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Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces procedures concerning the refunding of \$30,000 (plus accrued interest) in consent order funds. The funds are being held in escrow pursuant to a Stipulation for Compromise Settlement involving Houston-Pasadena Apache Oil Company.

DATE AND ADDRESS: Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107. All Applications should conspicuously display a reference to Case Number VEF-0022.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, (202) 426-1575.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(c) of the procedural regulations of the Department of Energy, 10 C.F.R. § 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision relates to a Stipulation for Compromise Settlement entered into by the Houston-Pasadena Apache Oil Company (Apache) which settled possible pricing violations in the firm's wholesale transactions of motor gasoline during the period October-December 1979. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Apache settlement fund was issued on September 16, 1996. 61 Fed. Reg. 50018 (September 24, 1996).

The Decision sets forth the procedures and standards that the DOE has formulated to distribute funds remitted by Apache and being held in escrow. The DOE has decided that the funds should be distributed in two stages in the manner utilized with respect to consent order funds in similar proceedings. In the first stage, the DOE will consider claims for refunds made by firms and individuals that purchased

motor gasoline from Apache during the audit period and were identified as overcharged Apache customers in DOE enforcement documentation.

The second stage of the refund process will take place only in the event that the meritorious first stage applicants do not deplete the settlement funds. Any funds that remain after all first stage claims have been decided will be distributed to state governments for use in four energy conservation programs, in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

All first stage applications should be submitted within 90 days of publication of this notice. All comments and applications received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107.

Dated: November 19, 1996.
George B. Breznay,
Director, Office of Hearings and Appeals.

Department of Energy
Decision and Order of the Department of Energy
Special Refund Procedures
November 19, 1996.

Name of Petitioner: Houston-Pasadena Apache Oil Co.

Date of Filing: September 1, 1995.
Case Number: VEF-0022.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Regulatory Litigation branch of the Office of General Counsel (OGC) (formerly the Economic Regulatory Administration (ERA)) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 1, 1995. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Stipulation for Compromise Settlement (Settlement Stipulation) concerning the Houston-Pasadena Apache Oil Company (Apache).

Background

Apache was a "reseller-retailer" of motor gasoline during the period of price controls. Accordingly, Apache was subject to the provisions of 10 C.F.R. Part 212, Subpart F, governing wholesale and retail sales of refined petroleum products. On April 30, 1985, the ERA issued a Proposed Remedial Order (PRO) to Apache concerning Apache's compliance with the price regulations for the period March 1, 1979 through December 31, 1979 (the audit period). Apache provided documents for a more limited period

(October-December 1979), and based upon those documents, the ERA found that Apache sold motor gasoline at prices in excess of those permitted under the DOE price regulations governing reseller-retailers during that period. After considering Apache's challenge to the PRO, the OHA issued a final Remedial Order (RO) to Apache on June 19, 1989. *See Houston/Pasadena Apache Oil Company*, 19 DOE ¶ 83,001 (1989). In the RO, the OHA remanded to the ERA a portion of the PRO involving retail transactions and two sales to Dow Chemical Company (Dow) and affirmed the rest of the PRO. The OHA also directed Apache to refund the amount of \$160,713 plus interest, this sum representing the overcharges realized by the firm in its wholesale transactions during the period October-December 1979. Apache did not honor its repayment obligation and the matter was referred to the Department of Justice (DOJ) for resolution. On June 4, 1993, the DOJ and Apache executed a Stipulation for Compromise Settlement resolving the issues addressed by the RO. Pursuant to this settlement, Apache agreed to pay \$30,000 in full settlement of the DOE claim. Apache's compliance with the settlement has resulted in payment to DOE of \$30,000 which we shall disburse pursuant to the procedures set forth in this Decision and Order. These funds are presently in an interest-bearing escrow account maintained by the Department of the Treasury.

Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. Generally, it is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the monies obtained from Apache. We therefore grant OGC's petition and assume jurisdiction over distribution of the funds.

On September 16, 1996, OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the Apache settlement fund. The PDO was published in the Federal Register and a 30 day period was provided for the submission of comments regarding our proposed refund plan. See 61 Fed. Reg. 50018 (September 24, 1996). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Apache settlement fund. Consequently, the procedures will be adopted as proposed.

Refund Procedures

A. Refund Claimants

Refund monies shall be distributed to those wholesale customers which were injured in their transactions with Apache during the

period October 1, 1979 through December 31, 1979. These customers of Apache are listed in Appendix A to the RO. If any of these customers are affiliates of Apache, they will be ineligible to apply for a refund in this proceeding.

B. Calculation of Refund Amounts

For claims against the funds obtained from Apache, we have established a maximum potential refund (allocable share) for each of the customers identified in the Apache RO as an overcharged customer. These claimant-specific maximum potential refunds are based upon the ratio of overcharges incurred by each customer to the total overcharge amount multiplied by the principal amount in the Apache escrow account. A list of the identified Apache customers and their maximum potential refunds is presented in the Appendix to this Decision. Each successful refund claimant shall also receive a pro rata share of interest which has accrued on the Apache escrow fund account.

C. Showing of Injury/Injury Presumptions

As in previous Subpart V proceedings, those customers who were ultimate consumers (end-users) of Apache motor gasoline shall be presumed injured by Apache's alleged overcharges. They will therefore not be required to make a further demonstration of injury in order to receive a refund.

Reseller claimants (including retailers and refiners) who purchased on a regular (non-spot) basis and whose maximum potential refund is \$10,000 or less will be presumed injured and therefore need not provide further demonstration of injury. See *E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We realize that the cost to an applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund. Consequently, in the absence of simplified procedures some injured parties would be denied an opportunity to obtain a refund.

In addition, Tesoro Crude (Tesoro Energy), the only potential reseller claimant whose allocable share exceeds \$10,000, may elect either to receive a refund under the small claims presumption outlined above or to pursue its potential refund of \$16,034.97. If Tesoro limits its claim to the \$10,000 small claims threshold, it need not demonstrate injury beyond the requirements established for other small claimants. If the firm elects to claim its entire potential refund it must establish that it did not pass the Apache overcharges along to its customers.¹ See, e.g., *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Tesoro can make such an injury showing by demonstrating that it would have kept its motor gasoline prices at the same level had the Apache overcharges not occurred.

While there are a variety of means by which a claimant could make this showing, Tesoro should demonstrate that at the time it purchased Apache motor gasoline, market conditions would not permit it to increase its prices to pass through the additional costs

¹ In the event that Tesoro demonstrates that it should be treated as an end-user instead of as a reseller, it will not be required to make this injury showing.

associated with the Apache overcharges. In addition, Tesoro must show that it had a "bank" of unrecovered product costs sufficient to support its refund claim in order to demonstrate that it did not subsequently recover those costs by increasing its prices. However, the maintenance of a cost bank does not automatically establish injury. See *Tenneco Oil/Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

Finally, we hereby establish a minimum amount of \$15 for refund claims. We have found in prior refund proceedings that the cost of processing claims in which refunds are sought for amounts less than \$15 outweighs the benefits of restitution in those situations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). See also 10 C.F.R. § 205.286(b). This restriction rules out the participation in this proceeding of two of the firms listed in the Appendix: Gulf Coast Waste, and Parrish Corp.²

D. Refund Application Requirements

To apply for a refund from the Apache settlement fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of the person to contact for any additional information, and the name and address of the person who should receive any refund check.³ If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) The applicant's use of motor gasoline from Apache: e.g., consumer (end-user), cooperative, or reseller;

(3) A statement certifying that the applicant purchased motor gasoline from Apache during the October 1979–December 1979 period;

(4) A statement as to whether the applicant or a related firm has filed, or has authorized

² Although the allocable share of Clay Texaco, \$14.70, is under the \$15 threshold, we have calculated that with interest its refund would exceed \$15.

³ Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

any individual to file on its behalf, any other application in the Apache refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(5) If the applicant is or was in any way affiliated with Apache, it should explain this affiliation, including the time period in which it was affiliated;

(6) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(7) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of the relevant documents should also be provided;

(8) The following statement signed by the individual applicant or a responsible official of the firm filing the refund application:⁴

"I swear (or affirm) that the information contained in this application is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room."

All applications should be either typed or printed and clearly labeled "Houston-Pasadena Apache Oil Co. Special Refund Proceeding, Case No. VEF-0022." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than 90 days from the publication of this Decision and Order in the Federal Register, and sent to: Houston-Pasadena Apache Oil Co., Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107.

Any representative that requests that it be a payee of a refund check must file with the OHA if it has not already done so a statement certifying that it maintains a separate escrow

⁴ We will not process applications signed by filing services or other representatives. In addition, the statement must be dated on or after the date of this Decision and Order. Any application signed and dated before the date of this Decision will be summarily dismissed.

account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicants.

Representatives who have not previously submitted an escrow account certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, HG-13, Chief, Docket and Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585-0107.

E. Distribution of Funds Remaining After First Stage

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501-07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Apache escrow account the OHA determines will not be needed to effect direct restitution to injured Apache customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by the Houston-Pasadena Apache Oil Company pursuant to the Stipulation for Compromise Settlement that became effective on June 4, 1993, may now be filed.

(2) All Applications for Refund must be postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: November 19, 1996.

George B. Breznay,
Director, Office of Hearings and Appeals.

APPENDIX—Continued

Applicant	Allocable share
True Oil Co	1,119.96
Two Oil Co	5,489.67
Yims Texaco	16.64
Total	\$30,000.00

* Under \$15 threshold. See n.2 of Decision.

Note: The allocable share entries were generated by multiplying the principal amount in the Apache escrow account by the percentage of total overcharges incurred by each individual claimant as determined by the ERA audit of Apache's business records.

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A copy of the proposed settlement agreement is available from Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260-7606. Written comments should be sent to John Hannon, Esq. at the above address and must be submitted on or before December 30, 1996.

Dated: November 20, 1996.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 96-30482 Filed 11-27-96; 8:45 am]

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[ER-FRL-5475-4]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5657-1]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed settlement agreement in the following case: *Sierra Club versus Carol M. Browner*, Civ. No. 93-0124 (consol. with 93-0125, 93-0197, and 93-0564) (D.D.C.). This action was filed under section 304(a)(2) of the Act, 42 U.S.C. 7604(a)(2), contesting among other matters EPS's failure to promulgate regulations containing standards applicable to emissions from new nonroad engines pursuant to section 213(a) of the Act. The Settlement Agreement concerns issuance by EPA of guidance to states on State Implementation Plan emissions credits for California Tier 2 Utility and Lawn and Garden Equipment Engine Emission Regulations.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 04, 1996 Through November 08, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D-BLM-K67037-NV Rating EO2, Twin Creeks Mine Consolidation and Expansion, which encompasses the former Rabbit Creek Mine and the former Chimney Creek Mine, Plan of Operation and Permit Application Approval, Winnemucca District, Humboldt County, NV.

Summary: EPA expressed environmental objections due to potential impacts to water quality/quantity, biological resources, including impacts associated with groundwater drawdown from pit dewatering; as well as the project's potential risks related to geologic hazards. EPA also requested additional information regarding these issues, as well as mitigation measures, geochemical characterization, reclamation, and ecological risk assessment.

ERP No. D-NPS-K61212-CA Rating EC2, San Francisco Maritime National Historical Park, General Management Plan, Implementation, San Francisco County, CA.

Summary: EPA expressed environmental concerns regarding water quality and erosion control, hazardous

APPENDIX

Applicant	Allocable share
Car Wash	\$31.17
Clay Texaco	14.70
DuMac Oil	22.59
Gulf Coast Waste*	8.97
Jas Lee	126.06
Joe Lee	3,059.22
John Parker	28.60
Kirby Car Wash	19.83
Lloyd Parrish	288.03
Main Stop	48.90
Parrish Corp.*	11.43
Quail Valley Gulf	166.95
So Sweet Energy	2,098.14
Tesoro Energy (Tesoro Crude) ..	16,034.97
Trio Oil Co	1,414.17