

In The Matter of
Celite Corporation
Lompoc Plant
I.D. No. 04-02848

PETITION FOR MODIFICATION

Docket No. M-2011-012-M

PROPOSED DECISION AND ORDER

On December 05, 2011, the law office of Ogletree Deakins on behalf of Celite Corporation (Celite) filed a petition seeking a modification of the application of 30 CFR § 56.20001 for the Lompoc Plant (I.D. No. 04-02848), located in Santa Barbara County, CA. This is a diatomaceous earth milling facility. Diatomaceous earth is a naturally occurring, soft, chalk-like sedimentary rock that is easily crumbled into a fine white to off-white powder. This powder has an abrasive feel, similar to pumice powder, and is very light, due to its high porosity. The typical chemical composition of diatomaceous earth is 86% silica, 5% sodium, 3% magnesium and 2% iron. Diatomaceous earth consists of fossilized remains of diatoms, a type of hard-shelled algae. It is used as a filtration aid, as a mild abrasive, as a mechanical insecticide, as an absorbent for liquids, as cat litter, as an activator in blood clotting studies, and as a component of dynamite.

The petitioner alleges that the proposed alternative method outlined in the petition, will at all times guarantee no less than the same measure of protection afforded by the standard.

An MSHA investigator conducted an on-site investigation at the mine at issue to determine the merits of the petition and filed a written report of his findings and recommendations with the Administrator for Metal and Nonmetal Mine Safety and Health. After a careful review of the entire record, including the petition and MSHA's investigative report and recommendations, this Proposed Decision and Order is issued.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator for Metal and Nonmetal Mine Safety and Health finds that the alternative method proposed by the petitioner, with the conditions listed below, would guarantee no less than the same measure of protection afforded by 30 CFR § 56.20001.

30 CFR § 56.20001 provides:

Intoxicating beverages and narcotics shall not be permitted or used in or around mines. Persons under the influence of alcohol or narcotics shall not be permitted on the job.

The Lompoc Mine is a surface diatomaceous earth (DE) mine and processing facility. Mined DE is processed by Celite to create finished DE products. Since beer industry customers are among Celite's largest, Celite's research scientists need to keep customer products on-site in the research lab for use in developmental research. Work routinely requiring the use of beer in the research lab includes DE permeability analysis, beer stability analysis, and solubility of other trace elements in DE that may have deleterious effect on beer quality.

On the basis of the petition, the findings of MSHA's investigations, and the recommendations of MSHA, Celite Corporation is granted a modification of the application of 30 CFR § 56.20001 at its Lompoc Plant laboratory.

ORDER

Wherefore, pursuant to the authority delegated by the Secretary of Labor to the Administrator for Metal and Nonmetal 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 a modification of 30 CFR § 56.20001 to Celite Corporation as it pertains to permitting the use of intoxicating beverages at its Lompoc Plant's laboratory, is hereby:

GRANTED, conditioned upon compliance with the following terms and conditions:

1. Beer used in laboratory (lab) procedures must be ordered by the Quality Specialist, or other responsible designee, from the purchasing coordinator.
2. The purchasing coordinator, or the operator's responsible designee, must arrange for the supply of beer to be purchased and delivered to the appropriate person/department for receipt. In some cases, beer may be received directly from a customer that requires testing of their specific beer and it will be received under the same procedures found in the following items.
3. When the beer is received, the amount received must be recorded on a log or other equivalent form.
4. Prior to storage, the bottles containing beer must be initialed, or marked in some way with a permanent marker, across the bottles' label. This is to more easily identify the bottles purchased for testing purposes.
5. Beer must be stored in a locked storage cabinet or box, except during testing procedures. The number of keys to the locked storage cabinet or box will be kept to a minimum.

6. The names and contact information of key holders will be provided to the Secretary or his/her Authorized Representative immediately upon request.
7. A record of beer use will be kept, to include amount, date used and initials or of the person acquiring the product for testing purposes.
8. When the testing has been concluded, the remaining degassed beer must be disposed of by being dumped down a sink drain or by other appropriate means.
9. Empty containers of beer must be kept in the locked cabinet/or designated receptacle until they can be properly disposed of or recycled properly.

Any party to this action desiring a hearing on this matter must file, in accordance with 30 CFR Part 44.14, a request for hearing within 30 days after service of the Proposed Decision and Order. This request for hearing must be filed with the Administrator for Metal and Nonmetal Mine Safety and Health, 1100 Wilson Boulevard, Arlington, Virginia 22209-3939.

If a hearing is requested, the request must contain a concise summary of position concerning the issues of fact or law desired to be raised by the party requesting the hearing, including specific objections to the Proposed Decision and Order. A party other than the petitioner who has requested a hearing shall also comment upon all issues of fact or law presented in the petition. Any party to this action requesting a hearing may indicate a desired hearing site. If no request for a hearing is filed within 30 days after service thereof, this Proposed Decision and Order will become final and must be posted by the operator on the respective mine's bulletin board at the mines at issue herein.

/s/ Neal Merrifield

Neal H. Merrifield
Administrator for Metal and Nonmetal
Mine Safety and Health