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GOVERNOR



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COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
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COMMISSIONERS

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

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF MARCH 14, 2013: 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, 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:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel were present and also staff attorneys for OGC; Ottley, Huffman, Long, Girard, Smock, Patrick 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 **2/14/13** 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 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:**

  - Each of the following cases were called in turn: 11-MSRC-181 Charlie J. Clark, 11-MSRC-187 Clifford Patterson, 11-MSRC-205 Carl D. Trent, 11-MSRC-224 Bobby J. Horn, Jr. 12-MSRC-076 Winfrey A. Bowman, 12-MSRC-083 Joshua E. Scott and 12-MSRC-120 Jason S. Cooper and no one appeared or participated. OMSL by counsel moved to **permanently revoke** each of them based upon their failure to submit the drug tests in their agreement or the failure of drug tests. 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.
  - Each of the following cases were called in turn and requested an **amendment** to a previous Final Order so as to complete the terms of their probation: 11-MSRC-160 Bryan C. Robbins, 12-MSRC-052 Jacob A. Todd and 12-MSRC-111 Anthony Scott Dennis. 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.
  - Good cause was shown and the following cases were **continued**: 11-MSRC-262 Charles D. Hoskins, 12-MSRC-040 Danny C. Bevins and 12-MSRC-097 Sammy Mullins. . 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.
  
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – revocations:**

  - 12-MSRC-212 Robert Brian Remus was called. He appeared and requested a **settlement**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
  - 12-MSRC-213 Jimmy Rose was called and prior to this meeting had requested a continuance to allow his attorney to prepare his defense. Whereas Rose failed to appear OMSL moved for a **Show Cause** Order for the next meeting. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 13-MSRC-015 Marshall Lloyd Eldridge appeared and demonstrated that the prior suspension was in error and moved to have his appeal **Sustained**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-001 Darrell Griffith (“new law”) was called in turn regarding a Show Cause issued at the last meeting for his failure to appear or participate in the hearing he requested. No one appeared at this meeting, thus OMSL moved for **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. failed to appeal or chose drug treatment cases – “new law” 3 year revocation**

- 13-MSRC-016 Zachary Conditt, 13-MSRC-017 Trey Tapp, 13-MSRC-018 Jeffrey Dover, 13-MSRC-019 James Hagan, 13-MSRC-020 Allen McGregor, 13-MSRC-021 Raymond Brush, 13-MSRC-022 Bobby Whitehead, 13-MSRC-023 Patrick Thomas, 13-MSRC-024 William Wright, 13-MSRC-025 Cody James, 13-MSRC-026 Richard D. Johnson, 13-MSRC-027 Brian Robinson, 13-MSRC-028 Elmer Hurt, 13-MSRC-029 Eric Watts and 13-MSRC-031 Kristopher Adkins were each called in turn. They did not appear or participate in any way and thus OMSL moved for 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.
- 13-MSRC-003 Levi Cox was called and requested a **Dismissal** and **reinstatement** based upon evidence and testimony that his suspension was in error. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair

**11:00 a.m. completed treatment & clean test drug cases, reinstate**

- None submitted for this meeting

**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 Docket for “traditional” type cases:**

- 10-MSRC-020 Noah Vance, settlement and 12-MSRC-114 John W. Mayo, settlement were each called and OMSL made a motion to **continue**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-103 Audy Stewart was called and a **settlement** was proposed. OMSL moved for acceptance. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-154 Norris, Massingale, Miniard, Davis, Stanton, Cox, Bailey & Caudill, was called and today, with all but Bailey resolved by **settlement** agreements. The **case as to Bailey was heard** and although the violation was found no penalty was assessed because of his cooperation with the investigation. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-103 Audy Stewart, was called and **settlement** was entered and moved to be accepted. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-156 Robert V. Brandenburg, Clark Burnett, Earnest D. Caldwell, Jeff I. Craig, Christopher D. Napier And George A. Saylor was **heard** as to Craig and Saylor with the **others being defaults**.

**Old Business**

❑ **Ratification of Final Order:**

*None submitted for this meeting.*

❑ **Administrative Hearings Update;**

The Commission discussed briefly the pending number of cases set for the next meeting and the possibility of at least one “traditional” type hearing.

□ **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. 07-MSRC-100 **Hendrickson Equipment** & James Hylton is being briefed.

**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 21, 2013** 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**

*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 11, 2013.**

- **Adjournment:** Commissioner and Chair Donan 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 April 11, 2013. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

  
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Hon. William D. Donan Chair  
Mine Safety Review Commission

11 April 2013  
Date