

Name	Case No.
Ellzey & Brooks, LLC	VFA-0433
Michael Ares	VWA-0022
Personnel Security Hearing	VSO-0210

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of July 20 Through July 24, 1998

During the week of July 20 through July 24, 1998, the decision and order summarized below was 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 this decision and order is available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, DC 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 12, 1998.

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

Decision List No. 95

Week of July 20 Through July 24, 1998

Refund Application

*ENRON CORP./APEX OIL CO., 7/22/98
RF340-136*

The DOE denied a refund application filed by Apex Oil Company in the Enron Corporation refund proceeding. The DOE determined that Apex was a spot purchaser of Enron product and that Apex had not rebutted the spot purchaser presumption of non-injury.

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of July 27 Through July 31, 1998

During the week of July 27 through July 31, 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 12, 1998.

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

Decision List No. 96—Week of July 27 Through July 31, 1998

Appeals

Charles W. Hemingway, 7/31/98, VFA-0424

DOE denied a Freedom of Information Act (FOIA) Appeal filed by Charles W. Hemingway. Hemingway contended that the redacted information was wrongfully withheld under Exemption 6 of the FOIA because he filed his request under the Ethics in Government Act (EGA), to which FOIA exemptions are inapplicable. OHA dismissed this portion of the Appeal because it lacks jurisdiction to consider matters arising under the EGA. DOE denied Hemingway's claim that it had waived the right to withhold a social security number under Exemption 6 by previously releasing it in a proceeding before the Merit Systems Protection Board. DOE held that the submission to the MSPB did not dissolve the employee's privacy right.

Edwin S. Rothschild, 7/28/98, VFA-0423

The DOE denied a Freedom of Information Act (FOIA) Appeal filed by the Edwin S. Rothschild. Rothschild sought documents used to prepare a report to Congress pertaining to consideration of a regional petroleum product reserve. Responsive documents were located by the Office of the Deputy

Assistant Secretary for Strategic Petroleum Reserves (SPR), but were withheld under Exemption 5. Rothschild argued that release of the report mandated release of the preparatory material. DOE found that the status of the documents as predecisional was not altered by the release of the final report, DOE and that SPR had articulated the foreseeable harm that would result from release of the requested documents.

Personnel Security

*Personnel Security Review, 7/29/98,
VSA-0186*

The Director of OHA issued an Opinion regarding the eligibility of an individual to maintain access authorization. The Director agreed with the Hearing Officer that the individual had failed to mitigate security concerns regarding his alcohol abuse, because while the individual had agreed not to use alcohol while participating in the Employee Assistance Program (EAPRO), he did so on ten occasions, and then lied about that use to his EAPRO counsel on eight occasions. Accordingly, the Director recommended that the individual's access authorization not be restored.

Refund Application

*Good Hope Refiners/Apex Oil
Company 7/31/98, RF339-12*

DOE considered an Application for Refund filed by Apex Oil Company in the Good Hope Refineries Special Refund Proceeding. DOE denied that portion of the application based on Apex's purchases of middle distillates during the period, August 19, 1973 through July 31, 1976, because Apex was a spot purchaser during this period and had failed to rebut the spot purchaser presumption of non-injury. DOE granted Apex a refund based on Apex's purchases of 500,241.901 gallons of motor gasoline during the period, August 1976 through July 31, 1979. DOE found that Apex had demonstrated injury by showing it had positive banks of unrecovered increased product costs in excess of the refund sought, and had suffered a competitive disadvantage as a result of its purchases from Good Hope.