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COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF DECEMBER 13, 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, 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 New.
- ❑ The **minutes** for the meeting on **11/08/12** 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:**

- Each of the following cases were called in turn: 10-MSRC-169 Brian Higgins, 11-MSRC-098 Jeremy Cissna, 11-MSRC-122 Michael Helton, 11-MSRC-147 Benjamin R. Richardson, 11-MSRC-163 William Clay Drago, 11-MSRC-252 Shane Alexander, 11-MSRC-254 Ronnie Quinton, 11-MSRC-258 Cecil Ricky Jones, 12-MSRC-031 Bret Offut and 11-MSRC-273 Johnathon Patterson 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.
- 11-MSRC-238 Timothy D. Mitchell, was called and OMSL moved to **continue**. 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.
- 10-MSRC-174 William T. Stewart and 11-MSRC-256 Austin Reuber were both called. Each requested an **Amended** Final Order with enhanced testing as a way to resolve the allegations contained in the Motion for Sanctions. 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-094 Kenneth R. Taylor, was called and OMSL moved to **dismiss** because he demonstrated that he was in compliance with the settlement. 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:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 12-MSRC-174 David Wayne Ashley, 12-MSRC-187 Mark Henshaw, and 12-MSRC-208 John Wilson who were both 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.

- 12-MSRC-175 Jason P. Parsons 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 appeals. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-170 Hope C. Sisk was 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-177 Clinton Ruble (“new law”) was called in turn regarding a Show Cause issued at the last meeting for their failure to appear or participate in the hearing they 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.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – one year revocations:

- 12-MSRC-191 Wilburn B. Madon was called and he presented evidence, testimony and documentation that demonstrated that more likely than not the determination of **suspension was in error**. OMSL moved to **withdraw and dismiss** the action. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-193 William P. North was called and OMSL moved for a **continuance to perfect service**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- The remainder of this docket was called as follows and no one appeared or participated and thus a **1 year revocation** was ordered seconded and approved unanimously. 12-MSRC-119 David B. Miller, 12-MSRC-192 Gregory R. Anderson, 12-MSRC-194 Larry Baldwin, 12-MSRC-195 Michael Arnold, 12-MSRC-196 Jay D. Mullins, 12-MSRC-197 Jeffery W. Harris, 12-MSRC-198 Cody D. Newsome, 12-MSRC-199 Charles T.

Johnson,12-MSRC-200 Abram James Swiger,12-MSRC-201 Charlie R Hudson,12-MSRC-202 Michael Rowley, and 12-MSRC-203 Ralph E. Anderson.

11:00 a.m. failed to appeal or chose drug treatment cases – 3 year revocation

- 12-MSRC-204 Dustin E. McLevain, 12-MSRC-205 Joshua Woods,12-MSRC-206 Dustin Herron,12-MSRC-207 Charles Campbell,12-MSRC-209 William Woods,12-MSRC-210 William Gates,12-MSRC-211 Todd W. Ward and 12-MSRC-212 Robert Remus 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

- *None submitted for this meeting.*

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

- 10-MSRC-007 **Warrior** was called regarding a settlement. OMSL presented the settlement and moved for approval. This was so moved, seconded and passed unanimously.

- 11-MSRC-119 **River View Coal**, was called and the Parties jointly moved to continue to May 9 and advised that a settlement was being discussed. This was so moved, seconded and passed unanimously.
- 12-MSRC-103 **Audy Stewart**, was called and OMSL moved continue to February 14, because a settlement was pending. This was so moved, seconded and passed unanimously.
- 12-MSRC-104 James E. **Kelly** & Israel **Clark**, upon a motion to continue and a pre-trial hearing was set for April 11. This was so moved, seconded and passed unanimously.
- 2-MSRC-114 **John W. Mayo** was called and OMSL requested that this be continued for a hearing on February 14. This was so moved, seconded and passed unanimously.

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

- None submitted for this meeting.

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 one “traditional” type hearing.

□ **Status Report & Abeyances;**

- 08-MSRC-124 Cyfers & Williamson was called and the parties requested a pre-trial for April 11. So moved, seconded and approved unanimously.

□ **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** remains forty eight (48) cents per mile.

□ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June 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 January 10, 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 January 10, 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

10 Jan 2013
Date