

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of September 28 Through October 2, 1998

During the week of September 28 through October 2, 1998, 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, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, 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 3, 1998.

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

Decision List No. 105

Personnel Security
Personnel Security Hearing, 9/30/98,
VSO-0204

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found that the respondent did not have a personality disorder as diagnosed by a psychiatrist because the psychiatrist stated that it was a close case and had based his diagnosis upon some incorrect information. The Hearing Officer also found, however, that the respondent

had not provided convincing evidence to contradict the psychiatrist's diagnosis that he suffered from alcohol abuse. Under these circumstances, the Hearing Officer found that the respondent's access authorization should not be reinstated.

Personnel Security Hearing, 10/1/98,
VSO-0205

After reviewing the record concerning the individual's rehabilitation from his bipolar-two mental condition, an OHA hearing officer issued an Opinion recommending that the individual's access authorization not be restored.

Refund Applicaitons

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.

Crude Oil Supplemental Refunds	RB272-00144	9/29/98
Don Nicolaysen et al	RK272-04820	9/29/98
Nueces Electric Coop, Inc.	RF272-94582	9/29/98

Dismissals

The following submissions were dismissed.

Case No.	Name
Jerry T. Ensminger	RK272-04395
Personnel Security Hearing	VSO-0231

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of August 17 Through August 21, 1998

During the week of August 17 through August 21, 1998, 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.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, 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 3, 1998.

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

Decision List No. 99

Appeals
Baker, Donelson, Bearman & Caldwell,
8/20/98, VFA-0430

Baker, Donelson, Bearman & Caldwell filed an Appeal from a determination issued to it by the Golden Field Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act. The law firm request sought records related to the DOE's "Building America" program and a particular Request for Proposal issued pursuant to that program. The Golden Field Office released all responsive records except for one document which

it withheld in full pursuant to Exemption 4. In considering the Appeal, the DOE determined that the determination letter employed three, analytically distinct, Exemption 4 tests: for trade secrets, for commercial or financial information that is voluntarily submitted, and for commercial or financial information that is involuntarily submitted. Because the tests are analytically distinct, they are mutually exclusive, and cannot be melded together for the same information. In addition, the determination letter did not explain the application of any of these three standards. Accordingly, the DOE granted the appeal in part and remanded the matter to the Golden Field Office to issue a new determination.

Bernice McCulloch, 8/17/98, VFA-0427