

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

NOTICE OF OPPORTUNITY TO PETITION FOR
REVIEW OF DETERMINATION DENYING
APPLICATION FOR PARTIAL EXEMPTION OF
THE BENTONITE CLAY (SWELLING TYPE)
MINING INDUSTRY AS A SEASONAL INDUSTRY
PURSUANT TO SECTION 7(b)(3) OF THE
FAIR LABOR STANDARDS ACT OF 1938 AND
PART 526 AS AMENDED OF REGULATIONS
ISSUED THEREUNDER

WHEREAS, application has been made by the Arctic Circle
Exploration Company, American Colloid Company, National Crushed Stone
Association, Inc., National Sand and Gravel Association, National Industrial
Sand Association, and sundry other parties (representative of various sur-
face and open-cut mining industries) under Section 7(b)(3) of the Fair
Labor Standards Act of 1938, and Regulations, Part 526, as amended (Regu-
lations applicable to Industries of a Seasonal Nature), issued by the
Administrator thereunder, for partial exemption of the said industries
from the maximum hours provisions of Section 7(a) of said Act pursuant to
Section 7(b)(3) applicable to industries found by the Administrator to be
of a seasonal nature; and

WHEREAS, a combined public hearing on the said applica-
tions was held before Harold Stein, the representative of the Administrator
of the Wage and Hour Division, duly authorized to hear and determine whether
or not any of the said industries or branches thereof is of a seasonal
nature within the meaning of Section 7(b)(3) of the Fair Labor Standards

Act of 1938, and Part 526 of Regulations issued thereunder, the term "surface or open-cut mining industries" being defined to include the mining, quarrying, dredging, and excavating of various-named products from pit, bank and marine deposits but not to embrace any underground operations; and

WHEREAS, following such hearing, the said Harold Stein duly made his findings of fact and determined as follows in reference to the surface or open-cut mining of Bentonite clay (swelling type):

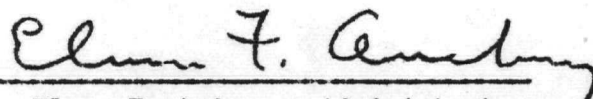
- (1) that the excavating and hauling of swelling bentonite is not a separate industry but is integral with the milling of swelling bentonite; and
- (2) assuming that the operations of excavating, hauling and milling swelling bentonite constitute a branch of an industry within the meaning of Sections 7(b)(3) and 3(h) of the Fair Labor Standards Act of 1938 and Section 526.2 of Regulations issued thereunder, the said branch of an industry operates continuously throughout the year and does not at any time cease production (as the term "production" is used in Regulations, Part 526, and is defined in Section 3(j) of the Act), and is therefore not an industry of a "seasonal" nature within the meaning of Section 7(b)(3) of

the Act and Section 526.3 of the Regulations.
and on the basis thereof denied the application; and

WHEREAS, said Findings and Determination were duly filed with the Administrator on October 4, 1939, and are now on file in his Office, Room 5144, Department of Labor Building, Washington, D. C., and available for examination by all interested parties:

NOW, THEREFORE, pursuant to the provisions of Section 526.7 of the aforesaid Regulations, notice is hereby given that any person aggrieved by the said determination may, within fifteen days after the date this notice appears in the Federal Register, file a petition with the Administrator requesting that he review the action of the said representative upon the record of hearing before the said representative.

Signed at Washington, D. C., this 6th day of October, 1939.



Elmor F. Andrews, Administrator
Wage and Hour Division
Department of Labor