

November 4, 2013

BY ELECTRONIC MAIL (washoshrccommission@oshrc.gov)

The Honorable Ray H. Darling, Jr., Executive Secretary
Occupational Safety and Health Review Commission

Re: *Kiewit Power Constructors Co.*, OSHRC Docket No. 11-2395

Dear Mr. Darling:

KPCC respectfully submits the following regarding the Secretary's reply to its citation of additional authorities: Contrary to the Secretary's principal argument that the authorities are "inapplicable because they concern...retroactiv[ity]," at least one (*Ledezma-Galicia v. Holder*, 636 F.3d 1059, 1067, 1075 (9th Cir. 2010), *cert. denied*, 555 U.S. 1170 (2009)) concerns implied repeal—thus showing that the principle of *INS v. St. Cyr*, 533 U.S. 289, 320 n.45 (2001), applies to any matter required to be clear.

Please distribute this letter to the Commission and the General Counsel, and electronically acknowledge receipt to asapper@mwe.com.

Respectfully submitted,

A handwritten signature in blue ink that reads "Arthur G. Sapper". The signature is written in a cursive style and is positioned above the typed name.

/s/ Arthur G. Sapper

cc: Messrs. Glabman and Joseph (electronic service certified this date)