

STEVEN L. BESHEAR
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SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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J. DUNCAN PITCHFORD
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF OCTOBER 10, 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:** Steve Hohmann Commissioner of DNR appeared to observe. Hon. Mike Haines, Energy and Environment Cabinet General Counsel were present and also staff attorneys for OGC; Ottley, 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.
- The **minutes** for the meeting on **8/8/13** 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:**

 - 12-MSRC-106 Billy Brashers was called. Brashers admitted missing tests which is non-compliance with the prior settlement. He cited extenuating circumstances that prevented taking the tests. He requested an amendment to the prior agreement. OMSL by counsel opposed. Brashers prior **settlement was amended** to a 180 day suspension and drug testing once a month for a year. This was moved, seconded and approved unanimously.
 - 13-MSRC-032 Jeff Vincent was called and he failed to appear, participate or defend in any way. OMSL stated that he failed to comply with the settlement agreement and requested a **3 year revocation**. This was moved, seconded and approved unanimously.
 - 11-MSRC-262 Charles Hoskins was called and failed to appear despite prior continuances. He failed to participate or defend in any way. OMSL requested a **permanent revocation** (old law case). This was moved, seconded and approved unanimously.

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

 - 13-MSRC-088 Travis Pennington was called and he failed to appear, defend or participate. 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-122 Aaron D. Ousley 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-119 James Blankenship was called and he failed to appear, defend or participate. Commissioner **Sloan recused** himself from this matter citing a conflict. OMSL moved to **Show Cause** to November 14. The motion carried unanimously upon vote of the remaining two Commissioners, and was ratified by the Chair.

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

- 13-MSRC-097 Travis Turner, 13-MSRC-098 Jonathan Gayheart, 13-MSRC-099 Donald Reed, 13-MSRC-100 Derek S. Phillips, 13-MSRC-101 Richard Rigdon, 13-MSRC-102 Jarrod Ramsey, 13-MSRC-103 Timothy L. Denton, 13-MSRC-104 Adam J. Gould, 13-MSRC-105 Andrew Adams, 13-MSRC-106 Justin Tipton, 13-MSRC-107 James Jones, 13-MSRC-108 Elliott Muncy, 13-MSRC-109 Richard Whitt, 13-MSRC-110 John Dunaway, 13-MSRC-111 Kenneth Jones, 13-MSRC-112 Shane D. Richardson, 13-MSRC-113 Brenden J. Evans, 13-MSRC-114 Jason Gager, 13-MSRC-115 Bobby Estes, 13-MSRC-116 Steven Stamper, 13-MSRC-118 Steven Blanchard, 13-MSRC-127 Thomas Dean, 13-MSRC-128 Darrell Goff, 13-MSRC-129 Matthew Johnson, 13-MSRC-130 Corey W. Gamble, 13-MSRC-131 William M. Johnson, 13-MSRC-132 Charles B. Gibbons, 13-MSRC-133 Bryan Wilson, 13-MSRC-134 Kenneth Williams and 13-MSRC-135 Dewey James 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-082 Allen Williamson, 13-MSRC-123 John Ditterline, 13-MSRC-124 Barry Gerton and 13-MSRC-136 James Branham 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

- None submitted for this meeting

The Docket for “traditional” type cases:

- 12-MSRC-104 James E. Kelly & Israel Clark, was called for a presentation of a **settlement**. A motion was made to grant, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 10-MSRC-193 Lone Mountain and 11-MSRC-119 River View were called. OMSL by counsel stated that the settlement agreements in both cases 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 upon OMSL's motion for default. Although late, all parties filed answers except for McKenzie, thus a **default was granted for McKenzie** and the motion was denied as to the other parties. 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.

□ 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** dropped to 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**

- 13-MSRC- 121 Ralf Napier, Hershel Napier, Jamie Johnson, Jeffery Coker, Phillip Wigington, And K & D Mining, Inc, consolidated with the file and petition for a hearing from 12-MSRC-112 K&D Mining, was presented for a Probable Cause determination. Probable Cause was found, so moved and seconded and passed.

□ **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 October 10, 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 November 14, 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. William D. Donan Chair
Mine Safety Review Commission

14 Nov 2013
Date