

Petitioner may now utilize the distance meters under certain prescribed terms and conditions contained in the ALJ Decision & Order Approving Settlement and Dismissal Order, Petitioner FMC Corporation, Issue Date: 24 May 2005 (Document is Attached).

December 13, 2004
In The Matter of
FMC Corporation
FMC@Westvaco Mine
I.D. No. 48-00152

PETITION FOR MODIFICATION

Docket No. M-2003-001-M

PROPOSED DECISION AND ORDER

On May 15, 2003, FMC Corporation (FMC) filed a petition for modification of 30 CFR §57.22305(Approved Equipment), at the FMC@Westvaco Mine (ID No. 48-00152) located in Sweetwater County, Wyoming. The FMC@Westvaco Mine is an underground trona mine using the room and pillar mining method. It has been classified as a gassy mine, Category III, under MSHA regulations. In compliance with the Federal Mine Safety and Health Act of 1977, Section 103(i), gas levels are checked at the FMC@Westvaco Mine by MSHA personnel every five working days.

Standard 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.

FMC's petition request states that using a Leico DISTO laser distance meter (the Meter), or similar surveying instrument to measure distances in areas that have not yet been roof bolted will increase miners' safety. Petitioner states that methane levels would be checked before using the Meter, every ten minutes during use, and that the Meter would not be operated in atmospheres containing one per cent or more methane. Additionally, Petitioner states that they would train all employees in the use of the Meter and the terms and conditions of the modification.

On June 18, 2003, MSHA investigators conducted an investigation into the merits of the petition and on July 14 filed a written report of their findings with the Administrator for Metal and Nonmetal Mine Safety and Health. On May 6, 2004, MSHA 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 the MSHA Technical Support report, this Proposed Decision and Order is issued.

FINDINGS OF FACT AND CONCLUSION OF LAW

The Petitioner states that the Meter's power output is minimal and considerably less than the 12-watt threshold for intrinsically safe electrical equipment. MSHA's investigation report determined that there is not a 12-watt threshold for intrinsically safe equipment. Intrinsically safe equipment does not have the potential to release enough electrical or thermal energy to ignite a flammable mixture of gas. The Meter manufacturer's specifications state that the Meter "cannot be used in an aggressive or explosive environment." Using the Meter inby the last open crosscut would expose miners to the high risk created by a poorly ventilated area and would be a potential ignition source in an explosive atmosphere.

Further, Petitioner states that some areas in the mine can not be measured to the face due to the roof not being bolted. Mandatory MSHA standards require these areas to be inspected, scaled, or bolted prior to miners going inby and/or prior to further mining. Furthermore, the convenience of using the Meter so that loose ground would not need to be scaled or bolted does not justify its use inby the last open crosscut. Locating headings can be accomplished without taking the Meter inby the last open crosscut.

FMC alleges that the alternative method outlined in its petition regarding the Meter will not result in a diminution of safety. The Meter manufacturer's specifications state that the meter cannot be used in an aggressive or explosive environment, such as a gassy mine.

Intrinsically safe equipment 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 Meter, followed by continuous monitoring while the Meter is in use, will not at all times provide the same measure of protection to miners working at the mine. Examining for methane while the Meter was 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 Meter before the methane release was detected and acted on.

The Administrator for Metal and Nonmetal has determined that the Petitioner has failed to demonstrate that use of a Leico DISTO laser distance meter 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 the Leico DISTO laser distance meter for the FMC@Westvaco 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-00007 and 2005-MSA-00009

In the Matter of:

FMC CORPORATION,
Petitioner,

v.

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

UNITED STEELWORKERS OF AMERICA 13214
Party-in-Interest.

and

CASE NO.: 2005-MSA-00011

In the Matter of:

FMC CORPORATION (Formerly TG SODA ASH, INC.),
Petitioner,

v.

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

MONTE MORELOCK (MINER'S REPRESENTATIVE),
Party-in-Interest.

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MSH DIVISION

*MSHA Docket Nos.
M-1991-03-M
M-2000-003-M
M-2003-001-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 May 2, 1991, Petitioner, FMC Corporation's predecessor, Tg Soda Ash, Inc., filed a petition for

modification to allow the use of a Mikita cordless drill, or other equivalent cordless drills, to drill spad holes for surveying and to install ventilation tubing anchors at the FMC Granger (formerly Wyoming Soda Ash) Mine near Green River in Sweetwater County, Wyoming. On October 29, 1991, MHSA issued a Proposed Decision and Order granting the petition. On July 21, 1999, MHSA granted petitioner an amended modification to use equivalent drills to the Makita, for the previously granted application. Thereafter, on December 13, 2004, MSHA issued a Proposed Decision and Order revoking this prior grant of the petition for modification.

In another petition filed in 2000, petitioner sought modification to use the same or similar drills at its Westvaco Mine near Green River in Sweetwater County, Wyoming. MHSA issued a Proposed Decision and Order granting the petition on August 28, 2001. On March 26, 2002, petitioner filed a request to amend the modification to increase the voltage of the drills it was using, and to expand the uses to which the drill could be put. On December 13, 2004, MHSA issued a Proposed Decision and Order denying the request to amend and revoking the prior grant of the petition.

Petitioner sought in an additional petition filed on May 15, 2003, to use a Leica DISTO laser distance meter at its Westvaco Mine near Green River in Sweetwater County, Wyoming. On December 13, 2004, MHSA issued a Proposed Decision and Order denying the petition.

The Petitioner thereafter filed requests for hearing which were received in the Office of Administrative Law Judges on January 28, 2005 and on February 11, 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 FMC Corporation in this matter are therefore **DISMISSED**. This Order constitutes the final agency action.



Russell D. Pulver
Administrative Law Judge

In the matter of:
 FMC Corporation
 Granger and Westvaco Mines
 I. D. Nos. 48-00639 & 48-00152

Petitions for Modification
 Docket Nos. 2005-MSA-07,
 2005-MSA-09 and 2005-MSA-11

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CONSENT AGREEMENT

On May 2, 1991, FMC Corporation's (Petitioner/Operator) predecessor, Tg Soda Ash, Inc. 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 Granger soda ash mine near Green River, Wyoming. Petitioner sought to use in or beyond the last open crosscut certain non-permissible tools. In its petition (No. M-1991-03-M), petitioner requested permission to use a 9.6 volt Makita battery powered cordless drill to install surveying spads. 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. Based on the findings and recommendations and other information, the Administrator issued a Proposed Decision and Order ("PDO") granting the petition on October 29, 1991. On July 21, 1999, MSHA granted petitioner an amended modification to use equivalent drills to the Makita, for the previously granted and other applications. 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 another petition (No. M-2000-03-M), petitioner in 2000 sought modification to use the same or similar drills at its Westvaco mine. 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. Based on the findings and recommendations and other information, the Administrator issued a Proposed Decision and Order ("PDO") granting the petition on August 28, 2001. On March 26, 2002, petitioner filed a request to amend the modification, to increase the voltage of the drills it was using, and to expand the uses to which the drill could be put. 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 request to amend, and revoking the prior grant of the petition, on December 13, 2004.

Petitioner sought in an additional petition filed on May 15, 2003 (No. M-2003-01-M), to use a Leica DISTO laser distance meter at its Westvaco mine. 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 in these three 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 Granger and Westvaco Mines. 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 Granger and Westvaco 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 9.6 volt battery powered cordless drills manufactured by Makita 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 at the Westvaco mine: Leica DISTO laser distance meter.
 - 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 Granger and Westvaco Mines.

Respectfully submitted,

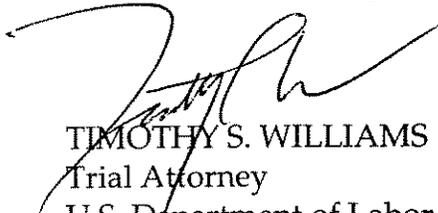
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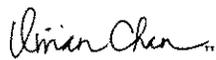
SERVICE SHEET

Case Name: MSHA v. FMC CORPORATION

Case Numbers: 2005MSA00007, 2005MSA00009, 2005MSA00011

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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