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ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS

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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JULY 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 J. Duncan Pitchford were present. Commissioner David B. Sloan was unable to attend. 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:** Freddy Lewis, OMSL Director, Hon. Diane Fleming, DNR General Counsel, Hon. Mike Haines, Energy and Environment Cabinet General Counsel were present and also staff attorneys for OGC; Huffman, Long, Girard, Smock 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 **06/14/12** 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:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 08-MSRC-168 Justin Caudill, 08-MSRC-266 Carlos B. Asher, 11-MSRC-009 Chris Girtten, 11-MSRC-072 Michael Jacobs, 11-MSRC-076 Eric D. Fleming, 11-MSRC-099 Alan L. Mason and 11-MSRC-145 Forrest M. Warfield who were each called in turn. No Petitioner appeared and no one entered an appearance on their behalf or otherwise attempted resolve the allegations. OMSL moved for a **Permanent Revocation** as to each. A motion was made to **grant** as to each which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.
- 11-MSRC-160 Bryan C. Robbins was called and requested a **modification of the prior Settlement Agreement** to extend testing and complete counseling. OMSL did not object. A motion was made to grant and seconded. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-115 Aaron Fritz was called. OMSL made a motion to **withdraw** its motion for sanctions after proof of prescriptions were presented. A motion was made to grant and 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:**

- 12-MSRC-100 Keith D. Berry was called and he requested a hearing. In the hearing he presented testimony that failed to demonstrate that more likely than not the suspension was in error, thus the **suspension was validly issued**. The Commission ordered an evaluation, drug testing for a year and a suspension consistent with similar cases resolved by settlement with OMSL in the past.
- 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-101 Michael Aud-Headlee and 12-MSRC-109 Benjamin C. Thomas 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-102 Zandall Wagers and 12-MSRC-107 David Combs were 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**. Each 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.
- 12-MSRC-099 James B Oaks, 12-MSRC-106 Billy Brashears, and 12-MSRC-108 Randall Z. Wagers, were each called and did not appear. OMSL moved to **Show Cause** 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 KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 12-MSRC-066 William Nathan Hall was called and OMSL moved to **Show Cause**, because he failed to appear or participate 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 11:00 a.m. Docket for “traditional” type cases:

- 11-MSRC-119 River View Coal LLS, was called OMSL moved for a **continuance to October 11**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

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 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** increased to forty eight (48) 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-113 George Saylor, *with a settlement* and 12-MSRC-114 John W. Mayo were each submitted and probable cause was found. The settlement in Saylor was approved.

□ **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 August 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 August 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

8/9/12
Date