

2520032034703

MACKALL, CROUNSE & MOORE

LAW OFFICES

1800 TCF TOWER
121 SOUTH EIGHTH STREET
MINNEAPOLIS, MINNESOTA 55402

TELEPHONE (612) 333-1341
FACSIMILE (612) 333-6173

FREDERICK L. THORSON
WINSTON E. MUNSON
CLAY R. MOORE
CONNOR F. SCHMID
LORENS Q. BRYNESTAD
SIDNEY KAPLAN
WOODBURY H. ANDREWS
GEORGE R.A. JOHNSON
J. MICHAEL COLLOTON
FRANK A. DVORAK
MARVIN C. INGBER
LESLIE H. NOVAK
TIMOTHY D. MORATZKA
DENIS E. GRANDE
MARTIN V. AYDELOTT
SHANE H. ANDERSON
GLENN R. DRURY
STEVEN B. SCHMIDT
ROBERT F. STRAUSS
KENDEL J. OHLROGGE
ROBERT S. LEE
JAMES T. SWENSON
ERIC O. MADSON
JOHN C. UTLEY
ARLIN B. WAELTI
STEPHEN F. GRINNELL
STEPHEN P. KELLEY
MICHAEL J. DWYER
TIMOTHY M. BARNETT
KARL K. HEINZERLING

DAVID J. DUDDESTON
TIMOTHY J. GRANDE
THOMAS J. LALLIER
JOHN R. GREEN
SUSAN M. SWIFT
SHEILA A. ENGELMEIER
DUANE G. JOHNSON
MICHAEL C. GLOVER
JEFFREY L. SHLOBERG
ANTHONY C. BRANCH
WILLIAM J. O'BRIEN
AMY J. JOHNSON
SHERYL G. MORRISON
D. CLAY TAYLOR
BRADLEY J. HALBERSTADT
JERRY A. BURG
MARTHA A. HOLTON
THOMAS P. O'DONNELL
DAVID S. GOLLIN*

HENRY C. MACKALL (1886-1879)
ROBERT M. CROUNSE (1883-1874)
PERRY R. MOORE (1884-1868)

*Admitted in Illinois Only

September 14, 1992

U.S. Department of Labor
Pension and Welfare Benefits
Administration
P.O. Box 75212
Washington, D.C. 20013-5121

BY CERTIFIED MAIL

Re: Alternative Method of Compliance for Pension
Plans for Selected Employees (DRC-TH 92-0170);
Employer Identification No: 13-5603841;
Date of Statement June 8, 1992

Dear Sir or Madam:

Our office represents Croda Inc., which has asked us to respond on its behalf to your letter dated August 31, 1992. A copy of your letter is enclosed.

The statement referred to in your letter was filed for the Croda Inc. Supplemental Retirement Plan, a copy of which is enclosed. Also enclosed is a copy of a first amendment to the plan, which is in the process of being adopted. Prior to the adoption of the first amendment, the plan was an unfunded "excess benefit plan" within the meaning of Section 3(36) of ERISA, and it was exempt from ERISA's reporting and disclosure requirements by virtue of ERISA § 4(b)(5). However, the first amendment will add benefits to the plan that are inconsistent with its status as an excess benefit plan. This will result in the plan's becoming subject to ERISA.

Regulation 29 C.F.R. § 2520.104-23 does not state when a plan becomes subject to ERISA for the purposes of the alternative method of compliance described therein. However, Regulation 29 C.F.R. § 2520.104b-2(a)(3)(i) (which establishes a 120-day period for distributing the summary plan description for a new plan) states that "where a plan is adopted with a retroactive effective date, the 120-day period begins on the date after the plan is adopted." We submit that in the absence of specificity dealing with the date on which a plan becomes subject to ERISA for the purposes of Regulation 29 C.F.R. § 2520.104b-2(a)(3)(i)



MACKALL, CROUNSE & MOORE

U.S. Department of Labor
September 14, 1992
Page 2

the provisions of Regulation § 2520.104b-2(a)(3)(i) should be applied.

The first amendment to the Croda Inc. Supplemental Retirement Plan will be effective as of December 1, 1989. However, the corporate actions necessary to adopt the amendment were not commenced until June 27, 1991, when consent resolutions were circulated to each director of Croda Inc. for signature. Most of the required signatures were obtained prior to the end of 1991; however, one signature still has not been obtained. Thus, the plan has not yet become subject to ERISA since all of the signatures required on the consent resolution adopting the amendment have not yet been obtained.¹

We therefore submit that the statement submitted on June 8, 1992 was timely filed, and that the company need not avail itself of the grace period program described in your notice dated July 24, 1992. We would note, however, that even if the company were required to use the grace period program, there would be no penalty because the statement was filed before the date on which the annual report for the 1991 plan year would have been due.

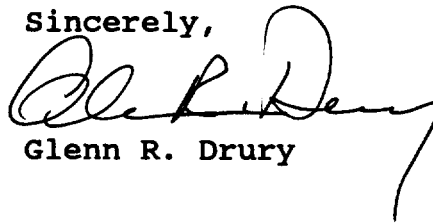
¹ Although we believe this to be the correct interpretation of the regulation, Croda nevertheless filed the required statement on June 8, 1992 to avoid any risk that it might be required to file an annual report for the plan year in which the corporate actions necessary to adopt the first amendment commenced.

MACKALL, CROUNSE & MOORE

U.S. Department of Labor
September 14, 1992
Page 3

We trust that the foregoing adequately demonstrates the timeliness of the statement; however, if you have any further questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn R. Drury", written in a cursive style. The signature is positioned above the printed name.

Glenn R. Drury

GRD/mrr/79624
Enclosures

cc: Ms. Marilyn Dunn (w/enc.)
Mr. Robert J. Fenner (w/enc.)

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210

August 31, 1992

Croda Inc.
7 Century Drive
Parsippany, NJ 07054-4698Re: Alternative Method of Compliance for Pension Plans for
Selected Employees (DRC-TH# 92-0170)Employer Identification Number: 13-5603841
Date of Statement: June 8, 1992RECEIVED
SEP - 3 1992
AAS'd.....

Dear Sir or Madame:

This letter acknowledges receipt of your statement submitted on behalf of the subject pension plan(s) pursuant to the Department of Labor's (Department) Regulation 29 CFR Section 2520.104-23, "Alternative Method of Compliance for Pension Plans for Selected Employees" (commonly referred to as "top hat plans").

We are unable to determine if your statement was submitted timely --within 120 days after the plan(s) became subject to Part 1 of Title I of ERISA. Please submit the plan document or summary plan description showing the date that the referenced plan(s) became subject to Part 1 of Title I of ERISA within 30 days of the date of this letter. If you failed to file the statement timely you may not avail yourself of the relief afforded by the alternative method of compliance and, therefore, must comply with all applicable reporting and disclosure requirements under Part 1 of Title I of ERISA. You may, however, take advantage of the "grace period" program described below.

On April 20, 1992, the Department published a notice in the Federal Register (57 FR 14436) announcing an expanded program for assessing civil penalties under ERISA section 502(c)(2). In the same notice, the Department also announced that for a limited "grace period" period (March 23, 1992 until September 30, 1992) plan administrators who voluntarily file overdue annual reports in accordance with the conditions set forth in the notice will be assessed reduced penalties (copy of notice attached). On July 24, 1992, the Department published a notice in the Federal Register (57 FR 33019) clarifying its position with respect to unfunded/fully insured top hat pension plans (copy of notice attached).

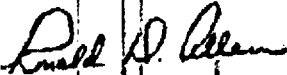
If you failed to file a Top Hat Statement within the 120 period you may wish to take advantage of the grace period program. In

order to apply for the reduced grace period penalty amounts, you must resubmit a statement that meets the alternative method of compliance along with a check for the appropriate penalty amount (\$1,000) to the Department before the end of the grace period. Please include the above DRC-TH# on your statement ensure proper identification of your case. Your check must be made Payable to the U.S. Department of Labor, and mailed along with your statement to the following address:

Pension and Welfare Benefits Administration
P.O. Box 75212
Washington, D.C. 20013-5212

For further information concerning the assessment of civil penalties under Section 502(c)(2) of ERISA, refer to Department regulations 29 CFR Sections 2560.502c-2 and 2570.60 and subsequent sections. If you have any questions, you may contact Ms. Karen Lynn Bell at (202) 523-4006. This is not a toll free number.

Sincerely,



Ronald D. Allen
Chief, Division of Reporting Compliance

Attachments

CRODA INC.

SUPPLEMENTAL RETIREMENT PLAN

The Employee Retirement Income Security Act of 1974 (ERISA), as amended, imposes limitations on the annual benefits that may be paid to participants under the Croda Inc. Retirement Plan for Salaried Employees (the "Pension Plan"). As a result, some participants in the Pension Plan may not be entitled to the level of benefits to which they would have been entitled had the ERISA limitations not been imposed. The purpose of the Croda Inc. Supplemental Retirement Plan (the "Plan") is to provide participants in the Pension Plan with the benefits they would have received from the Pension Plan but for the maximum limitations imposed by ERISA.

1. Administration

The committee (hereafter referred to as the "Committee") administering the Pension Plan shall also administer this Plan. The Committee shall have the authority:

- (a) to interpret the Plan;
- (b) to make rules and regulations concerning the administration of the Plan;
- (c) to employ or retain such persons (including independent accountants, lawyers, and actuaries) as it deems necessary or advisable to assist in the administration of the Plan; and
- (d) to take such other action as it deems necessary or advisable for the administration of the Plan;

provided, that no member of the Committee shall vote or decide upon any matter relating to himself or to any of his rights or benefits under the Plan. If one or more members of the Committee are disqualified by personal interest from taking part in a particular decision, the remaining member or members of the Committee (although less than a quorum) shall have full power to act in such matter. Expenses of administering the Plan shall be borne by Croda Inc. (the "Company").

2. Eligibility

A participant in the Pension Plan shall be eligible to participate in this Plan if he has reached his 50th birthday and if the annual benefit (as that term is defined in § 415(b) of the Internal Revenue Code of 1986 (the "Code")) payable to such participant under the Pension Plan would exceed the limitations of Code § 415(b) (as further modified by ERISA § 2004(d)(2)) or

Code § 415(e), but for the restrictions imposed by the Pension Plan to effectuate the limitations of Code § 415(b) and § 415(e).

3. Benefits

(a) If the benefits which a participant (or his surviving spouse or other beneficiary) would have received under the Pension Plan are reduced by the restrictions imposed by the Pension Plan to effectuate the limitations of Code § 415(b), as modified by ERISA § 2004(d), or Code § 415(e), the Company will pay to the participant (or to such surviving spouse or other beneficiary) an amount or amounts equal to the excess of:

(i) the amount or amounts that the participant (or his surviving spouse or other beneficiary) would have been entitled to receive under the Pension Plan if Code § 415 had not been enacted and the Pension Plan had not included restrictions designed to effectuate the limitations imposed by such section; over

(ii) the amount or amounts that the participant (or his surviving spouse or other beneficiary) is entitled to receive under the Pension Plan.

In the event that the benefits payable to a participant (or his surviving spouse or other beneficiary) under the Pension Plan are payable at a different time, or in a different form, than the benefits payable under this Plan, the amount of the benefits payable to the participant (or his surviving spouse or other beneficiary) under this paragraph 3(a) shall be determined as if the benefits payable under the Pension Plan had been paid at the same time, and in the same form, as the benefits payable under this Plan.

(b) Payment of the amounts payable to a participant (or his surviving spouse or other beneficiary) pursuant to paragraph (a) shall commence within 30 days after termination of the participant's employment with the Company and with all other employers who are required to be aggregated with the Company under Code §§ 414(b), (c), (m), and (o); provided, that if such employment terminates prior to the participant's 55th birthday for reasons other than his death, such payments, if any, shall commence within 30 days after the earlier of: (i) the participant's 55th birthday; or (ii) the date of the participant's death.

(c) Except as provided below in subparagraph (d), the amounts payable pursuant to paragraph 3(a) will be paid as follows:

(i) Joint and Survivor Annuity. If such amounts are payable to a participant who is married on the date the payments commence, they shall be paid to the participant monthly during his lifetime, with a reduced

amount payable monthly thereafter to the participant's surviving spouse, if any, for the lifetime of such surviving spouse.

(ii) Ten Year Continuous and Certain Annuity. If such amounts are payable to a participant who is not married on the date the payments commence, they shall be paid to the participant monthly during the participant's lifetime and, if the participant dies before the 120th such payment is made, they shall be continued thereafter to the participant's designated beneficiary until a total of 120 payments have been made.

(iii) Preretirement Survivor's Annuity. If such amounts are payable to the participant's surviving spouse by reason of the participant's death prior to receiving any payments from the Pension Plan, they shall be paid to such surviving spouse monthly during the surviving spouse's lifetime.

Notwithstanding the foregoing provisions of this paragraph 3(c), a participant (or his surviving spouse or other beneficiary) shall not be entitled to payments for any month if, by reason of any increase in the limitations of Code § 415 or otherwise, the benefits that the participant is (or would have been) entitled to receive from the Pension Plan for such month are not reduced by reason of the limitations set forth in Code § 415.

(d) Notwithstanding the provisions of subparagraph (c), the actuarial equivalent of amounts payable under this paragraph 3 may be paid in any other form then provided as an optional form of benefit under the Pension Plan if:

(i) the participant irrevocably elects, prior to the date on which he first becomes eligible to participate in the Plan, to receive payment from this Plan in such other form;

(ii) the trustees of any trust created for the purpose of paying benefits due pursuant to the Plan shall determine, in accordance with the provisions of a trust agreement making specific reference to this provision of the Plan, to pay such amounts in the form in which the participant (or his surviving spouse or other beneficiary) is actually receiving payments from the Pension Plan; or

(iii) the trustees of any trust created for the purpose of paying benefits due pursuant to the Plan shall determine that an acceleration of such payments is necessary in light of an unforeseeable emergency. For the purposes of this subparagraph, an "unforeseeable emergency" means a severe financial

hardship to the participant resulting from a sudden or unexpected illness or accident of the participant or a dependent (as defined in Code § 152(a)) of the participant, loss of the participant's property due to casualty, or other similar, extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. Payments will only be accelerated pursuant to this subparagraph to the extent that such hardship cannot be relieved:

(A) through reimbursement or compensation by insurance, or otherwise; or

(B) by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship.

Accelerated payments made pursuant to this subparagraph shall not exceed the actuarial equivalent of the remaining payments due, and such remaining payments shall be reduced by the actuarial equivalent of the accelerated payments.

In determining actuarial equivalence, the factors then in use for such purpose under the Pension Plan shall also be used for the purposes of this Plan. Notwithstanding the foregoing, the provisions of this subparagraph (d), and any election made pursuant to subparagraph (d)(i), shall not take effect until such time as the Company receives a ruling from the Internal Revenue Service that they will not cause a participant to include amounts attributable to benefits payable pursuant to the Plan in gross income prior to the year in which such amounts are actually received by the participant (or his surviving spouse or other beneficiary.)

4. Changes in Limitations and Benefits

(a) References in this Plan to specific sections of the Code and ERISA shall be references to such sections as they may be amended from time to time in order that the determination of benefits payable hereunder shall take into account any changes occurring in the limitations on contributions or benefits imposed by Code § 415.

(b) References in this Plan to the Pension Plan and specific sections thereof shall be references to such plan as it may be amended from time to time in order that the determination of benefits payable hereunder shall take into account any changes occurring from time to time in the benefits payable under the Pension Plan.

5. Conditions and Miscellaneous Matters

(a) The benefits payable under this Plan shall not be subject in any way to anticipation, alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution, or encumbrance of any kind, and any attempt to accomplish the same shall be void.

(b) Participation in this Plan does not give any person any right to be retained in the service of the Company or any of its affiliates. The right and power of the Company and its affiliates to dismiss or discharge any employee is expressly reserved.

(c) The rights of each participant and beneficiary to receive payments hereunder shall be solely those of an unsecured, general creditor of the Company.

(d) Whenever, in the Committee's opinion, any person entitled to receive any payment hereunder is under a legal disability, or is incapacitated in any way so as to be unable to manage his financial affairs, the Company may make such payment to such person, to his legal representative, or to a relative or friend of such person for his benefit, or the Company may apply the payment for the benefit of such person in such manner as the Committee considers advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this paragraph shall be a complete discharge of any liability for the making of such payment under the provisions of this Plan.

(e) This Plan shall be construed according to the laws of the State of New York, except to the extent that the same are superseded by applicable federal laws.

6. Amendment and Termination

The Company retains the right to modify, amend, or terminate this Plan; provided, however, that no modification, amendment, or termination shall, without the consent of the participant, adversely affect the rights of that participant to the supplemental benefits which have accrued hereunder before such modification, amendment, or termination occurs.

7. Effective Date

This Plan shall be effective as of December 1, 1987.

IN WITNESS WHEREOF, and to record the adoption of the Plan as set forth above, the Company has caused this document to be executed by its duly authorized officers as of the day and year last above written.

CRODA INC.

By 

President

[SEAL]

ATTEST:

By 

Secretary

FIRST AMENDMENT TO THE
CRODA INC. SUPPLEMENTAL RETIREMENT PLAN

Effective as of December 1, 1987, Croda Inc. (the "Company") adopted the Croda Inc. Supplemental Retirement Plan (the "Plan") for the purpose of providing certain of its employees who are participants in the Croda Inc. Retirement Plan for Salaried Employees (the "Pension Plan") with the benefits they would have received from the Pension Plan, but for the limitations on benefits imposed by Section 415 of the Internal Revenue Code of 1986 (the "Code"), as modified by Section 2004(d) of the Employee Retirement Income Security Act of 1974 ("ERISA"). The Company, having reserved the right to amend the Plan, now wishes to revise the Plan to provide participants with the benefits they would have received under the Pension Plan, but for the limitations on compensation imposed by Code § 401(a)(17). To accomplish this purpose, the Board of Directors of the Company has approved the following amendments to the Plan:

1. Paragraph 2 of the Plan is amended in its entirety, to read as follows:

"A participant in the Pension Plan shall be eligible to participate in this Plan if he has reached his 50th birthday, and if:

(a) the annual benefit (as that term is defined in Code § 415(b)) payable to such participant under the Pension Plan would exceed the limitations of Code § 415(b) (as modified by ERISA § 2004(d)(2)) or Code § 415(e), but for the restrictions imposed by the Pension Plan to effectuate the limitations imposed by Code § 415(b) and § 415(e); or

(b) the participant's compensation that is considered for the purpose of determining his annual benefit under the Pension Plan is limited by restrictions imposed by the Pension Plan to effectuate the limitations imposed by Code § 401(a)(17);

provided, that an individual who would otherwise be eligible to participate in the Plan shall not be eligible to participate if, in the opinion of legal counsel for the Company, such individual is not a member of a "select group of management or highly compensated employees" within the meaning of Sections 201(2), 301(a)(3), and 401(a)(1) of ERISA."

2. Subparagraph 3(a)(i) of the Plan is amended in its entirety, to read as follows:

"(i) the amount or amounts that the participant (or his surviving spouse or other beneficiary) would have been entitled to receive under the Pension Plan if Code § 415 and Code § 401(a)(17) had not been enacted and the Pension Plan had not included restrictions designed to effectuate the limitations imposed by such sections; over"

3. The words "or Code § 401(a)(17)" are added at the end of the sentence comprising subparagraph 4(a) of the Plan.

4. The foregoing amendments shall be effective as of December 1, 1989.

IN WITNESS WHEREOF, and to record the adoption of the foregoing amendments, the Company has caused this document to be executed by its duly authorized officers as of the day and year last above written.

CRODA INC.

By _____
President

[SEAL]

ATTEST:

By _____
Secretary