

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

COMMISSIONERS

WILLIAM D. DONAN, CHAIR
STEPHEN A. SANDERS
J. DUNCAN PITCHFORD

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF APRIL 12, 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, Commissioner Stephen A. Sanders and Commissioner J. Duncan Pitchford 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 was present and also staff attorneys for OGC; Smock, Thompson, 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 **03/08/12** 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:**
 - 11-MSRC-255 Toy Coots and 11-MSRC-292 Douglas Couch were called and did not appear or participate. OMSL by counsel moved for **permanent revocation** as a sanction for failing to comply with the terms of their probation as agreed in a previous settlement agreement adopted as a Final Order. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.

- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” 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 11-MSRC-286 Billy Akers, 12-MSRC-012 Jerry L. Lawson, 12-MSRC-029 Kevin L. Clark, 12-MSRC-034 Robert M Cox, 12-MSRC-039 Jeffrey Scott Dukes, 12-MSRC-040 Danny C. Bevins, 12-MSRC-041 Jeremy Bishop, 12-MSRC-043 Roy Laughary, 12-MSRC-044 Bruce L. Jarrell, 12-MSRC-045 Willie Blankenship, Jr., 12-MSRC-046 Bryan W Vincent, 12-MSRC-049 Michael Peters, 12-MSRC-050 Waymon K Mason and 12-MSRC-054 Mark Wilson who were each 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.
 - 11-MSRC-265 Jody A. Roberts, 12-MSRC-042 Joshua Kyle Dixon and 12-MSRC-048 George Hurt, were each called and did not appear. OMSL moved to **Show Cause**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
 - 12-MSRC-047 Benny Carlisle McClain was called and requested a hearing and presented evidence, testimony and documentation that demonstrated that more likely than not the determination of suspension was in error. He moved to **sustain** his appeal. 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 – “simple” one year revocations:

- 11-MSRC-294 Gary Isaac Hogston was called and appeared. He requested a **settlement** agreement. OMSL so moved. 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:

- 11-MSRC-112 Michael Crum requested the opportunity to appear and make a motion to reconsider a prior order due to error. He did not appear and therefore his motion was denied.

11:00 a.m. Appeal of Penalty Assessment

- None submitted for this meeting.

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

- The case of 12-MSRC-055 Kenneth Terrell McKnight & Jesse T. Wood, was called and OMSL moved for a ratification of a **settlement** agreement. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-018 **ICG Knott County** was called for approval of a proposed settlement however the agreement had not yet returned from the company. OMSL moved to continue to May 10, seconded and so Ordered.
- 11-MSRC-257 **Branham & Russell**; was called for entry of settlements as to each. The agreements were reviewed and a motion was made to approve. So moved, seconded and approved the Final Order incorporating the settlement agreement was ratified.

- 10-MSRC-193 **Lone Mountain** Processing came before the commission for a pre-hearing. The matter was set for a hearing on November 8 at 1:00 p.m. and continuing thereafter until completed.
- 10-MSRC-208 **Webster County Coal** came before the commission for a pre-hearing. The matter was set for a hearing on August 9 at 1:00 p.m. and continuing thereafter until completed.
- 09-MSRC-071 **Robert Sayler** a/k/a “Cloverlick” came before the commission for a pre-hearing and was set for a subsequent pre-hearing on October 4 at 11:00 a.m.
- 11-MSRC-169 for **Daniel Nantz** came before the commission for the ratification of a settlement agreement. The agreement was reviewed and a motion was made to approve. So moved and seconded the Final Order incorporating the settlement was approved.

The 1:00 p.m. Docket for “traditional” type cases:

A hearing was conducted in the case of 10-MSRC-105 **Sonny Dale Salyers** regarding an alleged failure to timely notify OMSL of an accident.

Old Business

□ **Ratification of Final Order:**

None submitted for this meeting.

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting and the possibility of one or more traditional type hearings.

□ **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** decreased to forty five (45) cents per mile.

❑ **Training**

- ❑ **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June 22, 2012** 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**

12-MSRC-055 Kenneth Terrell McKnight & Jesse T. Wood was submitted and probable cause was found. This also settled this meeting, see above.

❑ **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 10, 2012.**

- ❑ **Adjournment:** Commissioner and Chair Donan made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday May 10, 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

5/10/12
Date