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December 18, 2003

Mr. Milan Racic
Health and Safety Specialist
International Brotherhood of Boilermakers
452 W. Willow Court
Fox Point, Wisconsin 53217

Dear Mr. Racic:

Thank you for your September 26 and November 10, 2003 facsimiles to the Occupational Safety and Health Administration's (OSHA's) Directorate of Enforcement Programs requesting an interpretation of OSHA's General Duty Clause.

Your letters make reference to a July 23, 2003 letter sent by Ms. Peggy Zweber, Area Director of OSHA's Peoria Area Office, wherein she provided an interpretation of OSHA's General Duty Clause. As we stated to you on September 5, 2003, we support the statements made by Ms. Zweber. As Ms. Zweber stated, Section 5(a)(1) of the Occupational Safety and Health Act (the "General Duty Clause") requires an employer to furnish to its employees:

"employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees..."

Employers can be cited for violation of the General Duty Clause if a recognized serious hazard exists in their workplace and the employer does not take reasonable steps to prevent or abate the hazard. The General Duty Clause is used only where there is no standard that applies to the particular hazard. The following elements are necessary to prove a violation of the General Duty Clause:

- a. ***The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;***
- b. ***The hazard was recognized;***
- c. ***The hazard was causing or was likely to cause death or serious physical harm; and***
- d. ***There was a feasible and useful method to correct the hazard.***

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain this requirement and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirement discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we

update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please feel free to contact the Office of General Industry Enforcement at (202) 693-1850.

Sincerely,

Richard E. Fairfax, Director
Directorate of Enforcement Programs

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