

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

COMMISSIONERS

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

BRYON ALAN THOMPSON  
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF MARCH 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 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 **2/10/11** 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:**

  - 09-MSRC-231 Joe A Howard was called whereupon OMSL moved for **Continuance**. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.
  - 08-MSRC-249 Lloyd Collins Jr. III, 10-MSRC-021 William Johnson, Jr., and 10-MSRC-089 Randy R. Wood Jr., were called and did not appear. OMSL moved to grant its motion for **permanent revocation**. The matter was seconded as to each as appropriate and approved unanimously and was ratified.
  - 10-MSRC-192 Dennie Clem was called and presented proof of compliance by submitting all missing tests. OMSL moved to **withdraw**. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.
  - 09-MSRC-280 Toney Adams and 10-MSRC-170 Charles Fox, were called and wished to enter a **settlement agreement**. OMSL so moved. The matter was seconded as appropriate, carried unanimously and 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 10-MSRC-197 Robert Gene Caudill, 10-MSRC-166 James Boggs, 11-MSRC-027 Brain J. Ferguson, 11-MSRC-030 Andrew F. Smith, 11-MSRC-033 Daniel Hayes, 11-MSRC-034 Larry Ray Smith, 11-MSRC-060 Rodney Caldwell, 11-MSRC-061 Scottie Dewayne Miller, 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-062 Nicholas L. Hall and 11-MSRC-028 Michael C. Vanderpool were called and OMSL moved for a **Continuance** for good cause shown. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 10-MSRC-214 Chris McLemore, was 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-059 John B. West was 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-029 Justin M. Dillon, 11-MSRC-031 Jason Abner and 11-MSRC-032 John David Hayes 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:**

- 11-MSRC-020 Michael E. Carver and 11-MSRC-054 Jeffrey T. Belt were called and OMSL informed the Commission that it desired a **Settlement Agreement**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 11-MSRC-017 Michael A Lawson, 11-MSRC-018 Tim Hatfield, 11-MSRC-019 Michael Compton, 11-MSRC-035 Martin Paul Miller, 11-MSRC-036 Kevin Johnson, 11-MSRC-037 Scott Thompson, 11-MSRC-038 Calvin Sheldon, 11-MSRC-039 Sheldon Robinette, 11-MSRC-040 Mary J. Noble, 11-MSRC-041 Steven Tate Moore, 11-MSRC-042 Johnny Joseph, 11-MSRC-043 Brian P. Wright, 11-MSRC-044 Jerry Wright, 11-MSRC-045 Steve W. Stone, 11-MSRC-046 John L. Robertson, 11-MSRC-047 Jonathan P. Hamilton, 11-MSRC-048 Joshua Durham, 11-MSRC-049 James Thompson, 11-MSRC-051 Ronald K. Deel, 11-MSRC-052 Donnie Langdon, 11-MSRC-053 Michael S. Ratliff, 11-MSRC-055 Rodney Brock 11-MSRC-056 William Mike Campbell, 11-MSRC-057 Ray Cornett and 11-MSRC-058 Charles D. Thacker were called but did not appear. OMSL moved for **revocation**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

- 11-MSRC-050 Orville Bentley was called. OMSL moved for a **continuance**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified 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:**

08-MSRC-168 Justin Caudill, 08-MSRC-222 Buddie Ray Morris III, 10-MSRC-004 Waylon C. Mayhew, 110-MSRC-209 Gerald V. Frasure appeared and demonstrated just cause for modification of prior probationary terms for enhanced and extended testing. The Commission **granted** modification of their settlement agreements in their Final Orders.

10-MSRC-069 Chad Bowling, 08-MSRC-266 Carlos Brandon Asher, 09-MSRC-202 Dallas R. Banks requested modification of their settlement agreements incorporated in their Final Orders but failed to demonstrate sufficient proof. The Commission **denied** their requests.

**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:**

- 06-MSRC-015 Rutherford, 10-MSRC-105 Frasure Creek and 10-MSRC-200 Charles B Hall appeared and each tendered a settlement agreement. After questioning the parties and reviewing the proposal the Commission granted a motion for approval and incorporated the **settlement** as it's Final Order.
- 10-MSRC-113 Coal Diggers Inc., was called. Respondent Tackett tendered a settlement agreement. After questioning the Respondent and reviewing the proposal the Commission granted a motion for approval

and incorporated the **settlement** as it's Final Order. No one appeared on behalf of Coal Diggers and a motion for **default** was made by OMSL. This was so moved and approved by the Commission.

- 10-MSRC-218 Larry Lilly was called. No one appeared on behalf of Lilly and a motion for **default** was made by OMSL. This was so moved and approved by the Commission.

## 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 April 14, 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 four (44) 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-063 Jeffery L. Sandlin 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 April 14, 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 April 14, 2011. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

  
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Acting Chair  
Mine Safety Review Commission

4/14/11  
Date