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COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS

WILLIAM D. DONAN, CHAIR
STEPHEN A. SANDERS
J. DUNCAN PITCHFORD

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **MARCH 8, 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 **02/09/12** 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:**

- 10-MSRC-042 Brenda Barger was 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 her probation as agreed in a previous settlement agreement adopted as a Final Order. A motion for approval was made and was 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:**

- 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-289 Bryan K. Harlow, 11-MSRC-290 Stevie D. Fuller, 12-MSRC-013 Joseph D. Hatfield, 12-MSRC-015 Michael Collins, 12-MSRC-031 Brett Offutt, 12-MSRC-033 Charles D. Hughes, 12-MSRC-035 Brad Stewart, 12-MSRC-036 David Harvey, 12-MSRC-037 William M. Logsdon and 12-MSRC-038 Alexander Henry Skeens 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-276 John Travis Herald or Travis Herald, 11-MSRC-277 Joshua Slone, 11-MSRC-283 Christopher Short Initial Denial, 12-MSRC-001 Greg Coley, 12-MSRC-004 Dwight J. Frazier and 12-MSRC-005 Jarrod Carroll were 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 motions carried unanimously, and were ratified by the Chair.
- 12-MSRC-012 Jerry L. Lawson and 12-MSRC-034 Robert M Cox 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-286 Billy Akers Initial Denial was 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.

- 12-MSRC-032 John D Hill 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 appeal. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-284 Ernest Moore and 11-MSRC-285 Dwaine Harris were called regarding the initial denial of certifications due to a positive drug test. Neither held certificates nor appeared to pursue their appeal, thus OMSL moved to **sustain the Commissioner's determination to deny** initial certification. 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-017 Nicklaus Hogan, 12-MSRC-018 Randall Bratcher and 12-MSRC-026 Steven A. Layne were called and appeared. They each requested a **settlement** agreement. OMSL so moved. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-016 Paul Bruce, 12-MSRC-019 Spencer D. Baker, 12-MSRC-020 Bobby Wolford, 12-MSRC-021 Brad W. Neal, 12-MSRC-022 Jamie Williams, 12-MSRC-023 Bradley W. Thornberry, 12-MSRC-024 Jonathan Edward Case, 12-MSRC-025 David D. Morris, 12-MSRC-027 Jason T. North, 12-MSRC-028 Charles T. Pryor and finally 12-MSRC-030 Ronald David Cooper Jr. (as a second offense was permanently revoked) were each called in turn and no one appeared or participated on their behalf nor were any responsive pleadings of record. OMSL moved to **revoke** as to each. 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 appeared and admitted and requested resolution of matters by settlement. MSRC determined a course of disciplinary measures including an evaluation, subsequent treatment if

so required an a year of alcohol and drug testing in addition to meeting Virginia requirements. 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:

- 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-018 ICG Knott County was called OMSL moved for a **continuance** to April 12 to allow ratification of a **settlement** agreement being circulated for approval. 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

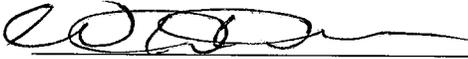
□ Settlement Agreements

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 April 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 April 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

4/12/12
Date