

Petitioner may no longer utilize drills and Petitioner may now utilize specific surveying equipment under certain prescribed terms and conditions contained in the ALJ Decision & Order Approving Settlement and Dismissal Order, Petitioner Solvay Chemicals, Inc. Issue Date: 24 May 2005 (Document is Attached).

December 13, 2004

In the matter of
Solvay Minerals, Inc.
Solvay Minerals, Inc. Mine
ID No. 48-00639

Petition for Modification

Docket No. M-91-05-M

PROPOSED DECISION AND ORDER TO REVOKE

On October 25, 1991, Solvay Minerals, Inc. Mine was granted a modification of the application of 30 CFR §57.22305, based upon an alternative method of compliance. The modification was amended on November 20, 1991, and August 13, 1999.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The August 13, 1999, amended modification of 30 CFR §57.22305 to Solvay Minerals, Inc. , was conditioned on compliance with the following:

1. This modification would permit the use of certain non-permissible tools or their equivalent in or beyond the last open crosscut. Specifically these tools are: (1) Wild DIOR 3002 DISTOMAT Electronic Distance Meter with attached Wild 472 632 targeting laser, with Wild GEB70 Battery Pack providing power to both units; (2) Wild 373710 GAB1 Plug-in Light Attachment for use on Wild Theodolite; (3) Black and Decker 1921K Single Speed Cordless Drill; (4) Advantage Laser Rangefinder with NiCad batteries.
2. Immediately prior to the use of the aforementioned equipment, 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 in 30 CFR §57.22002.
3. Qualified personnel will physically attend the equipment listed in paragraph No. 1 when they are operating in or beyond the last open crosscut or in areas where methane may enter the air current.
4. If 1.0 percent or more methane is detected, the procedures in 30 CFR §57.22234 will be followed.

5. This petition is granted for an indefinite period of time, but is subject to review at the discretion of the Administrator.

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(MSHA) has determined in accordance with 30 CFR §44.52(b) that the findings originally supporting the modification are no longer valid.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) on non-permissible cordless drills concluded that the drills do not at all times provide the same measure of protection as the standard.

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 described in the existing modification are not permissible. The drills manufacturers' specifications state that the drill should not be used in an explosive atmosphere. Neither are the drills 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.

Surveying equipment approved for use included in the petition included the following Wild DIOR 3002 DISTOMAT Electronic Distance Meter with attached Wild 472 632 targeting laser, Wild GEB70 Battery Pack providing power to both units, Wild 373710 GAB1 Plug-in Light Attachment for use on Wild Theodolite, and the Advantage Laser Rangefinder with NiCad batteries here in after referred to as Surveying Equipment. Examining for methane before using the Surveying Equipment, followed by continuous monitoring while the Surveying Equipment was in use, will not provide miners equivalent protection. Examining for methane while the Surveying Equipment 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 Station before the methane release was detected and acted on. Further, the Report found that using equipment such as the Survey Equipment which is not intrinsically safe, should not be used 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 and Surveying equipment 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 Solvay Minerals, Inc. 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 NO.: 2005-MSA-00010

In the Matter of:

SOLVAY CHEMICALS, INC. (Formerly SOLVAY MINERALS, INC.),
Petitioner,

v.

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

MIKE WILLMORE (MINER'S REPRESENTATIVE),
Party-in-Interest.

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SOLICITOR'S
MSH DIVISION

*MSHA Docket No.
M-1991-005-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 December 13, 2004, MSHA issued a Proposed Decision and Order to Revoke the Petition for Modification previously issued to Solvay Chemicals, Inc. and/or its predecessors to allow the use of (1) Wild DIOR 3002 DISTOMAT Electronic Distance Meter with attached Wild 472 632 targeting laser, with Wild GEB70 Battery Pack providing power to both units, (2) Wild 373710 GAB1 Plug-in light attachment for use on Wild Theodolite; (3) Black & Decker 1921K Single Speed Cordless Drill; and (4) Advantage Laser Rangefinder with NiCad batteries at its soda ash mine near Green River in Sweetwater County, Wyoming.

The Petitioner thereafter filed a request for hearing which was received in the Office of Administrative Law Judges on January 28, 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 Solvay Chemicals, Inc. in this matter is therefore **DISMISSED**. This Order constitutes the final agency action.



Russell D. Pulver
Administrative Law Judge

In the matter of:
 Solvay Chemicals, Inc.
 Solvay Chemicals, Inc. Mine
 I. D. No. 48-01295

Petition for Modification

Docket No. ~~M-1991-05-M~~

2005-MSA-10

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CONSENT AGREEMENT

On October 25, 1991, MSHA granted Tenneco Minerals Company, predecessor to Solvay Chemicals, Inc. (Petitioner/Operator) a 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. The modification allowed it to use in or beyond the last open crosscut certain non-permissible tools, including (1) Wild DIOR 3002 DISTOMAT Electronic Distance Meters with attached Wild 472 632 Targeting Lasers, with Wild GEB70 Battery Packs providing power to both units; (2) Wild 373710 GAB1 Plug-In Light Attachments for use on Wild Theodolites; and (3) Black and Decker 1921K Single Speed Cordless Drills. On August 17, 1999, MSHA granted the operator an amended modification of 30 C.F.R. § 57.22305 providing the operator with the ability to use equipment equivalent to that listed above, as well as (4) Advantage Laser Rangefinders with NiCad Batteries and/or equivalent units. 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 and other information, MSHA issued on December 13, 2004 a Proposed Decision and Order to Revoke. The Proposed Decision and Order indicated that the findings originally supporting the modification were found to no longer be valid, and that the grant of modification of 30 C.F.R. § 57.22305 would be revoked pursuant to 30 C.F.R. § 44.52(b). 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 Solvay Chemicals, Inc. 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 Solvay Chemicals, Inc. 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 Black and Decker 1921K Single Speed Cordless Drill 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: (1) Wild DIOR 3002 DISTOMAT Electronic Distance Meters with attached Wild 472 632 Targeting Lasers, with Wild GEB70 Battery Packs providing power to both units, and/or equivalent units; (2) Wild 373710 GAB1 Plug-In Light Attachments for use on Wild

Theodolites, and/or equivalent units; and (3) Advantage Laser Rangefinders with NiCad Batteries 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 Solvay Chemicals, Inc. Mine.

Respectfully submitted,

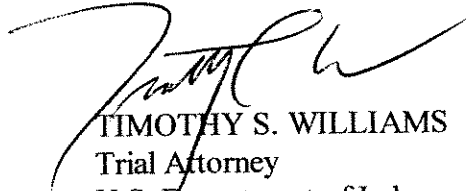


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SERVICE SHEET

Case Name: MSHA v. SOLVAY CHEMICALS, INC.

Case Number: 2005MSA00010

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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