

Pension Benefit Guaranty Corporation

76-20

February 10, 1976

REFERENCE:

[*1] 4062(e). Liability of Employer in Single Employer Plans. Closing of Facility Affecting More Than 20% of Plan Participants

OPINION:

In your letter of November 14, 1975, you inquired about the application of Section 4062(e) of the Employee Retirement Income Security Act of 1974 (hereinafter, the "Act") to the * * * Corporation's planned consolidation of its production facilities. You also asked that the Pension Benefit Guaranty Corporation (hereinafter, the "PBGC") indicate the type of indemnity agreement that would be acceptable to it, under Section 4063(e), if Section 4062(e) is found to apply to the situation you have described.

The PBGC's policy with regard to the interpretation and application of Section 4062(e) is, as you are aware, in the process of development. Because we understand that your client is delaying its consolidation pending a resolution of these Title IV issues, it might be more expeditious for * * * Corporation and the PBGC to enter into a indemnity agreement that would become effective in the event Section 4062(e) does apply, rather than awaiting an authoritative determination on a complex policy matter.

Enclosed is the original and one copy of the indemnity agreement [*2] that, in the view of the PBGC, would satisfy the purposes of Sections 4063 and 4064 of the Act in this situation. If * * * accepts this agreement, the PBGC can waive the alternative bond or escrow requirements that would be imposed on * * * if Section 4062(e) applies to the planned consolidation of operations. I understand you have been in communication with * * * of this Office concerning the form and content of the enclosed agreement, and that it is likely to be acceptable to your client. Unless you have further changes to propose, please return both copies to * * * after they have been signed by the appropriate officer of the * * * and we will return one fully executed copy to you. If you do wish to suggest additional modifications, please be in touch with * * * directly, at * * *

Henry Rose
General Counsel