COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **04 -MSRC- 011**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING COMPLAINANT

vs. **FINAL ORDER REGARDING TOMMY OSBORNE**

RAYMOND LITTLE, JR., GARY L. MEYERS
TOMMY OSBORNE, JOHN H. MULLINS &
HUBERT THOMAS RESPONDENTS

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Tommy Osborne, and the members of the Commission having reviewed the Settlement Agreement filed on May 2, 2005 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**. A copy is attached hereto;
3. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or

filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.

4. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13);
5. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
6. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 26TH day of May 2005.

MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 27TH day of May 2005:

HON. D.B. KAZEE
KAZEE LAW OFFICE
215 NORTH LAKE DRIVE
P.O. BOX 700
PRESTONSBURG, KY 41653
*Counsel for Respondent*

And by messenger mail to:

HON. TONY OPPEGARD
GENERAL COUNSEL
OFFICE OF MINE SAFETY & LICENSING
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601

Bryan Alan Thompson
General Counsel
Mine Safety Review Commission

RECEIVED
MAY - 2 2005
MINE SAFETY
REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

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| KY. OFFICE OF MINE SAFETY & LICENSING | ) | |
| | ) | |
| Complainant | ) | |
| | ) | |
| v. | ) | Administrative Action No. 04-MSRC-011 |
| | ) | |
| RAYMOND LITTLE, JR., GARY L. MEYERS, TOMMY OSBORNE, JOHN H. MULLINS & HUBERT THOMAS | ) | |
| | ) | |
| Respondents | ) | |

**SETTLEMENT AGREEMENT BETWEEN OMSL & TOMMY OSBORNE**

Come the Complainant, the Kentucky Office of Mine Safety & Licensing ("OMSL"), and Respondent Tommy Osborne ("Osborne"), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the final resolution of this action against him,[1] and the cancellation of the hearing (as it pertains to him) that is currently scheduled for April 14, 2005, Osborne acknowledges that the evidence is such that the Commission could find that he worked under unsupported mine roof, in violation of KRS 352.201 (1) and 805 KAR 5:030, Section 2 (1), as set forth in paragraph 9 of OMSL's Complaint. Therefore, without admitting the factual basis of the violation, he agrees to the following:

1. The **PROBATION OF HIS CONVENTIONAL SHOT FIRER'S CERTIFICATE (# MN-002-01) AND THE PROBATION OF HIS UNDERGROUND MINER'S CERTIFICATE (# ), EACH FOR A PERIOD OF ONE (1) YEAR**, effective

[1] OMSL and Osborne are filing a joint motion with the Mine Safety Review Commission ("the Commission") to approve the Settlement Agreement and dismiss the action against him.

upon the signing of this Settlement Agreement by both parties.

2. During this one-year probationary period, Osborne shall comply with all state and federal mine safety laws and regulations. The willful violation by Osborne of any of said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his conventional shot firer's certificate and/or his underground miner's certificate for the remainder of the probationary period.[2]

3. Within 45 days of the effective date of this Settlement Agreement, Osborne must take the **EIGHT(8) HOUR SAFETY TRAINING COURSE FOR BLASTERS** given by OMSL at its Martin District office.[3]

4. Within 120 days of the effective date of this Settlement Agreement, Osborne must re-take and pass the Kentucky blasters' examination administered by OMSL. If Osborne does not pass said examination within the 120-day period, his conventional shot firer's certificate will be automatically suspended until he passes the examination.[4]

5. This Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and any future adjudication against Osborne by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense"

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[2] If the circumstances warranted, OMSL would also retain the right to file a separate action with the Commission seeking other penalties against Osborne for his actions. In either event, Osborne would have the right to a hearing before the Commission on the allegations against him.

[3] Said training course for blasters is in addition to any annual refresher training or other safety training that Osborne is legally required to take.

[4] In the event that Osborne's conventional shot firer's certificate is suspended, he shall immediately surrender said certificate to OMSL. If he subsequently passes the examination, his certificate will be immediately returned to him.

as defined at 805 KAR 8:010, Section 1 (13).

Osborne states that he has carefully read this Settlement Agreement (or that the Settlement Agreement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

OMSL and Osborne acknowledge and agree that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

Tommy Osborne

TOMMY OSBORNE

5-2-05

DATE

Paris L Charles

PARIS L. CHARLES
Executive Director
Ky. Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

5-2-05

DATE

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Settlement Agreement Between OMSL & Tommy Osborne was mailed this 2ND day of MAY, 2005 to D.B. Kazee, Attorney-at-Law, P.O. Box 700, Prestonsburg, Kentucky 41653.

Tony Oppegard

TONY OPPEGARD, General Counsel
KY. OFFICE OF MINE SAFETY & LICENSING

dbk tommy osborne - settlement agreement