

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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WILLIAM D. DONAN, CHAIR
J. DUNCAN PITCHFORD
DAVID BRIAN SLOAN

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF NOVEMBER 14, 2013: 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, and Commissioner J. Duncan Pitchford and Commissioner David B. Sloan 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:** Energy and Environment Cabinet General Counsel staff attorneys for OGC were present; Otley, Girard, Smock, Patrick and Russell who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland. OMSL was represented by Amy Hislope.
- The **minutes** for the meeting on **10/10/13** 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 submitted for this meeting.*

□ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – revocations:**

- 13-MSRC-119 James Blankenship was called and he failed to appear, defend or participate. Commissioner Sloan recused. OMSL requested a **3 year revocation**. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-138 Scotty Tacket and 13-MSRC-139 Stevie Clark appeared and requested a settlement agreement. OMSL did not oppose a **settlement** agreement that provided for testing and an evaluation. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-126 Leonard Nantz, 13-MSRC-137 Oscar Bowling and 13-MSRC-140 Jesse Williams was called and they failed to appear, defend or participate. OMSL moved to **Show Cause** to December 12. The motion carried unanimously upon vote of the remaining two Commissioners, and was ratified by the Chair.
- 13-MSRC-125 Robert Owens appeared and requested a **hearing**. After taking testimony from the OMSL witness regarding the test, and considering the negative test presented by Owens the day after the alleged positive and his demeanor the Commission sustained his appeal.

9:00 a.m. failed to appeal or chose drug treatment cases – “new law” 3 year revocation

- 13-MSRC-131 William M. Johnson appeared after being revoked at the prior meeting and requested reconsideration and a settlement agreement. The Commission **rescinded** his revocation and issued an Order requiring drug testing and counseling consistent with those of OMSL.
- 13-MSRC-131 David Gill, 13-MSRC-141 David Gill, 13-MSRC-142 Bradley Crabtree, 13-MSRC-143 Brantley Hess, 13-MSRC-144 Richard Fulkerson, 13-MSRC-145 Bruce Young, 13-MSRC-146 Mark Sizemore, 13-MSRC-151 Matthew Leeder, 13-MSRC-152 Andrew Christian, 13-

MSRC-153 Gregory Kirksey, 13-MSRC-154 Trey West, 13-MSRC-155 Bradley Peyton and 13-MSRC-156 Brandon Maynard failed to appear, defend or participate upon the call of each of their cases. OMSL requested a 3 year revocation. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

9:00 a.m. completed treatment & clean test drug cases, reinstate

- 13-MSRC-117 Robert Bolen, 13-MSRC-147 Edward Davidson, 13-MSRC-148 James Russell and 13-MSRC-150 James Pierce demonstrated that they completed counseling and had a clean drug test and moved to be **reinstated**. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

Petition for Order in roof control violation

- 13-MSRC-120 Blue Diamond Coal Company was called for a pre-hearing for scheduling for an appeal of two non-compliances. The parties were ordered to present a schedule which they have done at the time of this writing and such was approved by the Commission.

The Docket for “traditional” type cases:

- 13-MSRC-095 Scott and Jones was called on a motion for **default** regarding Scott. No one appeared and no responsive pleading is of record despite good service. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-068 Steve Golden and 13-MSRC-069 David Hampton were both called upon a motion for **default**. No one appeared and no responsive pleading is of record despite good service. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-071 Darrell Jones & Tony Stacey were called and counsel requested a **continuance** to January 9, 2014 for purposes of settlement. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 13-MSRC-072 Plaster, Mead and Shortridge were called. Counsel moved for a **default as to Plaster**. No one appeared and no responsive pleading is of record despite good service. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair. Mead and Shortridge were continued to December for settlement.
- 13-MSRC-073 Wagner & Wagner were called. OMSL by counsel stated that the settlement agreements were being finalized and requested a **continuance** to December 12, 2013. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-080 Ousley et al. was called for scheduling. OMSL and counsel for defendants moved to **set the trial for April 10** and noted that it will take two full days. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 13-MSRC-070 Vonny Jones was called for a **hearing**. He appeared and a hearing was held. The Commission will issue a Final Order within 90 days.

Old Business

□ Ratification of Final Order:

- 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. 07-MSRC-100 **Hendrickson Equipment** & James Hylton is submitted for a ruling.

New Business

□ Office & Administrative;

- The General Counsel advised that the **mileage** is forty six (46) cents per mile.

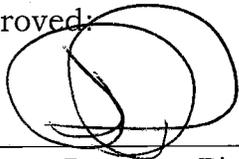
□ Training

- ❑ **Required Hearing Officer Training:** Next required Hearing Officer Training is on **June, 2014** at the KY History Center and in **March 2014** for Commissioner Sloan.
- ❑ **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 December 12, 2013.**
- ❑ **Adjournment:** Commissioner and Chair Donan made a motion to adjourn, which was seconded and the motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday December 12, 2013. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



 Hon. J. Duncan Pitchford, Acting Chair
 Mine Safety Review Commission

Dec 12 2013

Date