

Notice of Issuance of Decisions and Orders During the Week of December 11 Through December 15, 1995

During the week of December 11 through December 15, 1995, 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: August 29, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Appeals

Butler, Vines and Babb, P.L.L.C., 12/13/95, VFA-0098

Butler, Vines and Babb, P.L.C. filed an Appeal from a determination issued to it on November 2, 1995 by the Freedom of Information Act Officer (FOIA Officer) of the Oak Ridge Operations Office of the Department of Energy (DOE). In that determination, the FOIA Officer stated that no responsive documents could be found pursuant to a Freedom of Information Act request. Specifically, the FOIA Officer stated that there were no documents relating to Armstrong Contracting and Supply's sale of asbestos-containing material for use at the Oak Ridge Reservation or pertaining to contracts governing performance by Armstrong Contracting and Supply at Oak Ridge from 1958 through 1975. In considering the Appeal, the DOE discovered that there is a reasonable possibility that responsive documents may exist at a repository in Atlanta and remanded the case for a search of that repository.

Linda P. Yeatts, 12/13/95, VFA-0101

Linda P. Yeatts filed an Appeal of a determination issued by the DOE's Oak Ridge Operations Office under the Freedom of Information Act. The appellant contended that the Operations

Office had not conducted an adequate search. After considering the matter, the DOE determined that the Operations Office had conducted a reasonable search for responsive documents. Accordingly, the Appeal was denied. *U.S. Ecology, 12/13/95, VFA-0099*

U.S. Ecology, Inc. filed an Appeal from a partial denial by the Richland Operations Office of the U.S. Department of Energy (DOE/RL) of a Request for Information which the organization had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that one of the documents requested by U.S. Ecology related to an on-going procurement at DOE/RL and was properly labeled source selection information by DOE/RL. Because release of source selection information is prohibited by the Procurement Integrity Act, the document was properly withheld from disclosure to the requester under Exemption 3 of the FOIA. Accordingly, the Appeal was denied.

Personnel Security Hearings

Oak Ridge Operations Office, 12/13/95, VSA-0029

An individual whose access authorization was suspended filed a request for review of a DOE Hearing Officer's recommendation against restoring the authorization. The individual's access authorization had been suspended by the Department of Energy's (DOE) Oak Ridge Operations Office (Oak Ridge) upon its receipt of derogatory information indicating that the individual had been or was a user of alcohol habitually to excess, or that he had been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In his request for review, the individual claimed that he had been successfully rehabilitated from alcohol dependence. The Director of the Office of Hearings and Appeals found that: (i) The individual had not established that he had been sufficiently rehabilitated from alcohol dependence; and (ii) the nexus established between the behavior of the individual and the risk to the national security easily met the standard set forth by the federal courts. Accordingly, the Director found that the individual's access authorization should not be restored.

Rocky Flats Field Office, 12/13/95, VSA-0032

An individual whose request for access authorization was denied filed a request for review of a DOE Hearing

Officer's recommendation against granting the authorization. The individual's request for access authorization had been denied by the Department of Energy's (DOE) Rocky Flats Field Office upon its receipt of derogatory information indicating that the individual had an illness or mental condition of a nature which causes or may cause a significant defect in judgment or reliability.

Upon review, the individual claimed that she did not have any illness or mental condition of the aforementioned type, and vigorously evaded any serious discussion of the derogatory information at the hearing. The Director of the Office of Hearings and Appeals found that the individual had not established that she did not suffer from an illness or mental condition causing a significant defect in judgment or reliability, and that her request for access authorization should not be granted.

Request for Exception

F.L. Baker Dist., Inc., 12/13/95, VEE-0010

F.L. Baker Dist., Inc. (Baker) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Therefore, the DOE denied Baker's Application for Exception.

Refund Applications

Perry Gas Processors, Inc./State of Washington, 12/13/95, RQ183-597

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Washington. Washington requested that all remaining funds allocated to its Federally-Recognized Indian Tribes in the Perry Gas Processors special refund proceeding be used to fund the installation of a computer network. As of November 30, 1995, the allocation totaled \$2,755 (\$675 in principal and \$2,080 in interest), but the allocation will be slightly higher at the time of disbursement. The network, to be used by the Western Washington Indian Employment and Training Program, will allow the Indian Tribes to track energy usage in tribal facilities. The DOE found that the computer network would produce timely restitutionary benefits to injured consumers of refined petroleum products. Accordingly, Washington's second-stage refund application was granted.

Marine Corps Exchange 0231 Marine Corps Exchange Service, 12/13/95, RF272-67557, RF272-70220

The DOE issued a Decision and Order denying refunds to Marine Corps Exchange 0231 and Marine Corps Exchange Service, (collectively "the Exchange") in the crude oil overcharge refund proceeding conducted under 10 C.F.R. Part 205, Subpart V. The Exchange applied for a refund for petroleum products it sold through retail gasoline stations on Marine Corps bases. In denying a refund, the DOE

found that the Exchange was retailer of these products and was required to submit a detailed demonstration of injury from crude oil overcharges. Instead of submitting such a demonstration, the Exchange argued that (1) It suffered reduced profits because of the overcharges; (2) its prices were set lower than other gasoline retail outlets; and (3) the Exchange is similar to a cooperative because the refund would be shared with local Marine Corps recreation and morale support funds. The DOE rejected all three

arguments based on its findings in earlier cases. Since the Exchange failed to submit a demonstration of injury, the DOE denied its Application for Refund.

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.

Crude Oil Supply Ref Dist	RB272-00060	12/13/95
Crude Oil Supplemental Refund Distribution	RB272-00054	12/13/95
Crude Oil Supplemental Refund Distribution	RB272-00035	12/13/95
E & R Trucking Co., Inc. et al	RF272-77434	12/13/95
Electric Energy, Inc	RF272-65878	12/13/95
Enron Corp./Geiger Bottled Gas Company	RF340-0170	12/13/95
Southern States Utilities, Inc	RF340-0202
Flasher Farmers Union Oil Co.	RR272-0199	12/13/95
George R. Brown Lease Service	RF272-78648	12/13/95
Phoenix Industries, Inc. et al	RF272-92015	12/11/95
Ranger Fuel Corporation	RF272-77226	12/13/95
Jewell Ridge Coal Corporation	RF272-77227
Virginia Chemicals, Inc	RF272-77387	12/13/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Birchwood Air Service	RF272-98027
On Site Fuel Oil Co., Inc.	RF300-16898
State of Wyoming	RF272-95217

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Notice of Issuance of Decisions and Orders During the Week of January 22 Through January 26, 1996

During the week of January 22 through January 26, 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.

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Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: August 28, 1996.

Thomas O. Mann,
Acting Director, Office of Hearings and Appeals.

Appeals

David R. McMurdo, 1/25/96, VFA-0109

David R. McMurdo (Appellant) filed an Appeal under the Privacy Act of a December 7, 1995 determination issued to him by the DOE's Richland Operations Office (Richland). The Appellant, who had been employed by a sub-contractor on the Hanford Reservation, had requested all medical and personnel records held by Richland concerning him. On Appeal, the Appellant contended that the DOE's search for responsive documents was inadequate. After considering his Appeal, the DOE found that Richland's search for responsive documents was adequate. Accordingly, the Appeal was denied.

Nathaniel Hendricks, 1/26/96, VFA-0106

Nathaniel Hendricks (Appellant) filed an Appeal from a determination issued by the DOE's Office of Human Radiation Experiments (OHRE) in response to a request under the Freedom of Information Act (FOIA). The request related to the alleged release of radiation in the Chicago area in the early 1940s. The Chicago Operations Office (COO) and the OHRE conducted searches for responsive documents. The Appellant did not appeal the COO's determination, but appealed the OHRE determination, claiming that the OHRE had not performed an adequate search for responsive documents. In the interests of a factually complete determination, the DOE investigated the searches of the COO and the OHRE. With respect to the COO search, conducted by its contractor, Argonne National Laboratory (Argonne), the DOE discovered that Argonne possessed 5,000 notebooks of possibly responsive material, which had been determined likely to be radioactive. According to Argonne, the notebooks had never been examined due to the high costs of conducting the