

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  
J. DUNCAN PITCHFORD  
DAVID BRIAN SLOAN

BRYON ALAN THOMPSON  
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF JUNE 14, 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 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:** 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; 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 **05/10/12** 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:**

*None were submitted for this meeting.*

- **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 12-MSRC-089 Jimmy Crews, 12-MSRC-091 Timothy S. Cavanaugh, 12-MSRC-093 Corey Chaney, 12-MSRC-094 Kevin Walters, 12-MSRC-096 John D. West, 12-MSRC-097 Sammy R. Mullins and 12-MSRC-098 John Sheridan 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.
- 12-MSRC-090 William Derrick Jones 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. Each moved to **sustain** his appeal with the condition that he test once a month for the next three months and submit tests from his treatment program for the next year. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-051 Jason B. Elam, 12-MSRC-058 Steven Hoskins, 12-MSRC-062 Brian Spence and 12-MSRC-074 Curtis Webb, were each called and did not appear. OMSL moved to **revoke** 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-253 Ryan Ratliff, was called and OMSL moved to **continue** to August 9. 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-077 Matthew Clevidence was called and OMSL moved to **revoke**, 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:**

- 12-MSRC-045 Willie Blankenship, Jr., and 12-MSRC-049 Michael Peters, were called for a motion to **waive the 30 day suspension** because of a Mining Board reinstatement delay not the fault of the miner. So moved and seconded this passed and so ordered by the Chair.
- 12-MSRC-080 Larry Gayheart, requested reconsideration within 30 days of the Order for 1 year revocation alleging no service but he failed to appear or participate. OMSL moved to **deny**. So moved and seconded this passed and so ordered by the Chair.

**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-108 Shannon Owens, was called OMSL moved for a **settlement**. 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:**

- 10-MSRC-018 ICG Knott County, was called and OMSL moved for a **settlement**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 10-MSRC-020 Noah Vance was called and the Commission was informed that the matter had settled but the parties needed until August 9, 2012 to conclude the matter. 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.

## 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** remains 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-103 Audy Stewart, 12-MSRC-104 James Kelly & Israel Clark and 12-MSRC-105 Ralph Napier, Mark A. Sizemore & Michael "Tom" Lunsford were each submitted 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 July 12, 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 July 12, 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

7/12/12  
Date