

**Petitioner may no longer utilize drills and Petitioner may now utilize Leica Total Station Model no. TCR307 under certain prescribed terms and conditions contained in the ALJ Decision & Order Approving Settlement and Dismissal Order, Petitioner General Chemical (Soda Ash) Partners, Issue Date: 24 May 2005 (Document is Attached).**

December 13, 2004

In The Matter of  
General Chemical Corporation  
General Chemical Mine  
I.D. No. 48-00155

PETITION FOR MODIFICATION

Docket No. M-2002-003-M

### BACKGROUND

On April 19, 2002, General Chemical Soda Ash Partners (GCSAP) pursuant to Section 101(c) of the application of 30 CFR § 57.22305 to its General Chemical Mine (ID No. 48-00155) located in Sweetwater County, Wyoming.

The General Chemical Mine is an underground trona mine using the room and pillar mining method. It has been classified as a gassy mine, Category III, and typically exhausts approximately 1.4 million cubic feet of methane daily.

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.

GCSAP alleges that the alternative method outlined in its petition will not result in a diminution of safety to miners if they are allowed to use the following non-permissible equipment in or beyond the last open crosscut :

1. Leica Total Station Model No. TCR307
2. Cordless Milwaukee 14.4 volt Hammer Drill Model No. 0514-20, or equivalent.

GCSAP alleges the following reasons to support use of the Leica Total Station Model No. TCR307 (the station). Distances could be measured without entering an area. A built-in electronic distance meter allows remote measurement by reflecting light off an object, such as the face, with no reflector. The station would eliminate miner travel

through areas with poor roof or rib conditions and would allow measurement in unbolted areas. Use of the station would significantly reduce exposure to poor ground conditions for surveying personnel.

GCSAP alleges the following in support of using the cordless, Milwaukee 14.4 Volt, Hammer Drill (the drill). The Drill would replace use of a screw, twist-type, Yankee hand drill which requires more effort and time by surveying personnel engaged in drilling spad holes. Now miners stand on a ladder usually placed on uneven floor. If the drill is used, miners would spend less time on the ladder and reduce physical fatigue. Petitioner alleges that this will also eliminate repetitive motion injury such as carpal tunnel syndrome.

On August 7, 2002, MSHA investigators conducted an investigation into the merits of the petition and filed a written report of their findings and recommendations with the Administrator for Metal and Nonmetal Mine Safety and Health. On May 6, 2004, MSHA's technical Support staff prepared a report concerning the use of nonpermissible equipment. After a careful review of the entire record, including the petition, MSHA's investigative report and recommendations, and the Technical Support report, this Proposed Decision and Order is issued.

#### FINDINGS OF FACT AND CONCLUSION OF LAW

GCSAP alleges that the alternative method outlined in its petition regarding the Station will not result in a diminution of safety to miners. The Petitioner states that using the Station will make it unnecessary for miners to enter areas that might have poor roof or rib conditions. However, the petition has not alleged that the alternative method would at all times provide the same measure of protection as the existing standard.

The station manufacturer's specifications provide the following:

##### Limits of use

##### Environment

Suitable for use in an atmosphere appropriate for permanent human habitation: not suitable for use in aggressive or explosive environments.

Use in rain is permissible for limited periods. (emphasis added)

In contrast, intrinsically safe equipment, as required by the standard, does not have the potential to release enough electrical or thermal energy to ignite a flammable mixture of gas. 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 is detected and acted upon.

Further, the allegations concerning protection of the miners from poor ground conditions do not address the hazards addressed by MSHA's standard requiring use of permissible equipment in by the last open crosscut. MSHA addresses ground support hazards under 30 CFR § 57.3200 which requires the operator to take down or support hazardous ground conditions before work or travel is permitted in the area.

GCSAP alleges that the alternative method outlined in its petition regarding using the drill will not result in a diminution of safety to miners. However, the petitioner has not demonstrated that the use of nonpermissible drills would guarantee at all times the same measure of protection as the standard.

The drill manufacturer specifications state:

Do not operate power tools in explosive atmospheres, such as in the presence of flammable liquids, gases, or dust. Power tools create sparks which may ignite the dust of fumes.

MSHA Technical Support staff reiterated the importance of not using nonpermissible drills in gassy mines or potentially explosive atmospheres in a recent report concerning the use of nonpermissible equipment. The report concluded that examining the work area for methane periodically, or even continuously, does not guarantee at all times the same measure of protection as would use of permissible equipment required under the existing standard. Examining for methane before drilling does not detect methane released during drilling because the methane release follows the drill's penetration of the potentially gassy strata. The drill is closer to the potential source of the methane than the methane detector. Methane detectors use catalytic, heat-of-combustion, sensors that 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, the methane level could exceed the action level at the drill before the methane release can be detected and acted upon.

Finally, petitioner alleges that using the drill will decrease drilling time, reduce fatigue, and eliminate the occurrence of injury, such as carpal tunnel syndrome. Although these may improve efficiency or reduce the potential for injury, they do not address the same explosion and fire hazards as the standard petitioner seeks to modify.

The Administrator has determined the petition fails to demonstrate that the proposed alternative method 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 for the station and drill at the General Chemical Mine is hereby **DENIED** because the Petitioner has not demonstrated that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded miners working at the mine as would the existing mandatory standard.

Any party to this action desiring a hearing must file a request for hearing within 30 days after service of the Proposed Decision and Order, in accordance with 30 CFR Part 44.14, with the Administrator for Metal and Nonmetal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939. 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, this Proposed Decision and Order will become final and must be posted by the operator on the mine bulletin board at the mine.

/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 NO.: 2005-MSA-00006**

In the Matter of

**GENERAL CHEMICAL (SODA ASH) PARTNERS,**  
Petitioner

v.

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

**GLENN SIBERT (MINER'S REPRESENTATIVE),**  
Party-in-Interest.

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MSH DIVISION

*MSHA Docket No.  
M-2002-003-M*

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

This proceeding arises 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 April 19, 2002, Petitioner, General Chemical Soda Ash Partners, filed a petition for modification of the application of 30 C.F.R. § 57.22305 to allow the use of a Leica Total Station Model No. TCR307 and a Cordless Milwaukee 14.4 volt Hammer Drill Model No. 0514-20, or equivalent, at the General Chemical Mine near Green River in Sweetwater County, Wyoming. On December 13, 2004, MSHA issued a Proposed Decision and Order denying the petition for modification.

The Petitioner thereafter filed a request for hearing on January 13, 2005. The case was subsequently assigned to the undersigned Administrative Law Judge and an Initial Prehearing Order was issued on February 24, 2005..

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 petition of General Chemical Soda Ash Partners in this matter is therefore **DISMISSED**. This Order constitutes the final agency action.

  
Russell D. Pulver  
Administrative Law Judge

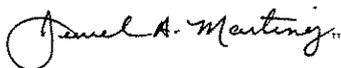
## SERVICE SHEET

Case Name: MSHA v. GENERAL CHEMICAL CORPORATION

Case Number: 2005MSA00006

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:  
General Chemical Soda Ash Partners  
General Chemical Mine  
I. D. No. 48-00155

Petition for Modification

Docket No. 2005-MSA-016

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**CONSENT AGREEMENT**

On April 19, 2002, General Chemical Soda Ash Partners (Petitioner/Operator) filed a petition 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 (No. M-2002-03-M). Petitioner sought to use in or beyond the last open crosscut certain non-permissible tools, including (1) Leica Total Station Model no. TCR307, with 6 volt battery and (2) Milwaukee 14.4 volt ½" hammer Drill Model No. 0514-20, or equivalent. 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 petition 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 and requested a hearing 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 General Chemical 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 General Chemical Mine is hereby:

GRANTED, subject to the following terms and conditions:

1. Petitioner shall not use nonpermissible electric drills, including but not limited to the Milwaukee 14.4 volt ½" hammer Drill Model No. 0514-20 and 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: Leica Total Station Model no. TCR307, with 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. § 57.22227.

- 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 General Chemical Mine.

Respectfully submitted,

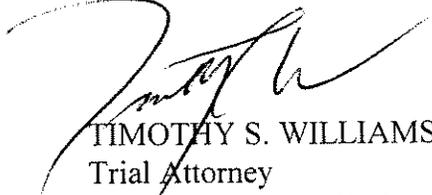


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