

U. S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington, D. C.

SEASONAL EXEMPTION DENIED BENTONITE CLAY MINING

The application of the open-cut clay mining industry for seasonal exemption from the maximum hours provisions of the Fair Labor Standards Act of 1938 under Section 7 (b)(3) of the Act was denied today with respect to the open-cut mining of bentonite clay, in a finding and determination signed by Harold Stein, assistant chief of the Hearings and Exemptions Section of the Wage and Hour Division.

A combined public hearing on the petition of several surface or open-cut mining industries for seasonal exemption was held June 19, 1939 by Mr. Stein, and the present findings relate solely to the open-cut mining of the type of bentonite clay originating chiefly in the Black Hills region of Wyoming and South Dakota. Other findings will be made subsequently for mining operations involving other products, it was stated.

The mining of bentonite clay, used chiefly for rebuilding foundry sands, for synthetic foundry sands and for oil well drilling muds, is not a large industry, Mr. Stein reported in his findings. Two of the three petitioners, the American Colloid Company and the Wyodak Chemical Company, representing most of the production of bentonite clay within the Wyoming-Dakota area, engage in both excavating and milling operations, and the third petitioner, the Silica Products Works, engages only in milling operations.

The fact that the American Colloid Company shifts its employees from milling to excavating is a strong indication that the two operations form one and not two branches of the industry, Mr. Stein reported, and since, by admission of the applicants, milling is continuous throughout the year, he concluded that "this single branch comprising both excavating and milling does not cease production and is not of a 'seasonal' nature."

Administrator Elmer F. Andrews, of the Wage and Hour Division, U. S. Department of Labor, at the same time signed a "notice of opportunity of petition for review" of the findings (Federal Register, October 7, 1939).

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