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COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS

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

MINUTES OF THE REGULAR MEETING OF APRIL 11, 2013: 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.

A handwritten signature in black ink, appearing to be "W.D.", is written over the text.

- ❑ **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 Lewis. New OGC staff attorney Kari Slayton was introduced.
- ❑ The **minutes** for the meeting on **3/14/13** 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:**

- Each of the following cases were called in turn: 11-MSRC-072 Michael Jacobs, 11-MSRC-222 James L. Spencer and 12-MSRC-040 Danny C. Bevins and no one appeared or participated. OMSL by counsel moved to **permanently revoke** each of them based upon their failure to submit the drug tests in their agreement or the failure of drug tests. 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.
- Each of the following cases were called in turn and requested an **amendment** to a previous Final Order so as to complete the terms of their probation: 11-MSRC-183 Mickey Saylor and 12-MSRC-097 Sammy Mullins. 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.

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

- 13-MSRC-030 Michael Gilbert and 13-MSRC-032 Jeff Vincent were called. They appeared and requested a **settlement**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-033 Jeffery Johnson appeared and demonstrated that the prior suspension was in error and 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.
- 12-MSRC-213 Jimmy Rose (“new law”) was called regarding a Show Cause issued at the last meeting for his failure to appear or participate in the hearing he requested. No one appeared at this meeting, thus OMSL moved for **3 year revocation**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-120 Jason Cooper, was permanently revoked in March but requested reconsideration to be heard at this meeting. He failed to appear at the scheduled time but did appear several hours late. The

Commission **continued** his case to May 9, and suggested that he take efforts at his discretion that may show the Commission a serious intent to be compliant with the prior settlement agreement and appear on time.

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

- 13-MSRC-034 Chad Vaughn, 13-MSRC-035 Samuel Williams and 13-MSRC-036 Timothy Kennedy 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

- 13-MSRC-028 Elmer Hurt appeared and demonstrated that he 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.

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 Docket for “traditional” type cases:

- 10-MSRC-020 Noah Vance was called and OMSL made a motion to **settle**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair. This concludes this case.

- 12-MSRC- 104 Kelley & Clark and 12-MSRC-114 Mayo were called and OMSL moved to **continue**. The motions carried unanimously, and were ratified by the Chair.
- 12-MSRC-12-MSRC-105 Ralph Napier, Mark A. Sizemore & Michael “Tom” Lunsford were called. OMSL moved for a **default** as to Sizemore and it was granted. The case was **continued** as to the other Respondents. 08-MSRC-124
- Cyfers & Williamson a MSHA 110 c continuance was called for a status conference and OMSL stated the matter would be settled by agreement. The case was **continued**.
- 09-MSRC-071 Robert Salyer “Cloverlick” was called and **continued** pending a settlement to next month.

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 at least 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. 07-MSRC-100 **Hendrickson Equipment** & James Hylton is being briefed.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** increased forty seven (47) cents per mile.

□ **Training**

□ **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June 21, 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.

□ **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 May 9, 2013.**

□ **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 May 9, 2013. 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

9 May 2013
Date