

Petitioner may now utilize the Topcon GTS 300 Series Electronic Total Station under certain prescribed terms and conditions contained in the ALJ Decision & Order Approving Settlement and Dismissal Order, Petitioner OCI Wyoming, L.P, Issue Date: 24 May 2005 (Document is Attached).

December 13, 2004
In The Matter of
OCI Wyoming, L.P.
Big Island Mine
I.D. No. 48-00154

PETITION FOR MODIFICATION

Docket No. M-2002-002-M

PROPOSED DECISION AND ORDER

On January 28, 2002, OCI Wyoming, L.P. (OCI), filed a petition for modification of the application of 30 CFR § 57.22305 (Approved Equipment) at the Big Island Mine (ID No. 48-00154), located in Sweetwater County, Wyoming. The Big Island Mine is an underground trona mine using the room and pillar mining method. It has been classified as gassy, Category III, under MSHA regulations and typically exhausts 400,000 cubic feet of methane daily. In compliance with the Federal Mine Safety and Health Act of 1977, Section 103(i), gas levels are checked at the Big Island Mine by MSHA every 15 working days.

30 CFR § 57.22305, Approved equipment, provides in part:

Equipment used in or beyond the last open crosscut and equipment used in areas where methane may enter the air current, such as pillar recovery workings, longwall faces and shortwall faces, shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36. Equipment shall not be operated in atmospheres containing 1.0 percent or more methane.

The petitioner seeks use of the Topcon GTS Series Electronic Total Station (Station), or similar surveying instrument, in by the last open crosscut. OCI states that the alternative method outlined in the petition will at all times guarantee no less than the same measure of protection for miners as afforded by the standard and that it will not result in diminution of safety to the miners.

The petition states that use of the Station will eliminate labor intensive ventilation modifications and would allow for more accurate surveying of abandoned mining panels. Petitioner states that the Station, or similar surveying instrument, would be used to traverse for mine expansion and obtain elevations in support of on-going geologic and rock mechanics modeling. OCI states that the Station would not be operated in atmospheres containing one per cent or more of methane.

On April 11, 2002, MSHA investigators conducted an investigation into the merits of the petition and on May 28, 2002, filed a written report of their findings with the Administrator for Metal and Nonmetal Mine Safety and Health. In addition, MSHA's Technical Support prepared a report concerning the use of nonpermissible equipment on May 6, 2004. After a careful review of the entire record, including the petition, MSHA's investigative report, and MSHA's Technical Support report, this Proposed Decision and Order is issued.

FINDINGS OF FACT AND CONCLUSION OF LAW

Petitioner alleges that use of the Station will eliminate labor intensive ventilation modifications. However, petitioner has detailed neither the labor intensive ventilation modifications that would be eliminated nor the hazards to which the miners would be exposed while performing this work. Further, petitioner has stated that ventilation would be maintained at a minimum of 10,000 cubic feet per minute (cfm) during drilling at the face if the petition were granted. Mandatory standard 30 CFR § 57.22213 already requires that a minimum of 2,000 cfm of air be coursed across each face of working places. To maintain either airflow, ventilation modifications will be required regardless of whether the Station is used or not.

OCI alleges that use of the Station will not result in a diminution of safety to the miners and that this method will at all times guarantee no less than the same measure of protection afforded by the standard. The Station is not intrinsically safe (not having the potential to release enough electrical or thermal energy to ignite a flammable mixture of gas) nor has it been approved by MSHA for use in gassy atmospheres. The Station manufacturer specifically warns that the Station is not approved for use in areas near flammable gas, liquid matter, and that it should not be used in a coal mine. This mine typically exhausts 400,000 cubic feet of methane daily.

Examining for methane before using the Station, followed by continuous monitoring while the Station is in use, will not provide miners equivalent protection. Examining for methane while the Station is in use would not detect methane in a timely manner. Methane detectors use catalytic, heat-of-combustion, sensors which do not respond immediately to the presence of methane in the atmosphere. Because of the response time of the methane detector following a methane release, the methane level could exceed the action level at the Station before the methane release was detected and acted on.

The Administrator for Metal and Nonmetal has determined the Petitioner has failed to demonstrate that using the Station in by the last open crosscut will at all times guarantee no less than the same measure of protection afforded by the standard.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Metal and Nonmetal Mine Safety and Health, and pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. Section 811(c), it is ordered that a modification of the application of 30 CFR § 57.22305 to allow the use of a Topcon GTS Series Electronic Total Station at the Big Island Mine is hereby **DENIED** because the Petitioner has not established that the alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

/s/ Robert M. Friend

Robert M. Friend
Administrator for Metal and Nonmetal
Mine Safety and Health

U.S. Department of Labor

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Issue Date: 24 May 2005

CASE NOs.: 2005-MSA-00005 and 2005-MSA-00008

In the Matter of

OCI WYOMING, L.P.,
Petitioner

v.

MINE SAFETY & HEALTH ADMINISTRATION (MSHA),
Party Opposing Petition, and

DAVE ANDERSON (MINER'S REPRESENTATIVE),
Party-in-Interest.

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MSHA DIVISION

*MSHA Docket Nos.
M-2002-01-M
M-2002-02-M*

**DECISION & ORDER APPROVING
SETTLEMENT AND DISMISSAL ORDER**

These proceedings arise under Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811(c) and its implementing regulations found at 30 C.F.R. 44. On January 28, 2002, Petitioner, OCI Wyoming L.P., filed two Petitions for Modification to allow the use of a Topcon GTS Series Electronic Total Station surveying instrument or similar surveying instrument and to allow the use of a 12 to 18 volt, battery-powered cordless drill manufactured by Black & Decker, DeWalt, Makita, Milwaukee, Hilti or similar battery-powered drill to drill spad holes, to survey, and to install rock mechanic stations at the Big Island Mine near Green River in Sweetwater County, Wyoming. On September 17, 2002, MSHA issued a Proposed Decision and Order granting the petition with respect to the use of a 12 to 18 volt, battery-powered cordless drill manufactured by Black & Decker, DeWalt, Makita, Milwaukee, Hilti or similar battery-powered drill to drill spad holes, to survey, and to install rock mechanic stations. Thereafter, on December 13, 2004, MSHA issued a Proposed Decision and Order revoking this prior grant of the petition for modification and also issued on the same date a Proposed Decision and Order denying the petition to allow the use of a Topcon GTS Series Electronic Total Station surveying instrument or similar surveying instrument.

The Petitioner thereafter filed requests for hearing which were received in the Office of Administrative Law Judges on January 28, 2005. The cases were subsequently assigned to the

undersigned Administrative Law Judge and an Initial Prehearing Order was issued on February 24, 2005 in each case.

On May 16, 2005, the parties submitted a Consent Agreement containing Consent Findings and a Consent Order, signed by each party. The Consent Agreement with Consent Findings and Consent Order are incorporated herein by this reference and are attached to this Order.

The parties have agreed that:

- 1) The Consent Order shall have the same effect as if made after a full hearing.
- 2) The record on which this Order is based consists of the Petition and agreement, and all other pertinent information as set forth in Section 44.27(b)(2).
- 3) In accordance with 30 C.F.R. § 44.27(b)(3), Petitioner agrees to waive any further procedural steps before the Administrative Law Judge and Assistant Secretary.
- 4) In accordance with 30 C.F.R. § 44.27(b)(4), Petitioner agrees to waive any right to challenge or contest the validity of the Consent Findings and Consent Order made in accordance with the Consent Agreement.
- 5) The terms and conditions of the Consent Order do not result in a diminution of safety.
- 6) The terms and conditions of the Consent Order will at all times guarantee no less than the same measure of protection afforded by the existing modification.

ORDER

I have carefully examined the Consent Agreement, Consent Findings and Consent Order submitted by the parties. Following that review, I have concluded that the Consent Findings and Consent Order are consistent with the requirements of 30 C.F.R. § 44.27 and therefore the Consent Order is **ACCEPTED** and **ADOPTED** as the Order of the undersigned. The petitions of OCI Wyoming L.P. in this matter are therefore **DISMISSED**. This Order constitutes the final agency action.


Russell D. Pulver
Administrative Law Judge

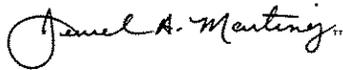
SERVICE SHEET

Case Name: MSHA v. OCI WYOMING, L.P.

Case Numbers: 2005MSA00005, 2005MSA00008

Document Title: **DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSAL ORDER**

I hereby certify that a copy of the above-referenced document was sent to the following this 24th day of May, 2005:



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In the matter of:
OCI Wyoming, L.P.
Big Island Mine
I. D. No. 48-00154

Petition for Modification

Docket Nos. 2005-MSA-05 &
2005-MSA-08

CONSENT AGREEMENT

On January 28, 2002, OCI Wyoming, L.P. (Petitioner/Operator) filed two petitions for modification, pursuant to 30 U.S.C. § 101(c) and 30 C.F.R. § 44.13, of the application of 30 C.F.R. § 57.22305 to its soda ash mine near Green River, Wyoming. Petitioner sought to use in or beyond the last open crosscut certain non-permissible tools. In one petition (No. M-2002-01-M), petitioner requested permission to use 12-18 volt battery powered cordless drills manufactured by Black & Decker, DeWalt, Makita, Milwaukee, Hilti or another manufacturer. Petitioner alleged that the use of this equipment was an alternative method which would reduce the risk of injury, be just as effective for the purpose utilized, and would at all times guarantee no less than the same measure of protection afforded by the standard. MSHA personnel conducted an investigation of the petitions and filed a report of their findings and recommendations with the Administrator. Based on the findings and recommendations and other information, the Administrator issued a Proposed Decision and Order ("PDO") granting the petition on September 17, 2002. On April 27, 2004, the Approval and Certification Center in MSHA's Directorate of Technical Support issued an Investigative Report entitled Evaluation of Petitions for Battery-Operated Cordless Drills. Based on that report, the Administrator issued a Proposed Decision and Order ("PDO") revoking the prior grant of the petition, on December 13, 2004.

In the other petition (No. M-2002-02-M), petitioner sought modification to use Topcon GTS 300 Series Electronic Total Station surveying equipment with a 9.6 volt battery or equivalent equipment. Petitioner alleged that the use of this equipment was an alternative method which would reduce the risk of injury, be just as effective for the purpose utilized, and would at all times guarantee no less than the same measure of protection afforded by the standard. MSHA personnel conducted an investigation of the petitions and filed a report of their findings and recommendations with the Administrator. On April 27, 2004, the Approval and Certification Center in MSHA's Directorate of Technical Support issued an Investigative Report entitled Evaluation of Petitions for Battery-Operated Cordless Drills. Based on that report, the findings and recommendations and other information, the Administrator issued a Proposed Decision and Order ("PDO") denying the petition on December 13, 2004.

Petitioner disagreed with MSHA's proposed action in these two cases and requested hearings before a Department of Labor Administrative Law Judge, pursuant to 30 C.F.R. § 44.14. The parties thereafter entered into settlement discussions, and negotiated this agreement which is a modification of the application of 30 C.F.R. § 57.22305 to Petitioner's Big Island Mine. In accordance with 30 C.F.R. § 44.27(b), this agreement contains Consent Findings and a Consent Order disposing of the entire proceeding.

CONSENT FINDINGS

In accordance with 30 C.F.R. § 44.27(b)(1), both MSHA and Petitioner agree that the following Consent Order shall have the same effect as if made after a full hearing.

In accordance with 30 C.F.R. § 44.27(b)(2), both MSHA and Petitioner agree that the record on which the following Consent Order is based consists of the petition and agreement, and all other pertinent information as set forth in Section 44.27(b)(2).

In accordance with 30 C.F.R. § 44.27(b)(3), Petitioner agrees to waive any further procedural steps before the Administrative Law Judge and Assistant Secretary.

In accordance with 30 C.F.R. § 44.27(b)(4), Petitioner agrees to waive any right to challenge or contest the validity of the Consent Findings and Consent Order made in accordance with this Consent Agreement.

Both MSHA and Petitioner agree that the terms and conditions of the following Consent Order do not result in a diminution of safety.

Both MSHA and Petitioner agree that the terms and conditions of the following Consent Order will at all times guarantee no less than the same measure of protection afforded by the existing modification.

CONSENT ORDER

Under the authority delegated by the Secretary of Labor to the Administrator for Metal and Nonmetal Safety and Health, and under § 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 811(c), and 30 C.F.R. Part 44, an amended modification of the application of 30 C.F.R. § 57.22305 at the Big Island Mine is hereby:

GRANTED, subject to the following terms and conditions:

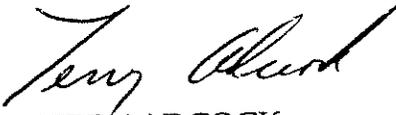
1. Petitioner shall not use nonpermissible electric drills, including but not limited to any 12-18 volt battery powered cordless drills manufactured

by Black & Decker, DeWalt, Makita, Milwaukee, Hilti or another manufacturer or any equivalent drills, for any purpose, in or beyond the last open crosscut or in any area where methane may enter the air current, such as pillar recovery workings, longwall faces or shortwall faces.

2. Any and all equipment used in the areas designated in the preceding paragraph shall comply in all respects with 30 C.F.R. § 57.22305, except as provided below:
3. Petitioner may use the following equipment in or beyond the last open crosscut: Topcon GTS 300 Series Electronic Total Station surveying equipment with a 9.6 volt battery and/or equivalent units.
 - a. Immediately prior to and continuously while using any of the equipment permitted in the preceding paragraph, Petitioner shall test for methane in the mine atmosphere, as mine atmosphere is defined in 30 C.F.R. § 57.2, and as close to the equipment as possible. Petitioner shall test with an approved instrument capable of providing both visual and audible alarms, which has been approved by MSHA pursuant to 30 C.F.R. § 57.2227.
 - b. Petitioner will immediately cease the use of such equipment and follow the procedures within 30 C.F.R. § 57.22234 whenever 1.0 percent or more of methane is detected.
 - c. Petitioner will ensure that qualified personnel, trained in the requirements of this petition, will physically attend all such equipment whenever it is located in or beyond the last open crosscut.
 - d. Batteries contained in the surveying equipment must be "changed out" or "charged" in fresh air outby the last open crosscut.
 - e. This grant of modification is subject to review at the discretion of the Administrator.

The parties request that the presiding Administrative Law Judge issue an Order approving this Consent Agreement including the Consent Findings and the Consent Order as a modification of 30 C.F.R. § 57.22305 at the Big Island Mine.

Respectfully submitted,



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