

## Dismissals

The following submissions were dismissed:

Name	Case No.
Clarke County, Virginia .....	RF272-86668
Mort Hall Aviation .....	RF304-15150

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, S.W., Washington, D.C. 20585, 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.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

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#### Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 14 through August 18, 1995

During the week of August 14 through August 18, 1995 the decisions and orders summarized below were issued with respect to applications for relief 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.

#### Appeal

*Greg Long, 8/15/95, VFA-0060*

Greg Long filed an Appeal from a determination issued to him by the Office of Public Affairs of the DOE's Albuquerque Operations Office in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In that determination, the Albuquerque Operations Office had withheld under the Exemption 5 "deliberative process privilege" a draft of a never-finalized or issued report investigating a mysterious "hum" reported in and around Taos, New Mexico. In considering the Appeal, the DOE found that the Albuquerque Operations Office had not determined whether the document contained deliberative material. In addition, the DOE had not determined whether the document contained segregable non-exempt material or whether the document qualified for withholding

under the standard articulated in the October 1993 Memorandum of Attorney General Janet Reno concerning the FOIA. Accordingly, the Appeal was granted in part, denied in part, and remanded to the Albuquerque Operations Office for a new determination in accordance with the guidance set forth in the Decision and Order.

#### Personnel Security Hearing

*Rocky Flats Field Office, 8/14/95, VSO-0027*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the eligibility of an individual for access authorization under 10 CFR Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." After considering the record in view of the standards set forth in Part 710, the Hearing Officer found that the individual adequately demonstrated rehabilitation from a history of alcohol abuse. Accordingly, the Hearing Officer found that the individual's access authorization should be granted.

#### Refund Applications

*Enron Corp./Ozona Butane Company, Inc., Bob's L.P. Gas, Inc., B.F. Goodrich Chemical Group, 8/16/95, RF340-58, RF340-110, RF340-144*

The DOE issued a Decision and Order concerning refund applications that Ozona Butane Company, Inc. (Ozona), Bob's LP Gas, Inc. (Bob's), and B.F. Goodrich Chemical Group (GCG) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that Ozona and Bob's were retailers of Enron products who qualified for refunds under the small claim presumption of injury. However, both firms purchased Enron product indirectly through Gartman Butane Company, Inc. (Gartman). The DOE collected information from Gartman in order to determine the portion of Gartman purchases by Ozona and Bob's that were Enron products. The DOE found that GCG used Enron propane as a feedstock to produce vinyl, and therefore that GCG was entitled to a refund for its purchases from Enron

under the presumption of injury for end-users of Enron products. The total refund granted to Ozona, Bob's and GCG, including interest, is \$10,914.

*General Electric Company, 8/16/95, RF272-25357, RD272-25357*

The DOE issued a Decision and Order granting an Application for Refund filed by General Electric Company (GE), a large diversified industrial corporation, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. Noting that the applicant did business in many markets, the States contended that a claim of 100% absorption of overcharges by a conglomerate such as GE is not reasonable. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. In addition, the DOE found that GE's purchases of ethane, chlorobenzene, acetic anhydride, polypropylene, isopropanol, isopropyl alcohol, methyl, cellosolve, cresylic acid, phenol, acetone, cumene, styrene, EPON 828/829, tetra-bromo bisphenol, and butadiene were not eligible for a crude oil refund. Finally, the DOE considered the validity of a waiver of the right to a crude oil refund filed in the Stripper Well Surface Transporters (ST) proceeding on behalf of RCA Corporation, which had been acquired by GE in a merger completed on June 9, 1986. The DOE found that where a dismissed ST application had not been filed by an authorized representative, the waiver had not been validly executed, and, therefore, the claimant had not waived its right to a Subpart V refund. The refund granted to the applicant in this Decision was \$2,536,874.

*Texaco Inc./J.E. Meintzer & Sons, Inc., 8/15/95, RF321-4048*

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning J.E. Meintzer &

Sons, Inc. (J.E. Meintzer & Sons), a direct purchaser of Texaco products. The DOE had previously determined that the purchase volumes of refund claims filed by affiliated firms should be combined in order to determine one allocable share for the applicants. In the instant case, a substantial amount of

common ownership interest existed previously between J.E. Meintzer & Sons and two other companies which have been granted refunds in the Texaco proceeding. Nonetheless, the DOE determined that because the degree of this common ownership has been dramatically decreased, none of the

involved companies are currently affiliated to a degree that would result in windfall benefits to a single corporate entity or shareholder. Thus, the DOE found that J.E. Meintzer & Sons' refund should not be reduced by the refunds granted the other two firms.

#### 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.

Atlantic Richfield Company/Brookvale Arco et al .....	RF304-14096	08/16/95
Bloomer Coop Feeds et al .....	RF272-86665	08/16/95
Crude Oil Supplemental Refund Distribution .....	RB272-8	08/15/95
Crude Oil Supplemental Refund Distribution .....	RB272-43	08/15/95
Crude Oil Supplemental Refund Distribution .....	RB272-42	08/15/95
Crude Oil Supplemental Refund Distribution .....	RB272-39	08/15/95
Crude Oil Supplemental Refund Distribution .....	RB272-37	08/15/95
Deback Cartage Company .....	RF272-97087	08/15/95
Dryer and Geodecke, Inc .....	RA272-71	08/16/95
Elmer Bowerman et al .....	RK272-424	08/15/95
Federal Reserve Bank of New York et al .....	RF272-90224	08/16/95
J.L. Anderson Co., Inc. et al .....	RF272-77264	08/16/95
Leboeouf Brothers Towing Company, Inc .....	RF272-69366	08/16/95
Leboeouf Brothers Towing Company, Inc .....	RD272-69366	
Monroe County Commission et al .....	RF272-97541	08/16/95
Ranson Farmers Coop Union et al .....	RF272-97161	08/16/95
Texaco Inc./Kelly's Food Store et al .....	RF321-19433	08/16/95
Texaco Inc./Ray's Texaco .....	RF321-20416	08/15/95
Cunningham's Texaco .....	RF321-20691	
Texaco Inc./Villa Street Service Station .....	RF321-20724	08/16/95
International Harvester .....	RF321-20755	
Webster School District et al .....	RF272-95425	08/16/95

#### Dismissals

The following submissions were dismissed:

Name	Case No.
City of Villa Park, CA .....	RF272-86154
Robert Hawthorne, Inc .....	RF272-86818
Silsbee Butane Company .....	RF304-15155
Thomas Fredrich .....	RF304-15146

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Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

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