

### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Carl's Arco .....	RF304-15464 ...	01/23/95
Atlantic Richfield Company/North Market Arco et al .....	RF304-13214 ...	01/23/95
Cedar Fair, L.P. ....	RF272-93563 ...	01/23/95
City of Broken Bow et al .....	RF272-84910 ...	01/27/95
Davis County Schools et al .....	RF272-86678 ...	01/25/95
Glendenning Motorways, Inc .....	RF272-89025 ...	01/23/95
Wag Enterprises, Inc .....	RF272-89026 ...	.....
Hawaiian Airlines, Inc .....	RF272-98767 ...	01/25/95
Eastern Air Lines, Inc .....	RF272-98778 ...	.....
Prairie Transportation, Inc .....	RF272-95099 ...	01/27/95
Star Truck Rental Inc .....	RF272-93462 ...	01/25/95
Stoops Express .....	RF272-82514 ...	01/25/95
Monkem Co., Inc. ....	RF272-82515 ...	.....
Texaco Inc./Atkins' 7-day Market .....	RF321-18684 ...	01/25/95
Stop & Shop .....	RF321-18685 ...	.....
Texaco Inc./Joe Dvornich Texaco et al .....	RF321-20243 ...	01/27/95
Texaco Inc./Skyline Texaco et al .....	RF321-20646 ...	01/27/95
Warner & Smith Motor Freight, Inc .....	RF272-89454 ...	01/27/95

### Dismissals

The following submissions were dismissed:

Name	Case No.
Alpha Beta Company .....	RF321-20365
American Western Corp .....	RF321-20363
Austin Bridge & Road, Inc .....	RF272-93567
Braswell Sand & Gravel Co., Inc .....	RF272-95002
Brooks Lumber Company .....	RF272-94277
Hamakua Sugar Company, Inc .....	RF321-20362
Kalama Chemical, Inc .....	RF272-90203
Purity Dairies, Inc .....	RF272-97254
Singer Sewing Company .....	RF321-20360
Stephens Contracting .....	RF272-95318
TFCO, Inc .....	RF304-14616
Tiger Oil Co .....	RF321-20500

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: April 27, 1995.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

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### Notice of Issuance of Decisions and Orders; Week of March 13 Through March 17, 1995

During the week of March 13 through March 17, 1995, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with

the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeals

##### *Casey O. Ruud, 3/16/95, VFA-0027*

Casey O. Ruud filed an Appeal from a partial denial by the Richland Operations Office of a Request for Information which he had submitted under the Freedom of Information Act. The Richland Operations Office had released copies of two letters that were requested, but had withheld the identity of the writer. In considering the Appeal, the DOE found that the writer's name and address were properly withheld under Exemption 6 of the FOIA.

##### *Robert S. Foote, 3/16/95, VFA-0024*

Robert S. Foote filed an Appeal from a determination issued to him on January 18, 1995 by the Acting Associate Director for Health and Environmental Research (OHER) in the Office of Energy Research of the

Department of Energy (DOE). In that determination, the OHER denied in part a request for information filed by Mr. Foote on July 26, 1994, under the Freedom of Information Act (FOIA). The OHER released certain items requested by Mr. Foote. However, it withheld other items either in their entirety or in part pursuant to 5 U.S.C. § 552(b)(5) (Exemption 5). In his Appeal, Mr. Foote challenged the OHER's application of Exemption 5 to the requested information and requested that the DOE direct the OHER to release the withheld information. In considering the Appeal, the Office of Hearings and Appeals found that although in the past it has analyzed this kind of information under the deliberative process privilege of Exemption 5, it is more appropriate to apply FOIA Exemption 6 to the withheld information. The Office of Hearings and Appeals remanded this Appeal to the OHER to either release the withheld information or prepare a new determination that explains in detail the reasons which justify withholding the information under Exemption 6.

Therefore, the Department of Energy granted in part and denied in part Mr. Foote's Appeal.

**Request for Exception**

*Visa Petroleum, Inc., 3/15/95, LEE-0096*

Visa Petroleum, Inc., filed an Application for Exception from the requirement that it file Form EIA-782B, the "Reseller's/Retailer's Monthly Petroleum Product Sales Report." The applicant submitted evidence that for the last two years, it had lost \$10,000 per year. In addition, the wife of the owner, who had been completing the forms, had recently been diagnosed as having cancer. Under these circumstances, the DOE found that the requirement that the firm submit the reports constituted a serious hardship. Accordingly, the firm's Application for Exception was granted.

**Refund Applications**

*Shell Oil Company/Briggs*

*Transportation Company, Texaco Inc./Briggs Transportation Company, 3/16/95, RR315-13, RR321-175*

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by LK, Inc. (LK), a filing service. In an earlier Decision, the DOE had rescinded two refunds granted to a bankrupt company, Briggs

Transportation Company (Briggs) in the Shell Oil Company and Texaco Inc. special refund proceedings. In that Decision, the DOE also ordered the filing service which had filed the Applications, LK, to repay its commissions which it had subtracted from the refunds. In its Motion for Reconsideration, LK argued that DOE does not possess the necessary authority to order the filing service to repay these funds. LK also argued that even if DOE possesses this authority, LK was still entitled to retain its commissions. In its Decision, the DOE found that it possesses the necessary authority to govern the conduct of those filing claims in its Subpart V proceedings, including filing services. It further found that the restitutionary purposes of the Petroleum Overcharge Distribution and Restitution Act of 1986 would not be served by permitting a filing service to recover a fee for an application in which the refund had been rescinded. Finally, the Decision noted that even under general common law principles, the filing service would not be entitled under its contingency fee arrangement with Briggs to recover a commission unless Briggs received a refund, and that Briggs cannot be considered to have received a refund which has been rescinded. Therefore, LK's Motion for Reconsideration was denied.

*Texaco Inc./Airport Texaco, 3/17/95, RR321-147, RF321-21060*

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Ben A. Story on behalf of Airport Texaco and rescinding a portion of a refund previously granted to John M. Locklier on behalf of the same station. Documents and statements submitted by both applicants demonstrated that a portion of Mr. Locklier's previous refund was based on purchases made by Airport Texaco when Mr. Story was the sole proprietor of that business, and that another portion of Mr. Locklier's refund was based on purchases made by the station during a period in which Airport Texaco was operated as a limited partnership of the two men. The limited partnership arrangement at Airport Texaco entitled Mr. Locklier to a specific amount from the outlet's profits, with the balance of the profits, if any, distributed to Mr. Story. Accordingly, DOE determined that dividing the refund money in the same proportions as the profits were divided was the most equitable solution in this case. Accordingly, the DOE issued a Decision and Order granting Mr. Story a refund and rescinding a portion of the refund granted to Mr. Locklier in *Texaco*, Case Nos. RF321-3311 *et al.* (May 26, 1992).

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Green Run Arco et al .....	RF304-14741 ..	03/15/95
Atlantic Richfield Company/Shelton Butane Co., Inc. et al .....	RF304-13487 ..	03/15/95
Clark Oil & Refining Corp./Lansing Ice & Fuel Company .....	RF342-6 .....	03/13/95
Rollins Oil Company .....	RF342-9 .....	
Clark Oil & Refining Corp./Oakley & Oldfield, Inc .....	RF342-311 .....	03/13/95
Cross Winds Transport, Inc .....	RF272-91991 ..	03/15/95
Gulf Oil Corporation/Crawford Garden Supplies, Inc .....	RF300-21572 ..	03/13/95
Crawford Garden Supplies, Inc .....	RF300-21824 ..	
Crawford Garden Supplies, Inc .....	RF300-21825 ..	
Minnesota Power .....	RF272-97260 ..	03/15/95
Shell Oil Company/Loiza Valley Shell Service Station .....	RR315-8 .....	03/15/95
Sigmor Corporation .....	RF272-93888 ..	03/13/95
Texaco Inc./Evan's Valley Texaco et al .....	RF321-20402 ..	03/16/95
Texaco Inc./Phillips Texaco et al .....	RF321-20208 ..	03/15/95

**Dismissals**

The following submissions were dismissed:

Name	Case No.
A&L Texaco .....	RF321-18601
City of Canton .....	RF272-85687
City of Clarkston .....	RF272-85667
City of Warrington .....	RF272-85806
Dejong Service .....	RF272-94053
Frank Kovac's Texaco Service .....	RF321-05529
Hendersonville Police Dept .....	RF272-94111
Interstate Texaco .....	RF321-20737
Lewis County .....	RF272-85814

Name	Case No.
Mullis Petroleum Co .....	RF321-20635
Read's Service Station .....	RF300-21680
Richland Parish .....	RF272-85808
Roosevelt County .....	RF272-85784
Town of Manlius .....	RF272-85818
Tri-Gas & Oil Co., Inc .....	RF321-20657
Venable, Baetjer, and Howard, LLP .....	VFA-0028

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: April 27, 1995.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

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## Office of Hearings and Appeals

### Issuance of Decisions and Orders During the Week of March 27 Through March 31, 1995

During the week of March 27 through March 31, 1995 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeals

*David K. Hackett, 3/31/95, VFA-0032*

David K. Hackett filed an Appeal from a determination issued by the Oak Ridge Operations Office (Oak Ridge) of the Department of Energy. In its determination, Oak Ridge stated that it was providing all documents responsive to the Appellant's November 6, 1994 request under the Freedom of Information Act (FOIA) which were in the possession of Oak Ridge. In his Appeal, the Appellant challenged the adequacy of Oak Ridge's search. The DOE found that some confusion had arisen because the Appellant had submitted three partially overlapping FOIA requests, and because three different DOE offices had been assigned to respond to the request at issue in this Appeal. In its Decision and Order, the DOE explained which offices were

responsible for responding to each request and how the request at issue in this particular case had been divided among these offices. The DOE concluded that there may be responsive documents that were not identified in the initial search and that some factual issues needed clarification. Accordingly, the DOE granted the Appeal and remanded the matter to Oak Ridge for further action.

*J. Eileen Price, 3/27/95 VFA-0031*

J. Eileen Price filed an Appeal from a determination issued to her by the Western Area Power Administration (WAPA) of the Department of Energy. The determination partially denied a Request for Information which Ms. Price submitted under the Freedom of Information Act. Ms. Price requested copies of all appraisal information in her personnel file, including any unofficial documents, notes and files which pertained to her or her employment in WAPA's Loveland Area Office beginning in October 1992. In its determination, the WAPA provided Ms. Price various documents responsive to her Freedom of Information Act Request. However, Ms. Price, in her Appeal, argued that further responsive documents must exist, since she had knowledge regarding the existence of several documents which WAPA failed to provide to her in its response. During its consideration of the Appeal, the DOE was notified by WAPA that it had discovered several documents which might be responsive to Ms. Price's FOIA Request. Consequently, the DOE granted the Appeal and remanded the matter to WAPA for a determination on the newly discovered documents.

*Mid-Missouri Nuclear Weapons Freeze, Inc., 3/27/95 VFA-0029*

Mid-Missouri Nuclear Weapons Freeze, Inc. (MNWF) filed an Appeal from a denial issued to it by the FOIA/Privacy Act Division of the Department of Energy and a partial denial issued to it by the Office of Nuclear Energy (DOE/NE) of a Request for Information which it had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Oak Ridge Operations Office and the Office of Nuclear Energy had conducted

searches reasonably calculated to find the requested information, and that all responsive documents had been released to MNWF. The DOE also found that MNWF had erred in believing that the Oak Ridge Operations Office was withholding subcontractor records. The Appeal was therefore denied.

*Physicians for Social Responsibility, Inc., 3/29/95 VFA-0030*

Physicians for Social Responsibility, Inc. (PSR) filed an Appeal from a denial issued to it by FOIA/Privacy Act Division of the Department of Energy and a partial denial issued to it by the Office of Nuclear Energy (DOE/NE) of a Request for Information which it had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Oak Ridge Operations Office and the Office of Nuclear Energy had conducted searches reasonably calculated to find the requested information, and that all responsive documents had been released to PSR. The DOE also found that PSR had erred in believing that the Oak Ridge Operations Office was withholding subcontractor records. The Appeal was therefore denied.

#### Personnel Security Hearing

*Rocky Flats Field Office, 3/27/95, VSO-0008*

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual to maintain a level "Q" access authorization under the provisions of 10 CFR part 710. The individual was alleged to have an illness or mental condition (difficulty in controlling his temper) of a nature that in the opinion of a board-certified psychiatrist causes, or may cause, a significant defect in his judgment or reliability. The individual was also alleged to abuse alcohol. On January 25, 1995, an evidentiary hearing was conducted in which a DOE-sponsored psychiatrist and the individual testified, along with other relevant witnesses. After carefully examining the record of the proceeding, the Hearing Officer determined that the psychiatrist had based his diagnosis in part upon incorrect information. In addition, there