Significant Index No. 401.00-00

200334038

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 30 2003

T:EP:RA:T:A1

In re:

Employer =

Plant A =

Plant B =

Plant C =

Plant D =

Plant E =

Plant F =

Plant G =

Plant H =

Plant I =

Dear Mr.

This letter constitutes notice that, with respect to the above-named defined benefit pension plan, the five plan amendments described below are reasonable and provide for de minimis increases in plan liabilities of the Plan within the meaning of section 401(a)(33)(A) of the Internal Revenue Code (Code) and section 204(i)(1) of the Employment Retirement Income Security Act of 1974 (ERISA).

Section 401(a)(33)(A) of the Code provides that a plan is not a qualified plan if there is an amendment that increases the liabilities of a plan where the plan is maintained by a debtor in a case under title 11 of the United States Code. However, section 401(a)(33)(B)(ii) provides exceptions to section 401(a)(33)(A) if the plan, were such amendment to take effect, would have a funded current liability percentage (as defined in section 412(l)(8)) of at least 100 percent or if the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor.

Section 204(i)(1) of the ERISA prohibits a plan amendment that increases the liabilities of a plan maintained by an employer that is a debtor under title 11 of the United States Code. Section 204(i)(2) of ERISA provides an exception to section 204(i)(1) of ERISA if the Secretary of the Treasury determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor.

On October 5, 2000, the Employer filed for protection under Chapter 11 of the United States Bankruptcy Code. The Employer has not yet been reorganized. On May 30, 2001, the Employer received a favorable ruling letter (the "May 30, 2001, Ruling Letter") indicating that certain plan amendments were reasonable and provided for de minimis increases in plan amendments. The Employer proposes five additional amendments to the Plan, subject to the restrictions of Code section 401(a)(33). The amendments are described below.

The Plan was established on January 1, 1996, by the merger of three existing plans. The Plan document has a separate portion (or "Attachment") for each formerly separate plan. Currently, as a result of subsequent corporate acquisitions, the Plan has eleven Attachments.

AMENDMENT 1

> Attachment #2 would be amended to increase the applicable flat dollar accrual rate by $3.00 for participants employed at Plant A who retire on or after January 1, 2002.

The Employer has stated that the purpose of this amendment is to bring the benefit levels for Plant A participants more in-line with other participants whose coverage is provided for in Attachment #2.

AMENDMENT 2

Attachment #7 would be amended to increase the applicable flat dollar accrual rate by $2.00, $2.00, and $2.00 for the periods August 1, 2001-July 31, 2002, August 1, 2002-July 1, 2003, and August 1, 2003-July 1, 2004, respectively, in comparison with the previous 12 month period. Attachment #7 would also be amended to provide that all employees hired at Plant B on or after September 1, 2001, would not be covered under Attachment #7.

Attachment #1 would be amended to provide that all employees hired at Plant B on or after September 1, 2001, would be covered by the cash balance benefit under Attachment #1 of the Plan and would receive service-based credits equal to $60 per month of service.

The Employer has stated that the purpose of this amendment is to bring the benefit levels for participants employed at Plant B more in-line with similarly situated employees of the Employer and to stay competitive within the Employer's industry. Furthermore, the Employer states that the above changes to Attachments #1 and #7 were negotiated in the context of a broader collective bargaining process in which the parties agreed to changes in other benefit programs that will result in savings to the Employer.

AMENDMENT 3

Attachment #3 would be amended to provide a $1 dollar increase in the flat dollar accrual rate for participants employed at Plant C or Plant D who retire on or after January 1, 2001 (for participants employed at Plant C), or February 1, 2001 (for participants employed at Plant D).

The Employer has stated that the purpose of this amendment is to bring the benefit levels for participants employed at Plants C and D more in-line with similarly situated employees of the Employer and to stay competitive within the Employer's industry. Furthermore, the Employer states that the changes to Attachment #3 were negotiated in the context of a broader collective bargaining process in which the parties agreed to changes in other benefit programs that will result in savings to the Employer.

The Employer intends to make the following proposed amendments effective within 120 days of the date of this letter (the "Effective Date").

AMENDMENT 4

Attachment #1 would be amended to provide coverage, on the Effective Date, for participants employed at Plant A (other than for participants age 40 or older with at least ten years of service as of December 31, 2002, "Grandfathered Employees"), such participants to receive pay-based credits in accordance with the pay credit provisions of Attachment #1.

Attachment #2 would be amended to cease coverage, on the Effective Date, for participants employed at Plant A (other than for Grandfathered Employees). In addition, Attachment #2 would be amended to provide a lump sum benefit for all active participants employed at Plant A (including Grandfathered Employees) equal to the actuarial equivalent of the participant's accrued benefit. (Currently, lump sum payments for Plant A employees are limited to the actuarial equivalent of the participant's accrued benefit as of December 31, 1994).

The Employer has stated that the purpose of this amendment is to bring the benefit levels and options for Plant A participants more in-line with other hourly participants in the Plan.

AMENDMENT 5

Attachment #1 would be amended to provide, that, as of the last day of each month, beginning with the month of the Effective Date, and ending with the 23rd month thereafter, the cash balance account of each participant covered under the pay credit provisions of Attachment #1 would be credited with an amount equal to four percent of such participant's compensation for that month. (Currently the pay credit provisions of Attachment #1 generally provide for the crediting of amounts equal to two percent of each participant's compensation up to one-half of the Social Security Wage Base and four percent of compensation above that level).

Attachment #1 would also be amended to provide that, beginning with the month of the Effective Date, and ending with the 23rd month thereafter, the cash balance accounts of certain employees of Plants E, F, G, H, and I, would be credited under the pay credit provisions of Attachment #1 (in lieu of amounts currently credited to such employee's accounts under the service credit provisions of that attachment).

The Employer has stated that the purpose of this amendment is to make uniform the overall pay credit rate for covered employees regardless of pay level.

After the amendments described above, the Plan has a funded current liability percentage that is less than 100 percent and the Employer is a debtor in possession in a case under title 11 of the United States Code. Merely because, generally, the amendments were negotiated in the context of broader collective bargaining processes does not cause them to be considered reasonable. However, the Employer believes that the amendments will help it to remain competitive. Furthermore, upon receipt of this ruling letter, the Employer will contribute to the Plan an amount equal to the increase in current liability resulting from all of the proposed amendments. Accordingly, if such contribution is made, the amendments are considered reasonable.

The actuarial information furnished indicates that the sum of the increase in current liability resulting from the five proposed amendments plus the amendments adopted pursuant to the May 30, 2001, Ruling Letter is less than three percent (3%). Similarly, the sum of the increase in accrued liability resulting from the five proposed amendments plus the amendments adopted pursuant to the May 30, 2001, Ruling Letter is less than three percent (3%). In addition, the increase in the sum of the normal cost, net amortization charges, and additional funding charges, resulting from such amendments is also less than three percent (3%). Based upon the above, the increase in Plan liabilities is de minimis.

This ruling considers only the application of Code section 401(a)(33) and ERISA section 204(i) to the amendments described in your August 12, 2002, ruling request, as supplemented by your letter of November 12, 2002, and does not consider any other issues that may arise in connection with the Plan or these amendments. In particular, this ruling does not consider the application of section 411(b)(1)H) of the Code, section 204(b)(1)(H) of ERISA, or section (4) of the Age Discrimination and Employment Act, to AMENDMENT 4.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file. A copy of this letter is also being sent to the Manager, Employee Plans Classification in

If you have any questions on this ruling letter, please contact

Sincerely,

James E. Holland, Jr., Manager
Employee Plans Technical