BY ELECTRONIC MAIL

November 15, 2013

Ray H. Darling, Jr.
Executive Secretary
Occupational Safety and Health Review Commission
washoshrccommission@oshrc.gov

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

Dear Mr. Darling:

Pursuant to the Commission’s November, 14, 2013 order permitting the Secretary to submit a one-sentence response to Kiewit’s November 4, 2013 surreply, the Secretary submits the following response:

City of Arlington, Texas v. FCC, 133 S. Ct. 1863, 1871 (2013), not Kiewit’s cited authorities, applies here because OSH Act, section 6(a) expressly authorized the Secretary to promulgate established federal standards as OSH Act standards without notice-and-comment rule-making (thereby making the APA anti-implied-repeal provision, 5 U.S.C. § 559, inapplicable), but did not specify the scope of the permitted expansion of the coverage of these established federal standards (thereby making Chevron deference to the Secretary’s interpretation of section 6(a) appropriate).

Respectfully submitted,

M. PATRICIA SMITH
Solicitor

JOSEPH M. WOODWARD
Associate Solicitor for
Occupational Safety
and Health

CHARLES F. JAMES
Counsel for Appellate Litigation

/s/ Scott Glabman
SCOTT GLABMAN
Senior Appellate Attorney
U.S. Department of Labor
Room S-4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210-0001

Cc: Messrs. Sapper and Joseph
(202) 693-5493
Dear Mr. Darling:

I attach the Secretary’s response to Kiewit’s supplemental authorities surreply. I have e-mailed a copy of the response to opposing counsel and counsel for amicus curiae APA Watch as indicated in the above cc line.

Sincerely,

Scott Glabman
Senior Appellate Attorney
Office of the Solicitor
Occupational Safety and Health Division
U.S. Department of Labor
(voice) (202) 693-5493
(fax) (202) 693-5466

This message may contain information that is privileged or otherwise exempt from disclosure under applicable law. Do not disclose without consulting the Office of the Solicitor. If you believe that you have received this e-mail in error, please notify the sender immediately.