

Pension Benefit Guaranty Corporation

77-168

October 27, 1977

REFERENCE:

[\*1] 4021(b)(13) Plans Covered. Professional Service Employer Plans  
4021(c)(2)(A) Plans Covered. Definition of Professional Service Employer  
4021(c)(2)(B) Plans Covered. Definition of Professional Individuals

OPINION:

This is to notify you that the \* \* \*, Defined Benefit Pension Trust (the "Trust") is covered under Title IV of the Employer Retirement Income Security Act of 1974 (the "Act"). In a telephone conversation between you and \* \* \*, it was suggested that the Trust may be excluded from Title IV coverage under the § 4021(b)(13) exclusion for plans maintained by professional service employers.

Section 4021(b)(13) of the Act excludes from Title IV coverage any plan \* \* \*

"established and maintained by a professional service employer which does not at any time after the date of enactment of this Act have more than 25 active participants in the plan."

Section 4021(c)(2)(A) defines the phrase "professional service employer" as \* \* \*

". . . any proprietorship, partnership, corporation, or other association or organization, (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance [\*2] of professional services . . . ."

Section 4021(c)(2)(B) lists some but not all of the individuals who are considered to be "professional individuals".

The Pension Benefit Guaranty Corporation found it unnecessary to consider whether \* \* \* (the "Employer") is "owned or controlled by professional individuals" within the meaning of § § 4021(c)(2)(A)(i) and 4021(c)(2)(B). Because the information you have provided indicates that the performance of professional services is not the Employer's "principal business" within the meaning of § 4021(c)(2)(A)(ii), the Trust does not meet the requirements of § 4021(b)(13) for exclusion as a plan maintained by a professional service employer.

You stated to \* \* \* that the principal business of the Employer is the design, installation, and maintenance of "cathodic protection systems". In a telephone conversation with \* \* \* of this office, \* \* \* the Employer's Corporate Secretary and Office Manager, explained that the Employer installs electrolytic systems designed to prevent the corrosion of metal fixtures such as pipelines and well casings. \* \* \* stated that although the Employer designs some of the systems, it installs many more than it designs. [\*3] \* \* \* explained that the engineering facet of the Employer's business is comprised primarily of determining whether the soil conditions surrounding a particular fixture are such that the fixture requires corrosion protection. \* \* \* stated that at this time the provision of engineering services accounts for a small part of the Employer's business. \* \* \* said installation of the systems accounts for a greater volume of the Employer's business and a larger portion of its income than engineering does, and that more corporate time is spent installing the systems than providing engineering services.

Based on the above information, the Employer's "principal business" is the installation of cathodic protection systems rather than the provision of engineering services. The installation of these systems does not constitute the rendering of professional services. Accordingly, the performance of professional services is not the Employer's "principal business" within the meaning of § 4021(c)(2)(A)(ii). The Trust therefore is not excluded under § 4021(b)(13) and should be terminated as a covered plan.

Henry Rose  
General Counsel