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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 **JUNE 9, 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 appointment is pending, Commissioner William D. Donan and Commissioner Stephen A. Sanders were present. Commissioner Donan assumed the role of Acting Chair. 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 Acting 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 **5/12/11** 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:**

- 09-MSRC-321 Joe A. Howard 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 his probation as agreed in a previous settlement agreement adopted as a Final Order. Commissioner Donan made a motion for approval, which 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-098 Jerry Cissna, 11-MSRC-099 Alan L. Mason, 11-MSRC-101 Paul J. Bartley, 11-MSRC-106 Jeremy Jarvis, 11-MSRC-108 Jeffery S Brothers and 11-MSRC-110 Roy Neace 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-090 Joshua Ryan Howell and 11-MSRC-092 Jerry W. Brummett Jr., 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 motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-097 Danny D. Johnson and 11-MSRC-105 Virgil W. Howell, were 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-102 Travis Loney, 11-MSRC-103 Daniel L. Stanfill, 11-MSRC-104 Jesse A. Bates and 11-MSRC-109 Ronnie D. Partin were 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 and requested a hearing. At the outset of the hearing Kinser, by counsel, objected to the appearance of a witness by phone. OMSL by counsel moved for a **continuance** so as to have the witness appear. 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:

- 11-MSRC-111 Eddie L. Gray, 11-MSRC-113 Corbin Darren Howell, Jr., 11-MSRC-114 Jackie L. Dehart, 11-MSRC-115 Robert D. Bentley and 11-MSRC-117 Timothy S. Barker 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-112 Michael Crum and 11-MSRC-116 Damon U. Bates 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-118 Thomas Gray 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:

- 06-MSRC-060 Timothy N. Caudill was called. He was allowed the opportunity to be **reinstated** upon completion of new miner training and the counseling recommended by his rehabilitation worker. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 09-MSRC-025 Ryan Hughes and 08-MSRC-261 Ronald Holcomb were called. Each requested a **modification of a prior order** with enhanced testing so that they could complete probation. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ~~✶~~ 09-MSRC-138 Timothy R. Blanton, 10-MSRC-038 Michael Bryant, 10-MSRC-069 Chad Bowling, 10-MSRC-189 Brian Morgan, 10-MSRC-202 Charles Reed and 11-MSRC-036 Kevin Johnson 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.
- 10-MSRC-119 Stephen Alan Ford appeared with counsel and argued that the original basis for the suspension was in error. A modification was **denied but the record was left open** for the submission of proof. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-028 Michael Vanderpool appeared and participated and requested the approval of a **settlement agreement** modifying a prior order of this Commission. 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. 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.

★ 10-MSRC-069 Chad Bowling did appear and was granted his request to return³ in August. BAT

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

- 11-MSRC-096 Donald D. Coots was called, but **settlement was denied** for the terms to be either re-evaluated or explained as to the agreed disciplinary measures. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-063 Jeffery Lynn Sandlin and 11-MSRC-219 Casey Reed & Reed Construction, were each called and no one appeared to respond to a motion for **default**. So moved by OMSL, and thus 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-111 Viper Coal, LLC was ratified unanimously.

□ **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 24, 2011** 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**

11-MSRC-096 Donald Coats was called for a determination of Probable Cause. After review the Commission moved for a finding and this was **found**, seconded and approved.

□ **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 14, 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 July 14, 2011. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Acting Chair
Mine Safety Review Commission

7/14/11
Date