

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

BRYON ALAN THOMPSON
GENERAL COUNSEL

COMMISSIONERS

WILLIAM D. DONAN, CHAIR
J. DUNCAN PITCHFORD
DAVID BRIAN SLOAN

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JANUARY 9, 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 J. Duncan Pitchford could not attend and resigned because of a move out of state. 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. DNR Director Steve Hohman attended. OMSL director Frank Reed attended. 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 **12/12/13** 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 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:**

- 13-MSRC-084 Russell David Bean Jr., was called. OMLS moved to **amend** the prior Settlement because a delay in delivery of the agreement caused Bean to miss a test. The Settlement was amended to add two more months of once a month testing. The motion was made, seconded and approved unanimously.
- 13-MSRC-087 Cordero Hardrick and 13-MSRC-138 Scotty Tackett were called and did not appear after a Show Cause order from December. OMSL moved for a **3 year revocation** as to each. The motion was made, seconded and approved unanimously.
- 13-MSRC-089 Eric A Smith was called. OMSL stated that it withdrew its motion because Smith was in compliance and requested a **dismissal**. 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:**

- 13-MSRC-149 Timothy P. Christopher, was called for a hearing. He was under a Show Cause Order to appear at this meeting and he failed to appear, defend or participate in the hearing he requested. Thus OMSL moved to **revoke** for no less than 3 years. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified.
- 13-MSRC-157 Steve R. Conrad appeared and requested a settlement agreement. OMSL did not oppose a **settlement** agreement that provided for testing and an evaluation. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified.
- 13-MSRC-159 Scotty Quinn, 13-MSRC-170 Tristan Berryman, and 13-MSRC-172 Jeff J. Willis were called and they failed to appear, defend or participate. OMSL moved to **Show Cause** to February 13, 2014. The motion carried unanimously upon vote of the remaining Commissioner, and was ratified by the Chair.
- 13-MSRC-119 James N. Blankenship was **continued** from the last meeting. Because of the resignation of one Commissioner and the

appearance of a conflict of another this matter had to be continued until a new Commissioner is appointed. Thus Sua Sponte this matter was continued to April 10, 2014.

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

- 13-MSRC-168 Caleb Jones, 13-MSRC-169 Eric Noffsinger, 13-MSRC-173 Paul Rudd, 13-MSRC-174 Jessie Brown, 13-MSRC-175 Joseph A. Parsons, 13-MSRC-176 Johnny Bryant, 13-MSRC-177 Stephen Hensley, 13-MSRC-178 Marcus S. Roberts, 13-MSRC-179 Jordan Hyatt and 13-MSRC-180 Kenneth Henshaw 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

- 13-MSRC- 167 Jared Wolfe, 13-MSRC-181 Brandon Baize and 13-MSRC-182 Justin Melton 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

- 13-MSRC-044 Verlin Perkins was called. He did not appear or defend and OMSL stated that per his phone call he did not intend to contest. OMSL moved for a one year **revocation**. The motion carried and was approved unanimously.

The Docket for “traditional” type cases:

- 13-MSRC-071 Darrel Jones & Tony Stacey were called and requested a **hearing** and one was granted.
- 13-MSRC-072 Donnie Meade & Randy Shortridge were called and OMSL presented a **settlement** and moved for approval. The motion carried and was granted unanimously.

- 13-MSRC-073 Wagner & Wagner was called. Counsel indicated that a settlement was tendered but has not been returned. A motion was made to **Show Cause**, for a default in February which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-193 Lone Mountain, was called and counsel requested a **continuance** to February 13, 2014 for purposes of settlement. 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:

- 13-MSRC-070 Vonny Jones Final Order was ratified.

□ 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 five (45) cents per mile.
- **Training:** Commissioner Pitchford stated that he was relocating out of state and that January would be his last meeting. Previously the statutorily required mine site visits were tentatively scheduled for January, however that training would be more cost effective if the new Commissioner were present.
- **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June, 2014** at the KY History Center and in **March 2014** for Commissioner Sloan and the new appointment.
- **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**

- 13-MSRC-171 Danny W. Fouts was called and probable cause was found.

□ **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 13, 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 February 13, 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

2/13/14.
Date