

Employee Protection Program. Greer alleged that he lost his employment with META, Inc., as a result of his cooperation with an investigation conducted by the Office of Inspector General into misuse of government property by two DOE employees responsible for supervising the META contract. The investigation resulted in a reprimand for one of the DOE employees. There was no allegation that META intentionally did anything improper, but that the two DOE officials who were the subjects of the IG investigation orchestrated Greer's dismissal by making negative comments about his work to META officials. META claimed that Greer's dismissal was the result of a corporate reorganization and that the DOE officials had no input into the decision.

The Hearing Officer found that Greer had not sustained his burden of demonstrating that DOE officials contributed in any way to his dismissal. The Hearing Officer noted that it is often impossible for the complainant to find a "smoking gun" that proves an employer's retaliatory intent and that the testimony of contractor officials who

have been accused of retaliating must be viewed with some skepticism. However, since there was no allegation of intentional wrongdoing and the testimony presented by META officials was consistent and reasonable, the Hearing Officer found their testimony to be credible. Consequently, he found that Greer's role in the IG investigation had no bearing upon the loss of his employment. Consequently, the relief Greer requested was denied.

Refund Applications

STATE ESCROW DISTRIBUTION, 10/11/96, RF302-19

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute \$15,400,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

THE 341 TRACT UNIT OF THE CITRONELLE FIELD/NATIONAL COOPERATIVE REFINERY, ET AL., 10/10/96, RF345-69, ET AL.

The Department of Energy granted Applications for Refund filed by five refiner cooperatives in the 341 Tract

Unit of the Citronelle Field refund proceeding. The DOE rejected arguments by a group of Utilities, Transporters and Manufacturers and a group of States to the effect that these refiner cooperatives had previously waived their rights to receive more than the 5.4 percent share allocated to other refiners. The DOE also determined that the refunds should not be disbursed until it was clear that no appeal of the determination had been filed. The funds will be placed in a separate interest bearing account earmarked for these refiner cooperatives, who will be entitled to their refunds as well as accrued interest, should the outcome of any litigation be favorable to them. The total refund granted was \$1,746,845.

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.

Name of firm	Case No.	Received
CITY OF KERNERSVILLE	RC272-354	10/10/96
TOWNSHIP OF PRINCETON	RC272-355	
CRUDE OIL SUPPLE REF DIST	RB272-00088	10/8/96
EAST POINT TRAWLERS, INC	RJ272-23	10/7/96
GRAY TRUCK CO., ET AL	RF272-97946	10/11/96
KEIGHTLY BROS. INC	RC272-333	10/8/96
POLK CNTY FARMERS COOP., ET AL	RF272-97804	10/8/96
REDWING CARRIERS, INC., ET AL	RG272-00096	10/7/96

Dismissals

The following submissions were dismissed.

Name	Case No.
AMERICAN FALCON CORP.	RF272-90314
COCA-COLA BOTTLING CO. CONSOLIDATED	RF272-92518
COLUMBUS CONSOLIDATED GOVT	RF272-95156
EQUITY COOPERATIVE	RG272-706
GREAT WESTERN AIRLINES, INC	RG272-1004
ITALIANO & PLACHE, L.L.P.	VFA-0219
MONTGOMERY TANK LINES	RG272-465
OAK RIDGE OPERATIONS OFFICE	VSO-0107
SCHENECTADY NAVAL REACTORS OFF	VSO-0112
SQUAW LAKE COOPERATIVE CO	RG272-707
SUTHERLAND FARMERS COOP	RG272-491

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Notice of Issuance of Decisions and Orders; Week of September 30 Through October 4, 1996

During the week of September 30 through October 4, 1996, the decisions

and orders summarized below were issued with respect to appeals, applications, petitions, or other requests 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.

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, DC 20585-0107, 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. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: November 20, 1996.

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

Decision List No. 1

Week of September 30 Through October 4, 1996

Appeals

Harold Bibeau, 10/4/96, VFA-0212

Harold Bibeau filed an Appeal from a determination issued to him by the Oak Ridge Operations Office (DOE/OR). In his Appeal, Mr. Bibeau asserted that DOE/OR improperly failed to provide him with documents regarding human radiation or hormone experiments he had requested pursuant to the FOIA. During the pendency of the Appeal, several potentially responsive documents were discovered by DOE/OR. Consequently, the DOE remanded the matter to DOE/OR for a determination regarding the newly discovered documents.

James H. Stebbings, 9/30/96, VFA-0211

James Stebbings (Stebbing) filed an Appeal from a partial denial by the Department of Energy's Argonne Group (Argonne) of a request for information which was submitted under the Freedom of Information Act. Stebbings appealed the adequacy of Argonne's search. The DOE found that Argonne had conducted a search reasonably calculated to uncover responsive material. Because the requester could not provide any information that further records existed, the Appeal was denied.

Personnel Security Hearing

Albuquerque Operations Office, 10/4/96, VSO-0104

A Hearing Officer issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 CFR Part 710. The Hearing Officer found that: (i) the individual has a mental condition, substance abuse, which causes, or may cause a significant defect in judgment or reliability; (ii) the individual has a long history of abuse of illegal drugs; (iii) the individual provided false information to the DOE; (iv) the acts of the individual tend to show that he is not honest, reliable, or trustworthy; and (v) the DOE's security concerns were not overcome by evidence mitigating these concerns. Accordingly, the Hearing Officer found that the individual should not be granted an access authorization.

Whistleblower Proceeding

Richard W. Gallegos, 10/4/96, VWA-0004

Richard W. Gallegos claimed that he was retaliated against by Sandia National Laboratory for making disclosures during a five-year period about mismanagement at the Lab. An Office of Hearings and Appeals Hearing Officer concluded that Mr. Gallegos had not shown by a preponderance of the evidence that he made disclosures that are protected by the DOE's Contractor Employee Protection Program, or that, if they were protected disclosures, they contributed to adverse actions taken against him after October 1, 1993, the date on which employees at Sandia became covered by the Contractor Employee Protection Program. The

request for relief filed by Mr. Gallegos was accordingly denied.

Refund Applications

Burt County Cooperative, et al., 10/1/96, RR272-218 et al.

The DOE denied the Motions for Reconsideration filed by the National Bank for Cooperatives (CoBank) on behalf of seven cooperatives that purchased refined petroleum products during the refund period. CoBank failed to present reasons sufficient to warrant modification of our July 28, 1994 Decision and Order, since it could not certify that it would pass through, in full, any refund to the members of the seven cooperatives. Consequently, there was no assurance that the refunds would go to people who were actually injured by the overcharges.

Texaco, Inc./Fairpark Grocery, 10/2/96, RF321-21088

The Department of Energy rescinded a refund that was granted to Fairpark Grocery because the check was not presented for payment and the owner of the outlet could not be located. The DOE, therefore, directed that the refund be redeposited into the Texaco escrow account.

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.

Artcraft Industries, Inc, et al	RF272-97802	10/2/96
Edmonds School District No. 15, Vicentian Sisters of Charity	RF272-97928	10/2/96
	RF272-97935	
Inter-State Hardwoods Co., Inc., et al	RF272-90296	10/4/96
Louisiana Land & Exploration Co.	RF272-98207	10/1/96
Western AG-Minerals Co.	RK272-3911	10/2/96

Dismissals

The following submissions were dismissed.

Name	Case No.
Albuquerque Operations Office	VSO-0111
Channel Flying, Inc	RF272-98008
Collinson, Inc	RF272-99126
Hillin Production Company	RF272-99129
Irving N. Loomis & Sons, Inc	RF272-99125
Lyondell Petrochemical Co	RR272-239
Petro San Juan	VEE-0029
Reuben Johnson & Son, Inc	RF272-99127
St. Anne's Hospital	RG272-737
T. A. Loving Company	RF272-99116
Town of East Greenwich	RG272-740

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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