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COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS

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

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF MAY 10, 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 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 **04/12/12** 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:**

- 11-MSRC-006 James L. Hardrick, 11-MSRC-010 Robert Neace, 11-MSRC-108 Jeffery Brothers, 11-MSRC-158 Michael Jobe, and 11-MSRC-251 Christopher Geary, were called and although Neace appeared the others did not appear or participate. OMSL by counsel moved for **permanent revocation** as a sanction for failing to comply with the terms of their 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 12-MSRC-052 Jacob Allen Todd, 12-MSRC-053 Roland Jones, 12-MSRC-057 Mitchell J. Napier, 12-MSRC-059 Jack Kimber Holbrook, Jr., 12-MSRC-065 Jeff Brown, 12-MSRC-067 Richie T. Coleman, 12-MSRC-069 Bobby R. Kilbourne, 12-MSRC-070 Jacques Samuel, 12-MSRC-073 Freddy Fuson, 12-MSRC-075 Michael L. Moudry, Jr., and 12-MSRC-076 Winfrey Bowman 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-253 Ryan Ratliff, 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 **Show Cause**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-056 James Estep, 12-MSRC-060 Donald Akers, 12-MSRC-061 Mickey Bentley, 12-MSRC-063 Thomas L. Walker, 12-MSRC-064 John Capps, 12-MSRC-68 Travis Lynn Willett, and 12-MSRC-071 Eric Shown were each called in turn 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.

- 11-MSRC-265 Jody A. Roberts, 12-MSRC-042 Joshua Kyle Dixon, and 12-MSRC-048 George Hurt 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.
- 12-MSRC-072 Randal A. Snyder, was called and OMSL moved to **continue** to October 4. 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 **continue** to allow for service. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 12-MSRC-078 John McGinnis, 12-MSRC-079 Gary Franklin, 12-MSRC-080 Larry Gayheart, 12-MSRC-081 Ryan D. Tackett, 12-MSRC-082 Gary R Carraway, 12-MSRC-085 Eric L. Thompson, 12-MSRC-086 Stephen P. Thomas, 12-MSRC-087 Lyle D. Britton, and 12-MSRC-088 Johnny Lee Younce who was permanently revoked were each called in turn and did not appear nor have anyone appear in their behalf. 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.
- 12-MSRC-083 Joshua E. Scott was called and appeared. He 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-084 Shawn A. Slayton was called and was **reinstated** upon a finding that he held prescriptions and had a timely clean drug test. 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:

- 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:

- 11-MSRC-194 Jamie S. Lester, requested the opportunity to appear and make a motion to reconsider a prior order due to error. He appeared and wished to enter a **settlement**, which was so Ordered by the MSRC after a motion, second and vote.

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-166 Chad Jarrell, was called regarding a drug suspension at a non-licensed facility 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.
- 11-MSRC-167 James D. Francis, was called regarding a drug suspension at a non-licensed facility, 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-108 Shannon Owens, was called and OMSL moved to **continue** to June 14. 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 **continuance** to June 14. 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:**

10-MSRC-105 Sonny Dale Salyers, was discussed and the opinion was signed as the Commissions Final Order.

❑ **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 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-092 Bell County Coal Corp. and 12-MSRC-095 Kenneth Byrd & Nathan Wright 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 June 14, 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 June 14, 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

6/14/12
Date