U.S DEPARTMENT OF LABOR
Pension and Welfare Benefits Programs
Washington, D.C. 20216

MAR 4 1977

OPINION 77-26 A

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Mr. Michael E. Dunn
Andrews Mosburg Davis Elam Legg & Bixler, Inc.
Midland Center
Oklahoma City, Oklahoma 73102

Dear Mr. Dunn:

This is in reply to your letter concerning the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence has resulted in a delay in responding.

You state that you represent Dyco Petroleum Corporation (the Company), a firm which has established the Incentive Compensation Plan and Trust Agreement (the Plan) for the purpose of improving recruiting and retention of upper management personnel. The Company is engaged in the oil and gas industry and is in the business of owning, transferring, conveying, and selling oil and gas leasehold interests. Prior to or concurrently with a sale, the Company carries out an overriding royalty interest from the leasehold interest and transfers the overriding royalty interest to the Plan. Those overriding royalty interests transferred to the Plan during a calendar year are collectively referred to as a "Pool". Within a reasonable time after the end of each calendar year, the Trustee pays to the participants of each "Pool" their respective shares of net income from the "Pool". You request a ruling as to whether the Plan constitutes an "employee benefit plan" within the meaning of ERISA.

The Department of Labor has adopted an advisory opinion procedure (ERISA Procedure 76-1, copy enclosed) which describes the general procedures for issuing information letters and advisory opinions under ERISA. Pursuant to ERISA Procedure 76-1, this letter is to have the effect of an advisory opinion.

Section 3(3) of ERISA defines the term "employee benefit plan" to include employee welfare benefit plan or an employee pension benefit plan or a plan which is both a welfare and a pension plan. Section 4(a) indicates that such plans are subject to the provisions of Title I of ERISA.

Section 2510.3-2 of regulations issued by the Department on August 15, 1975 (copy enclosed) clarifies the definition of the term pension plan for purposes of Title I of ERISA. As indicated in section 2510.3-2(c), the term "pension plan" should not include payments made by an employer to some or all of its employees as bonuses for work performed unless such payments are systematically deferred to the termination of covered employment or beyond or so as to provide retirement income to employees.

Pursuant to the Plans' provisions, the Trustee pays to the participants of each "Pool" their respective shares of net income from each "Pool" within a reasonable time after the end of each calendar year, or more often as the Trustee determines at his discretion. Therefore, the Plan qualifies as a bonus program described in section 2510.3-2(c). As such, it is neither a pension plan nor an employee benefit plan and is not subject to the provisions of Title I of ERISA.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions

Enclosures