

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
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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 NOVEMBER 10, 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, Thompson, 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 **10/06/11** 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:**
 - 08-MSRC-113 Shane Gross, 09-MSRC-076 James Jarrett, 10-MSRC-136 Kenneth S Eldridge and 10-MSRC-209 Gerald V. Frasure, 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 their probation as agreed in a previous settlement agreement adopted as a Final Order. A motion for approval was made and was seconded for each. The motions carried unanimously, and were ratified by the Chair.
 - 10-MSRC-126 Shannon Williams and 10-MSRC-170 Charles Fox, were called and OMSL moved for a **continuance**. A motion for approval was made and was seconded for each. The motions carried unanimously, and were ratified by the Chair.
 - 10-MSRC-180 David Heath Akers was called and OMSL presented proof sufficient for OMSL to **withdraw** its motion for sanctions. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
 - 10-MSRC-197 Robert Gene Caudill, 11-MSRC-005 Mitchell Risner and 11-MSRC-118 Thomas Gray appeared and requested an **amendment to their previous settlement agreement**. Motions for approval were made and were seconded for each. The motions carried unanimously, and were ratified by the Chair.
 - 10-MSRC-205 Dennis Matthews was called and did not appear. OMSL moved for a **Show Cause** hearing for December. 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-235 Michael Sincell, 11-MSRC-236 Michael Goodie, 11-MSRC-237 Wendell E. Cohelia, 11-MSRC-238 Timothy D. Mitchell, 11-MSRC-239 Leslie Lee May, 11-MSRC-243 Gary Pennington, 11-MSRC-244 Raymond Large, 11-MSRC-245 Jim C. Blackwell old # 11-MSRC-196 and 11-MSRC-246 David Dale Keith 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-143 Joseph Adkins, 11-MSRC-173 Harold Grubbs, 11-MSRC-176 Raymond C. Perkins, 11-MSRC-177 Robert Ferrell Delaney, and 11-MSRC-189 Anthony Newsome 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-228 Bronell L. Sturgill, 11-MSRC-229 Rodney D. Smith, 11-MSRC-230 Bryan K Whitten, 11-MSRC-231 Kelly Morgan and 11-MSRC-233 Phillip Walls 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-234 Keith W. Halbert and 11-MSRC-242 John M. Jones were called. They 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-172 Jeffery McQueen, 11-MSRC-174 Sam Maggard, 11-MSRC-232 Nathan Collins and 11-MSRC-241 David K Gates were called regarding an initial denial. The DNR Commissioner's determination to **deny certification was overruled**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-240 Benjamin Jason Adkins, was called and did not appear. OMSL moved to **continue**. 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-191 Brian M. Ramey, 11-MSRC-192 Delbert W. Conn, 11-MSRC-193 Lawrence E. Lee, 11-MSRC-194 Jamie S. Lester, 11-MSRC-195 Troy Deaton, 11-MSRC-197 Jake Mullins, 11-MSRC-198 Roy L Standifur, 11-MSRC-199 John R. Prader, 11-MSRC-202 Robert Winters, 11-MSRC-203 Leslie Cornett, 11-MSRC-204 Jack A Brock, 11-MSRC-206 Cody W. Korb, 11-MSRC-207 Michael J. Stanley, 11-MSRC-208 Ronnie N. Poe, 11-MSRC-209 Brian K. Rose, 11-MSRC-210 Steven Jones, 11-MSRC-212 Jason K. Nobel, 11-MSRC-213 Christopher S. Hamilton, 11-MSRC-214 Williard Troy Napier, 11-MSRC-215 Tyler S. Allen, 11-MSRC-216 Kermit M. Clemons, 11-MSRC-217 Charles Lawrence Farley, 11-MSRC-218 Chad Jones, 11-MSRC-219 Justin M Kidd, 11-MSRC-220 James Lee Miller, 11-MSRC-221 Jeremy McElwain, 11-MSRC-222 James L. Spencer, 11-MSRC-223 Eric Cupp, 11-MSRC-225 Brandon David Morgan, 11-MSRC-226 Ronald Clothier, Jr., and 11-MSRC-227 Johnathon W. Meadows were each called and did not appear and no one appeared on their behalf. OMSL moved to **revoke** for not less than one year. A motion was made and seconded to approve for each. The Final Order was **approved** unanimously for each and signed by the Chair.
- 11-MSRC-200 Casey Smith, 11-MSRC-201 Bobby Collins, 11-MSRC-205 Carl D. Trent, 11-MSRC-211 Keith Lawson and 11-MSRC-224 Bobby Horn Jr. were called. Each requested a **Settlement Agreement**. A motion was made and seconded to approve as to each. The Final Order was **approved** unanimously and signed 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:

- 10-MSRC-184 James Peterson, and 08-MSRC-299 Arthur Richardson were called and each appeared and requested a **modification of a prior settlement** which included enhanced drug testing and probation. A motion was made to **grant**, which was seconded as appropriate as to each. The motion carried unanimously for both, and were 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.

The 11:00 a.m. Docket for “traditional” type cases:

- 11-MSRC-165 Matrix Energy, prehearing was called and OMSL moved to **continue** to January 12. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-119 River View Coal, prehearing was called and OMSL moved to **continue** to March 8. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-207 Leeco Inc., was called and OMSL stated that the matter was **settled** and so moved. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-208 Webster County Coal, and 10- MSRC-193 Lone Mountain Processing, Inc. were each called regarding the pending Motion for Summary Disposition. OMSL is to submit a response and then the motions stand **submitted**.

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 December 8, 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**

- 11-MSRC-257 Joey Branham & Jeremy Russell was called for a Probable Cause determination. OMSL so moved. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

□ **Settlement Agreements**

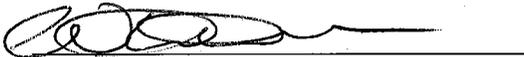
The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- **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 December 8** 2011.
- **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 December 8, 2011. 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

12 / 8 / 11
Date