

Petitioner may no longer utilize drills, pursuant to 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-2000-003-M

PROPOSED DECISION AND ORDER TO REVOKE

On August 28, 2001, FMC Corporation (FMC) was granted a modification of the application of 30 CFR § 57.22305 (Approved Equipment) for the use of a cordless drill with a specific voltage to install spads in the mine roof at the FMC@Westvaco Mine. On March 26, 2002, FMC filed a petition to modify the application of this modification to allow the use of the cordless drill to anchor holes for hanging ventilation ducting in addition to installing survey spads.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The existing modification of 30 CFR §57.22305 dated August 28, 2001, was 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. Air flow will be coursed through the last open crosscut as per 30 CFR § 57.22213.
2. Immediately prior to the use of the drill, the mine atmosphere will be tested for methane and will be continuously monitored with an approved instrument capable of providing both visual and audible alarms per 30 CFR § 57.22227, and according to the definition of mine atmosphere as per 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 as per 30 CFR § 57.22234 will be followed.
4. Qualified personnel will physically attend the drill when the drill is located in or beyond the last open crosscut or in areas where methane may enter the air current.

5. The cordless battery unit must be “changed out” or “charged” only in fresh air out by the last open crosscut.

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determined, in accordance with 30 CFR §44.52(b), that the findings originally supporting the existing modification are no longer valid.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

The Report determined that examining for methane before drilling, followed by continuous monitoring during drilling does not provide miners equivalent protection as does compliance with the standard. Examining for methane 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 manufacturer’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 outweigh any gain in efficiency or reduction in 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. §811(c), it is ordered that the petitioner's request to amend the modification is **DENIED** and the modification of 30 CFR § 57.22305, as it applies to the FMC@Westvaco Mine, is hereby **REVOKED**.

/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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MSHA 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

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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

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,

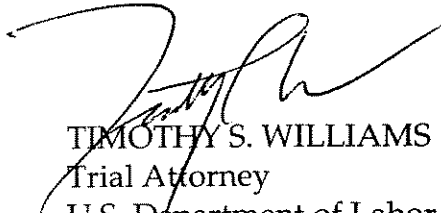
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SERVICE SHEET

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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