

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.

SUPPLEMENTARY DETERMINATION NO. 2, IN THE MATTER OF APPLICATION FOR THE EXEMPTION OF THE DREDGING AND EXCAVATING OF SAND AND GRAVEL FROM SURFACE OR OPEN CUTS FROM THE MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938, PURSUANT TO SECTION 7(b)(3) OF THE ACT, PART 526 AS AMENDED OF THE REGULATIONS ISSUED THEREUNDER, AND PARAGRAPH (8) OF THE ORIGINAL DETERMINATION MADE IN THE MATTER OF THE SAND AND GRAVEL INDUSTRY PURSUANT TO HEARING HELD JUNE 19, 1939.

WHEREAS, the Administrator determined after a public hearing held before Harold Stein, Presiding Officer, on June 19, 1939 that:

1. There is a branch of the sand and gravel industry wherein the plants normally shut down for about six months each year, except for an insubstantial amount of production that may be produced shortly before or shortly after the main production season. This branch is located in the colder and, in general, more northerly parts of the United States; and
3. The plants in the northern branch cease operation annually at a regularly recurring season of the year, except for sales, maintenance, and similar work, because the materials used by the industry are not available for excavation, handling and processing in the form in which they must be excavated, handled, and processed, i.e., as unfrozen sand and gravel, because of climatic factors; and
4. The northern branch of the sand and gravel industry is an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526 of Regulations issued thereunder; and

WHEREAS, Paragraph (8) of the above Determination provides that it shall be without prejudice to a supplementary determination enlarging the scope of the Northern branch by the inclusion therein of such plants or groups of plants, if any, as operate in the same manner

and for the same reasons as the plants in the Northern branch described in paragraphs 1 and 3 above; and

WHEREAS, Eggeman, Reed & Cleland filed an application with the Wage and Hour Division, United States Department of Labor, on behalf of J. C. O'Connor & Sons, Inc., of Fort Wayne, Indiana, pursuant to Paragraph (8) of the above cited original determination in the matter of the sand and gravel industry, for a supplementary determination enlarging the scope of the Northern branch of the sand and gravel industry to include the dredging and excavating of sand and gravel by J. C. O'Connor & Sons, Inc., near Peru, Miami County, Indiana; and

WHEREAS, it appears from the application filed by Eggeman, Reed & Cleland on behalf of J. C. O'Connor & Sons, Inc., of Fort Wayne, Indiana, that the sand and gravel plant of the aforesaid company in Miami County, Indiana, operates in the same manner and for the same reason as the plants in the Northern branch described in paragraphs 1 and 3 of the original determination.

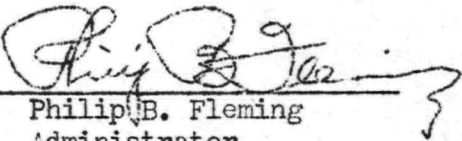
NOW, THEREFORE, upon consideration of the facts stated in the said application for supplementary determination, the Administrator hereby determines, pursuant to Section 526.5(b)(ii), as amended, of the Regulations, that a prima facie case has been shown for enlarging the scope of the Northern branch of the sand and gravel industry, in accordance with Paragraph (8) of the original determination and pursuant to Section 7(b)(3) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder to include the sand and gravel plant of J. C. O'Connor & Sons, Inc., in Miami County, Indiana.

In accordance with the procedure established by Section 526.5 (b)(ii), as amended, of the Regulations, the Administrator for fifteen days following the publication of this determination will receive objection to the granting of the exemption and request for hearing from any interested person. Upon receipt of objection and request for hearing, the Administrator will set the application for the hearing before himself or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the prima facie case shown upon the application.

The application may be examined in Room 5220, U. S. Department of Labor, Washington, D.C.

Signed at Washington, D.C., this 24th day of July, 1940.


Philip B. Fleming
Administrator
Wage & Hour Division
U.S. Department of Labor