

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION NO. 82-66A

Sec. 101, 103, 104

DEC 15 1982

Mark P. Altieri, Esq.
Fulbright & Jaworski
800 Bank of Southwest Building
Houston, Texas 77002

Dear Mr. Altieri:

This is in response to your letter of June 29, 1982 in which you have requested, on behalf of the Inpak, Inc. Pension Plan (the "Plan"), an advisory opinion concerning the application of the reporting and disclosure requirements of title I of the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence concerning ERISA has resulted in a delay in responding to you.

Your letter contains the following facts and representations relative to the Plan. The Plan, a defined benefit pension plan, was sponsored and administered by Inpak, Inc., a wholly owned subsidiary of National Inpak Corporation, which along with its subsidiaries, National Cellulose Corporation and National Cellulose Corporation of Ohio, adopted the Plan. The aforementioned corporations are still in existence and doing business. However, due to continued and severe business hardships, the aforementioned corporations terminated the Plan by amendment effective March 31, 1980.

On March 31, 1980, the Pension Benefit Guaranty Corporation (the "PBGC") received from Inpak, Inc. a Notice of Intent to Terminate the Plan. The PBGC declined to determine that the Plan assets were sufficient to discharge all obligations thereunder, and, pursuant to section 4042(c) of ERISA, determined that the Plan should be terminated in order to protect the interests of participants and to avoid any further deterioration in the financial condition of the Plan. Under section 4042(c), the PBGC also appointed itself trustee of the Plan, with all rights of trustee with respect to the Plan and its assets, effective March 31, 1980. Pursuant to section 4007(a) of ERISA, the plan administrator was thereafter relieved of further premium payments to the PBGC. As to the ongoing obligation of the Plan to file annual return/reports (Form 5500 series), you were informed by the Internal Revenue Service, by letter dated April 7, 1982, that a final Form 5500 series return/report is properly filed in the plan year in which a defined benefit plan is terminated and the PBGC is appointed trustee of the Plan pursuant to section 4042 of ERISA.

However, in recognition of the independent annual reporting requirements, and other reporting and disclosure requirements, contained in title I of ERISA and penalties for noncompliance therewith, you have requested that the Department render an opinion with respect to the application of those requirements to the Plan. Specifically, you have requested an opinion stating that the administrator of the Plan is not required to comply with the following reporting and disclosure requirements of ERISA for any year subsequent to the plan year ended March 31, 1980: (1) preparation and filing of an annual return/report (Form 5500 series), including any schedules, financial statements and accounting and/or actuarial opinions required to be appended thereto; (2) preparation and distribution of summary annual reports to participants; and (3) preparation and distribution of summary plan descriptions to participants and filing a copy of the summary plan description with the Secretary of Labor.

It is the position of the Department that, because the Plan is a defined benefit plan which is terminated and for which the PBGC is appointed trustee under section 4042 of ERISA, the Plan administrator is relieved, by virtue of such termination, from the reporting and disclosure obligations arising under Part 1 of title I of ERISA with respect to any plan year subsequent to the plan year in which the termination under section 4042 is deemed to have occurred. Therefore, it is the opinion of the Department that Inpak, Inc., as plan administrator, would not be required for purposes of title I of ERISA to comply with the reporting and disclosure requirements arising with respect to any year subsequent to the plan year ended March 31, 1980, including: the preparation and filing of annual return/reports (Form 5500 series) and any statements, schedules and opinions required with respect thereto under title I of ERISA; the preparation and distribution of summary annual reports to plan participants; and the filing of a copy of the summary plan description with the Secretary of Labor.

With respect to the plan year ended March 31, 1980, the administrator of the Plan proposes to: (1) file a "final" Form 5500-C for the plan year ended March 31, 1980, complete in all regards as to the applicable schedules, financial statements and actuarial opinions; (2) prepare and distribute "final" summary annual reports to Plan participants as well as a complete accounting to Plan participants as to the status of their benefits under the Plan as administered by the PBGC; and (3) provide the name, address and phone number of appropriate officials at the PBGC who may be contacted to provide information as to Plan benefits available to participants. It is requested that these proposed actions by the administrator of the Plan be viewed by the Department as full and complete compliance with any and all reporting and disclosure requirements otherwise imposed on the plan administrator under applicable provisions of title I of ERISA with respect to the plan year ended March 31, 1980 and all subsequent years with respect to which the PBGC (or any successor thereto) acts as trustee of the assets of the Plan.

While the Department, absent a complete review of the reporting and disclosure materials described above, is unwilling to conclude that the distribution and/or filing of the described materials represents "full and complete compliance" with any and all reporting and disclosure requirements, it does appear that the proposed reporting and disclosure measures to be undertaken by the administrator of the Plan would satisfy, at least in form, the applicable

reporting and disclosure requirements of title I of ERISA for the plan year ended March 31, 1980. Accordingly, the Department does not believe that the prescription of an alternative method of compliance with respect to the reporting and disclosure requirements of title I of ERISA for the Plan is either appropriate or necessary.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 (copy enclosed). Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs

Enclosure