

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT, KENTUCKY 40601
TELEPHONE: (502) 573 - 0316
FAX: (502) 573-0344

BRYON ALAN THOMPSON
GENERAL COUNSEL

COMMISSIONERS

WILLIAM D. DONAN, CHAIR
STEPHEN A. SANDERS
J. DUNCAN PITCHFORD

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF OCTOBER 6, 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 **9/08/11** 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-263 Herman D. Grubbs and 11-MSRC-128 Jacolby Qualls 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-205 Dennis Matthews and 11-MSRC-118 Thomas Gray (11:00 a.m.) were called and OMSL moved for a **continuance**. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-134 James D. Cornett 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-152 Lloyd Gene Adams was called (11:00 a.m.) and requested an **amendment to the previous settlement agreement**. 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-170 Timothy Cornett, previous 08-MSRC-170, 11-MSRC-171 Carroll Wayne Rickard previous 08-MSRC-237, 11-MSRC-175 Timothy Gross, 11-MSRC-181 Charlie J. Clark, 11-MSRC-182 Bryan Hicks, 11-MSRC-183 Mickey Saylor, 11-MSRC-187 Clifford Patterson and 11-MSRC-188 David L Justice 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-149 Daryl Edward Adkins and 11-MSRC-179 Jan B Shoulders former 09-MSRC-235 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-143 Joseph Adkins, 11-MSRC-172 Jeffery McQueen - initial denial, 11-MSRC-173 Harold Grubbs, 11-MSRC-174 Sam Maggard - initial denial, 11-MSRC-176 Raymond C. Perkins, 11-MSRC-177 Robert Ferrell Delaney and 11-MSRC-189 Anthony Newsome 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-158 Michael B. Jobe, 11-MSRC-178 Brian Edward Robinson, 11-MSRC-180 Aaron S. Oldham, 11-MSRC-184 Fess Pace Jr., 11-MSRC-185 Michael Morgan and 11-MSRC-186 Roger Bowling 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.

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 submitted for this meeting.*

The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:

- 11-MSRC-190 Shaun Pugh was called for a Probable Cause determination on this **reciprocity** based action. OMSL so moved. 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 Motions to Modify prior Orders:

- 10-MSRC-119 Stephen Alan Ford was called and appeared. He presented a new evaluation and three negative drug tests taken over the last 6 weeks 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. The motion carried unanimously, and was ratified by the Chair.

- 08-MSRC-238 Louis Sandlin, 09-MSRC-051 Charlton E. Bennett, 09-MSRC-132 Johnny Brown and 10-MSRC-203 Jonathan Asher were called. No one participated or otherwise appeared regarding the request to modify a prior order. A motion to **deny** was made, seconded and approved.
- 10-MSRC-184 James Peterson was called and OMSL stated that Peterson requested more time to submit tests and obtain an evaluation. OMSL moved for continuance. 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.

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

- 11-MSRC-165 Matrix Energy, prehearing was called and OMSL moved to **continue** to November 10. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-081 Timothy Hurd, was called and he appeared. Hurd requested a **settlement** and OMSL reported that the matter settled for the disciplinary terms demanded in the Complaint. 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:

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 November 10, 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-190 Shaun Pugh was called for a Probable Cause determination on this **reciprocity** based action. 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**

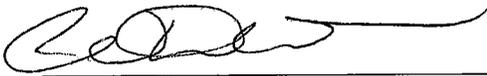
The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- **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 November 10, 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 November 10, 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

10 Nov 2011
Date