

In The Matter of
Dicalite Minerals Corp.
Dicalite Minerals Corp.
I.D. No. 04-04053

PETITION FOR MODIFICATION

Docket No. M-2011-013-M

PROPOSED DECISION AND ORDER

On December 05, 2011, the law office of Jamie P. Yadgaroff on behalf of Dicalite Minerals Corp., (Dicalite) filed a petition seeking a modification of the application of 30 CFR § 56.20001 for the dicalite plant (I.D. No. 04-04053), located in Santa Barbara County, CA. This is a surface diatomaceous earth ("DE") mine and processing facility. Mined DE is processed by Dicalite to create finished DE products ("the Marketable Products").

One of the commercial applications of the Marketable Products is a filtration agent utilized during the brewing process for beer. The Marketable Products and other ingredients are integrated onto a fine 2 mesh screen creating a "filter-cake." At the end of the brewing process the beer is passed through the filter-cake to remove undesirable containments. This results in higher clarity of the beer, which is commercially desirable.

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 this mine 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 (PDO) 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.

Dicalite seeks to modify 30 CFR § 56.20001 so that beer can be stored on the mine site. 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. Specifically, Dicalite asks that it be permitted to: (1) store containers of beer at the Plant in secure locations, with restricted access; (2) use beer for purposes of quality control testing, statistical method control testing, and research testing; and (3) store open containers of beer, that may be used during more than one testing event at the Dicalite Plant, in secure locations, with restricted access;

The modification of the application of 30 CFR § 56.20001 at the Dicalite Plant is on the basis of; the petition, the findings of MSHA's investigations, and the recommendations of MSHA. The consumption of any intoxicating beverages and narcotics will be prohibited in or around the mine.

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 Dicalite Minerals Corp., as it pertains to permitting the use of intoxicating beverages at its laboratory, is hereby:

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

1. Beer used in lab procedures will be ordered by a lab tech, or other responsible designee, who will arrange for the supply of beer to be purchased and delivered to the appropriate person/department for receipt.
2. When the beer is received, the amount received must be recorded on a log or other equivalent form.
3. 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 easily identify the bottles purchased for testing purposes.
4. 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.
5. The names and contact information of key holders will be provided to the Secretary or his/her Authorized Representative immediately upon request.
6. 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.

7. 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.

8. Empty containers of beer must be kept in the locked storage cabinet/or designated receptacle until they can be properly disposed of or appropriately recycled.

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