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GOVERNOR



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SECRETARY

COMMONWEALTH OF KENTUCKY  
**ENERGY AND ENVIRONMENT CABINET**

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
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STEPHEN A. SANDERS  
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**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF JANUARY 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 **12/08/11** 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:**

- 10-MSRC-126 Shannon Williams and 10-MSRC-170 Charles Fox 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 for each. 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 – “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-159 Casey Turner (amended to allow for testing after release from incarceration), 11-MSRC-264 Gary Hawkins, 11-MSRC-274 Wesley Lykins, 11-MSRC-275 Brandon Holton, 11-MSRC-278 Freddie Lee Colwell, 11-MSRC-279 Jordan B. White, 11-MSRC-280 Buck Combs, 11-MSRC-282 Adam J Eastwood, 11-MSRC-284 Ernest Moore Initial Denial, 11-MSRC-288 Heath Sissom and 11-MSRC-292 Douglas W Couch (previous 07-MSRC-079) 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-261 John Crawford was called and did not appear. OMSL moved for **revocation** for not less than one year. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-287 Jeffery S. Jones, 11-MSRC-291 Matthew Blevins, 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.
- 11-MSRC-265 Jody Roberts, continue to April, 11-MSRC-276 John Travis Herald or Travis Herald, 11-MSRC-277 Joshua Slone, 11-MSRC-283 Christopher Short (Initial Denial), 11-MSRC-286 Billy Akers (Initial Denial), 11-MSRC-289 Bryan K. Harlow and 11-MSRC-290 Stevie D. Fuller were called and did not appear. OMSL moved to **continue**. 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 (Dicks Fork address) consolidated with 11-MSRC-299 Gary Isaac Hogston (Rocky Road address) and 11-MSRC-307 Jamie Owsley were each called in turn and OMSL moved as to each for a **continuance**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-295 William F. Allen, 11-MSRC-296 Rodney Campbell, 11-MSRC-297 Larry Wolford, 11-MSRC-298 Derek Robinson, 11-MSRC-300 Ronnie D. Partin 11-MSRC-301 Timothy Parsley, 11-MSRC-302 Cody Parker, 11-MSRC-303 Joseph Padilla, 11-MSRC-304 Phillip W Shelton, 11-MSRC-305 David W. Stidham, 11-MSRC-306 Matthew Wagers, 11-MSRC-308 Michael L. Gross, 11-MSRC-309 Nathan Evans, 11-MSRC-310 Daniel Conrad, 11-MSRC-311 William Cullen, 11-MSRC-312 Joshua Conely, 11-MSRC-313 Derrick Horn, 11-MSRC-314 Tony Kegley, 11-MSRC-315 Paul M. Lee and 11-MSRC- 316 Shawn L. Ratliff were each called in turn and OMSL moved as to each for **revocation** for not less than one year. 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:**

- 11-MSRC-293 Brett Ward was called to Determine **Probable Cause**. 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 Petition for Roof Control Violation Orders:**

- 11-MSRC-281 Coal Creek Mining, LLC and 11-MSRC-165 Matrix Energy were called in turn. OMSL tendered a **settlement** and requested approval. 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 Motions to Modify prior Orders:**

- 11-MSRC-267 Danny Deboard was called and presented a negative/clean hair follicle test relevant to the time period of his suspension. He moved to **sustain his appeal** based upon this evidence and his prior testimony. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-221 Jeremy McElwain was granted an opportunity to appear and present further evidence and testimony but did not. No action was taken.

**11:00 a.m. Appeal of Penalty Assessment**

*None submitted for this meeting.*

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

- 11-MSRC-166 Chad B. Jarrell, 11-MSRC-167 James D. Francis, 11-MSRC-169 Daniel Nantz and 10-MSRC-018 ICG Knott County Coal were each called in turn and OMSL stated there were **pending settlement** agreements for each and moved for **continuances**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC- 168 Jordan D. Wilkins and 11-MSRC-169 Jacky D. Beatty, were called in turn. OMSL moved for **default** because of their failure to appear, participate or defend in any way. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

**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 in **June 22, 2012** at the KY History Center. **Initial Hearing Officer training** will be in **March 23 2012**.
- **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 February 9, 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 February 9, 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

2/9/12  
Date