

**Petitioner may no longer utilize drills, pursuant to the ALJ Decision & Order Approving Settlement and Dismissal Order, Petitioner OCI Wyoming, L.P, Issue Date: 24 May 2005 (Document 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-2002-001-M

PROPOSED DECISION AND ORDER TO REVOKE

Pursuant to a Decision and Order issued September 28, 2002, OCI Wyoming, L.P.'s Big Island Mine was granted a petition for modification of 30 CFR § 57.22305, based upon an alternative method of compliance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The modification dated September 28, 2002 of 30 CFR § 57.22305 to OCI Wyoming, L.P. Inc. (OCI) as it pertained to the use of a non-permissible, 12 to 18 volt, battery-powered, cordless drill manufactured by Black & Decker, DeWalt, Makita, Milwaukee, Hilti or similar non-permissible battery-powered drill in or beyond the last open crosscut, to drill spad holes, to survey and to install rock mechanic stations was granted conditioned on compliance with the following:

1. Auxiliary ventilation will be provided if the face has been advanced more than 30 feet beyond the last open crosscut. A minimum of 10,000 cubic feet per minute of air will be coursed through the last open crosscut, or through the air course in which the drill is used if the face has been advanced more than 30 feet beyond the last open crosscut.
2. Immediately prior to using the drill, the mine atmosphere shall be tested for methane and continuously monitored with an approved instrument capable of providing both visual and audible alarms as required by 30 CFR § 57.22227, and according to the definition of mine atmosphere in accordance with 30 CFR § 57.22002.
3. If 1.0% or more methane is found prior to drilling, or after drilling has started, drilling will immediately cease and procedures implemented in accordance with 30 CFR § 57.22234.
4. Qualified personnel will physically attend the drill when it is located in or

beyond the last open crosscut or in areas where methane may enter the air current.

5. The cordless battery unit for the drill will be "changed out" or "charged" only in fresh air outby the last open crosscut.
6. The drills will only be used inby the last open crosscut to drill spad holes for surveying and the installation of rock mechanic stations.

The Mine Safety and Health Administration (MSHA) has determined, in accordance with 30 CFR §44.52(b), that the findings originally supporting the modification are no longer valid. A May 6, 2004 MSHA Technical Support Report (Report) concluded that non-permissible cordless drills determined these drills used in accordance with the terms and conditions of the existing modification cannot guarantee at all times the same level of protection as permissible equipment.

The Report determined that examining for methane before drilling, followed by continuous monitoring during drilling does not provide miners equivalent protection as compliance with the standard. Examining before drilling does not detect methane released during drilling. This is because the methane is not released until the drill penetrates the potentially gassy strata. An examination while drilling does not timely detect methane. This is because the drill is nearer to the source of the methane than the methane detector. 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 and the proximity of the drill motor to the probable methane release point, following a methane release, the methane level could exceed the action level at the drill before the methane release was detected.

The drills considered in the Petition are not permissible. The manufacture's specifications specifically state:

" DO NOT OPERATE portable electric tools near flammable liquids or in gaseous atmospheres. Motors in these tools normally spark, and the sparks might ignite fumes."

The drills are not intrinsically safe for use in gassy mines or explosive atmospheres. Further, the report found that there is no intrinsically safe, battery powered drill available for use in explosive atmospheres, such as gassy mines

MSHA has determined that the potential hazards that could occur with the operation of non-permissible or non-intrinsically safe drills in explosive atmospheres outweighs any gains in efficiency or reduction of potential injuries.

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 modification of 30 CFR §57. 22305, as it applies to the Wyoming Soda Ash Mine, is hereby **REVOKED**.

Pursuant to 30 CFR 44.52, revocation of the granted modification will become final 30 days after service of this Proposed Decision and Order to Revoke, unless a hearing is requested on the Decision and Order. Any party to this action desiring a hearing on this matter must file in accordance with 30 CFR Part 44.14, within 30 days. The request for hearing must be filed with the Administrator for Metal and Nonmetal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209. If a hearing is requested, the request shall contain a concise summary of position on the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the Proposed Decision and Order. A party other than the petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition. Any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, the order to revoke will become final.

/s/ Robert M. Friend

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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

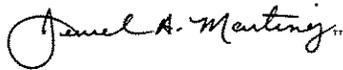
**SERVICE SHEET**

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

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### 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:

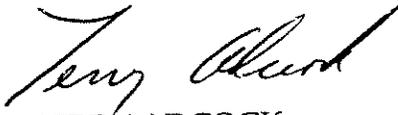
1. Petitioner shall not use nonpermissible electric drills, including but not limited to any 12-18 volt battery powered cordless drills manufactured

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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