRC-049 Daymon Everage, and 14-MSRC-050 Alexander M. Laffoon failed to appear, defend or participate upon the call of each of their cases. OMSL requested 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.

9:00 a.m. completed treatment & clean test drug cases, reinstate

- 14-MSRC-022 David Miller, 14-MSRC-023 Javier Hernandez, 14-MSRC-035 Jesse Richardson, 14-MSRC-037 Nicholas Fulkerson and 14-MSRC-047 Joshua Castle demonstrated that they completed counseling and had a clean drug test and moved to be **reinstated**. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

Petition for Order in roof control violation

- None submitted for this meeting

Non-licensed facility drug cases

- 14-MSRC-009 Jason K. Bevins, 14-MSRC-013 Chadwick Sifers, 14-MSRC-012 Teddy A. Smith, 14-MSRC-014 Otis Anderson and 14-MSRC-015 Carl McIntosh were each called for a hearing regarding allegations of substance abuse reported by their employers at non-licensed coal facilities. No one appeared to defend. Each were **revoked** for no less than one year upon motion and unanimous vote.

The Docket for “traditional” type cases:

- 12-MSRC-105 Napier and OMSL presented a **settlement** and moved for approval. The motion carried and was granted unanimously.
- 13-MSRC-073 Wagner & Wagner were called and OMSL counsel requested a **withdrawal** of the Complaint. A motion was made to grant and dismiss, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-080 Tram Energy was called for various **motions** each disposed of as follows. The motion to continue was granted. The motion for partial summary judgment was stayed until the May 8 meeting. The motion(s) to compel were granted.

- 13-MSRC-121 K & D Mining was called. OMSL moved to **continue** to the May 8 meeting to perfect service. The motion was granted.
- 13-MSRC-120 Blue Diamond was called and OMSL presented a **settlement** agreement which was approved by the Commission.
- 13-MSRC-171 Danny Fouts was called and appeared and requested a **settlement**. So moved and approved was ratified by the Commission.

Old Business

□ Ratification of Final Order:

- 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. 07-MSRC-100 **Hendrickson Equipment** & James Hylton is submitted for a ruling.

New Business

□ Office & Administrative;

- The General Counsel advised that the **mileage** is forty six (46) cents per mile.
- **Training:** The statutorily required mine site visits were postponed until the new Commissioner is appointed and available.
- **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June 13, 2014** 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.
- **Probable Cause Determinations**
 - 14-MSRC-018 Mayo Resources, Inc., 14-MSRC019 Jason Bonham & Phillip Fields, 14-MSRC-020 James Cress Jr., 14-MSRC-021 Deborah

Bledsoe and 14-MSRC-033 Brian K. Halbert were each called in turn for a probable cause determination. That determination was made after each were reviewed and the matters were set for hearings.

□ **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 May 8, 2014.**

□ **Adjournment:** Commissioner Sloan 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 May 8, 2014. 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

5/8/14
Date