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ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF JULY 14, 2011: 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, Pete Thompson, Russell and Richardson 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 **6/9/11** 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-182 Earl Reed May and 11-MSRC-079 Bradley J. Grant were 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 his 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.
 - 10-MSRC-184 James Peterson was called and OMSL moved for a **continuance** to check on alleged proof of compliance. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
 - 10-MSRC-014 Jeremy McCoy was called and OMSL stated that he called and assured them that he would appear and answer the allegations. No one appeared on his behalf and no filing is of record, thus OMSL moved for **show cause**. 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-121 Everett Johnson Jr., 11-MSRC-122 Michael Helton, 11-MSRC-124 Dean Merrell, 11-MSRC-125 Greg Lovan, 11-MSRC-128 Jacolby Qualls and 11-MSRC-129 Adam K. Hardin, 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-097 Danny D. Johnson was 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 motion carried unanimously, and was ratified by the Chair.

- 11-MSRC-123 Robert Wayne Powell an initial denial and 11-MSRC-126 Shannon B. Fultz 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-120 Ronald David Cooper Sr., 11-MSRC-127 Marvin J. Ousley and 11-MSRC-130 Hubert J. Hill were each called. Each presented evidence that demonstrated that more likely than not the suspension was in error. They moved to have their **appeals sustained**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-107 Matthew Bennett or Bennett Mathew Kinser, was called after being continued from last month and requested a **hearing**. A hearing was held, with testimony, exhibits and arguments of counsel concluding today and being submitted for a decision.

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:

- 11-MSRC-112 Michael Crum, 11-MSRC-131 Jeremy Johnson, 11-MSRC-134 Alex L. Gibbons, 11-MSRC-135 William A. Maynard and 11-MSRC-136 William P. Smith were each called in turn and did not appear or participate. OMSL by counsel 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.
- 11-MSRC-132 Lawrence Anderson, Jr., 11-MSRC-133 Jason R. Barnes and 11-MSRC-137 William Jarrod Sparks were called and OMSL moved for a **continuance** as to each. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-116 Damon Bates was called and indicated that he desired a **settlement agreement**. 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 Motions to Modify prior Orders:

- 11-MSRC-116 Shaun Aslinger and 11-MSRC-021 Anthony W. Mars were called. They moved to be **reinstated** based upon new information and the submittal of clean/negative drug tests. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-119 Stephen Alan Ford, 11-MSRC-036 Kevin Johnson and 11-MSRC-108 Jeffery S. Brothers were each called in turn. None participated or otherwise appeared regarding their request to modify a prior order. A motion to **deny** was made, seconded and approved.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

11:00 a.m. Petitions for an Order filed by OMSL in roof control cases:

None submitted for this meeting.

The 1:00 p.m. Docket for “traditional” type cases:

- 10-MSRC-193 Lone Mountain & 10-MSRC-208 Webster County Coal, were called and the hearings **continued** to November 10, 2011.
- 10-MSRC-111 Viper, was called on a motion regarding **reconsideration** of the assessed penalty. That motion was **denied**.

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 on Thursday August 11, 2011, 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 seven (47) cents per mile.

□ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in June 2012 at the KY History Center. Initial Hearing Officer training will be in March 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 August 11, 2011.**

- **Adjournment:** Commissioner 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 11, 2011. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



WILLIAM D. DONAN, CHAIR
MINE SAFETY REVIEW COMMISSION

8-11-11

Date