COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **06-MSRC-035**

JEFFERY MULKEY PETITIONER

FINAL ORDER

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING RESPONDENT

* * * * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Respondent, Office of Mine Safety and Licensing (OMSL) and Petitioner Jeffery Mulkey, and the members of the Commission having reviewed the Settlement Agreement filed on or about September 11, 2006 in the matter herein, and the Commissioners being sufficiently advised,

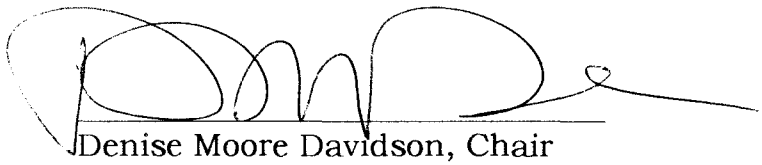
IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. Any formal hearing and pre-hearing conference scheduled and other pre-hearing orders are **CANCELLED**;
3. 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;

4. 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.
5. 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);
6. 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
7. 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 26 TH day of September 2006.



Denise Moore Davidson, Chair
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 28TH day of September 2006:

HON. THOMAS W. MOAK
MOAK & NUNNERY, P.S.C.
268 EAST FRIEND ST., SUITE 103
P.O. BOX 510
PRESTONSBURG, KY 41653
Counsel for Petitioner

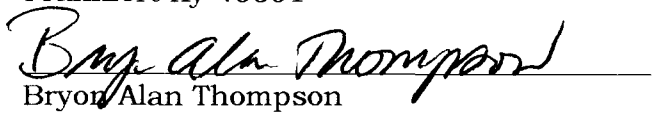
JEFFERY MULKEY
77 ACRES BRANCH
BANNER, KENTUCKY 41603

And by messenger mail to:

Hon. C. Michael Haines
Office of Legal Services
Natural Resources Legal Division
#2 Hudson Hollow
Frankfort, Kentucky 40601
(502) 564-2356
FAX: (502) 564-9212

And the original shall be kept on file:

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



Bryon Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
Action No. 06-MSRC-035

RECEIVED
MINE SAFETY REVIEW COMMISSION

JEFFERY MULKEY **PETITIONER**

v. **SETTLEMENT AGREEMENT**

KENTUCKY OFFICE OF MINE SAFETY & LICENSING **RESPONDENT**

* * * * * * * * * *

Come the parties, Petitioner Jeffery Mulkey, by counsel, and the Respondent, the Kentucky Office of Mine Safety and Licensing (OMSL), by counsel, 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, and the cancellation of the hearing (as it pertains to him) that was scheduled for September 14, 2006, the Petitioner hereby admits that he violated his employer's substance abuse policy, which was reported to the Respondent and resulted in the suspension of his surface miner's certificate on August 16, 2006. His actions constituted a violation of KRS 351.120. Therefore, ~~Jackie S. Williams~~ JEFFREY MULKEY hereby agrees to the following:

1. The suspension of his surface miner's certificate until such time as his application for restoration of his certificate is accepted by the Kentucky Mining Board (Board), in accordance with KRS 351.120(13), but in no event shall the suspension end sooner than September 28, 2006.

2. The Petitioner's surface miner's certificate shall be placed in probation for a period of one (1) year from the date of the restoration of said certificate by the Board, subject to the conditions set forth in Paragraphs 3 and 4, below.

3. During this one-year probationary period, Mulkey shall comply with all state and federal mine safety laws and regulations, including the terms of this Settlement Agreement. The willful violation by Mulkey of any of said laws or regulations, or the terms of this settlement agreement, may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his surface miner or other certificates for the remainder of the probationary period.

4. Mulkey shall submit to drug testing once every sixty (60) days and have the results of same reported to OMSL, at his own expense. If necessary, the Petitioner can utilize the drug testing program offered by OMSL through its examination system, at his own expense.

5. Mulkey understands and agrees that the report of any positive drug test results shall be cause for the revocation of his certificate(s).

Mulkey further agrees that 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(13).

Mulkey and his counsel state that they have carefully read this Settlement Agreement, which they have carefully considered the Agreement prior to signing it, and that Williams understands and agrees to its terms and provisions.

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

JEFFERY MULKEY
77 Acres Branch
Banner, Kentucky 41603

JOHNNY GREENE
Acting Executive Director
KY Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

9-19-06
DATE

9-22-06
DATE

THOMAS W. MOAK
Moak & Nunnery, P.S.C.
268 East Friend Street, Suite 103
P.O. Box 510
Prestonsburg, Kentucky 41653
Counsel for Petitioner

C. MICHAEL HAINES
Office of Legal Services,
Natural Resources Legal Division
Office of Mine Safety & Licensing
2 Hudson Hollow
Frankfort, Kentucky 40601
Counsel for Respondent

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Settlement Agreement was served upon the following by mailing, postage prepaid, a true and correct copy of same to the following on this the 22 day of September, 2006:

Hon. Thomas W. Moak
Moak & Nunnery, P.S.C.
268 East Friend Street, Suite 103
P.O. Box 510
Prestonsburg, Kentucky 41653

C. MICHAEL HAINES