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COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION  
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COMMISSIONERS

\_\_\_\_\_, CHAIR  
WILLIAM D. DONAN  
STEPHEN A. SANDERS

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF **MAY 12, 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 **4/14/11** 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:**

- *None considered at this meeting.*

□ **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-067 Thomas Compton, 11-MSRC-083 James Potter, 11-MSRC-084 Bill Henry, 11-MSRC-085 Thomas Winkler, 11-MSRC-086 James Clifford Slone, 11-MSRC-087 Herbert T. Wilson, 11-MSRC-088 Timothy Roy Hall, 11-MSRC-089 Scotty Collins, 11-MSRC-093 Ronnie Lee Sparkman, 11-MSRC-094 Kenneth R. Taylor and 11-MSRC-095 Bruce Wayne Madden 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-071 Larry Napier and 11-MSRC-080 Lonnie Williamson 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-090 Joshua Ryan Howell and 11-MSRC-092 Jerry W. Brummett Jr., 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-082 Andrew Taylor, 11-MSRC-091 Dennis Patterson and 11-MSRC-100 Brandon D. Tackett 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.

**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:**

- *None considered at 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 Pre-Hearings**

- The Commission convened a pre-hearing regarding a potentially dispositive motion to dismiss in 10-MSRC-208 Webster County Coal and 10-MSRC-193 Lone Mountain.

**The 11:00 a.m. Docket for Motions to Modify prior Orders:**

- 11-MSRC-076 Eric Fleming and 11-MSRC-078 Todd Hamlin to waive 30 day suspension because of an administrative delay preventing MB approval. The motions were made, seconded and approved.
- 11-MSRC-036 Kevin Johnson was called. He requested a rehearing from March regarding a previous 1 year revocation. He failed to meet his burden of proof. 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:**

*None considered at this meeting.*

## Old Business

### ❑ **Ratification of Final Order:**

*None scheduled for this meeting.*

### ❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday June 9, 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 Coots 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 June 9, 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 June 9, 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

6/9/11  
Date