

under 10 CFR Part 710. The DOE office responsible for determining such eligibility had issued a Notification Letter finding security concerns arising from a 10 year pattern of excessive indebtedness and delinquencies and from inaccuracies on DOE forms and in a Personnel Security Interview. The

Hearing Officer found the individual had not mitigated the security concerns. Accordingly, the Hearing Officer did not recommend a grant of access authorization.

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.

APPLIED INDUSTRIALS MATERIALS CORP.	RF272-92329	12/6/96
GULF OIL CORPORATION/BUFFALO AREO. CORP./MILLER TABEK	RR300-00275	12/6/96
GULF OIL CORPORATION/D.L. CHEAVES	RR300-00288	12/6/96
MONTGOMERY CNTY BOARD OF EDUCA.	RC272-322	12/6/96
MONTGOMERY CNTY BOARD OF EDUCA.	RJ272-4
MONTGOMERY CNTY BOARD OF EDUCA.	RK272-1105
NEW YORK HOSPITAL	RJ272-00032	12/3/96

Dismissals

The following submissions were dismissed.

Name	Case No.
BALAIR/CTA	RG272-533
IMPERIAL AIRLINES, INC.	RG272-428
INDIANA DEPT. OF TRANSPORTATION	RG272-1017
LIMESTONE CO.	RG272-541
LORAIN COUNTY LANDMARK, INC.	RG272-1021
M C TRUCKING	RG272-540
MELVIN STONE CO.	RG272-539
MUTUAL MATERIALS CO.	RG272-578
PEORIA COUNTY SERVICE CO.	RG272-1022
POWER RIG DRILLING CO.	RG272-501
SAN LUIS HILLS FARMS	RG272-1005
SUNRISE COOPERATIVE INC.	RG272-1020

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Notice of Issuance of Decisions and Orders; Week of December 9 Through December 13, 1996

During the week of December 9 through December 13, 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, S.W., Washington, D.C. 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: January 16, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 11—Week of December 9 Through December 13, 1996

Refund Application

Shell Oil Co./Atchison, Topeka & Santa Fe Railway Co., 12/13/96, RR-315-11

The Atchison, Topeka & Santa Fe Railway Company, Inc. (Santa Fe) filed a motion for reconsideration of a denial by the Department of Energy's (DOE)

Office of Hearings and Appeal of an application for an above-volumetric refund claim in the DOE's Subpart V Shell Oil Company refund proceeding. In considering the Motion for reconsideration, OHA found that Santa Fe's contention that Shell should use a different May 15, 1973 price to calculate the Maximum Legal Selling Price for diesel fuel at two of Shell's refineries was without merit. The DOE also applied the doctrine of res judicata in finding that Santa Fe's above-volumetric claim was barred by its prior settlement of a lawsuit concerning the same issues.

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.

J.W. MASSENGILL ESTATE ET AL	RK272-01365	12/13/96
OLIVE SPRINGS QUARRY ET AL	RG272-18	12/11/96
PAGE CO-OP. FARM BUREAU ET AL	RG272-00875	12/12/96

Dismissals

The following submissions were dismissed.

Name	Case No.
BEN LINE STEAMERS LTD	RG272-402
BUFKOR, INC	RG272-905
CHINESE MARITIME TRANSPORT, LTD	RG272-400
FARMERS UNION CO-OP OIL CO	RF272-94747
HAROLD M. CLARK EXCAVATING, INC	RK272-3248
SEATTLE SNOHOMISH MILL CO., INC	RG272-960
TRANS-WORLD TIRE CORP	RG272-800

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Notice of Issuance of Decisions and Orders; Week of December 16 Through December 20, 1996

During the week of December 16 through December 20, 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, D.C. 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: January 16, 1997.

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

Decision List No. 12—Week of
December 16 Through December 20,
1996

Appeals

Benton County, Washington, 12/19/96,
LPA-0001

The Office of Hearings and Appeals (OHA) issued a decision on an appeal that Benton County, Washington filed on November 4, 1993, under the Notice of Interpretation and Procedures (NOIP) implementing the "payments-equal-to-taxes" (PETT) provisions of the Nuclear Waste Policy Act of 1982, as amended (NWPA), 42 U.S.C. § 10101 et seq. Under the NOIP, the Department of Energy (DOE) will grant, to a county in which a candidate site for a high-level

nuclear waste repository is located, a payment equal to the amount that county would receive if it were authorized to tax site characterization activities at that site. See 56 Fed. Reg. 42314 (August 27, 1991). The payment authorized by the NWPA is known as a "PETT grant." Benton County submitted to DOE's Richland Operations Office (DOE/RL) an estimate of \$45.7 million as the PETT grant amount it should receive for site characterization activities at the Basalt Waste Isolation Project (BWIP) on the Hanford Nuclear Reservation. DOE/RL issued an initial DOE determination which denied Benton County's PETT claim, except for approximately \$440,000. In its appeal, Benton County challenged the amount of the PETT grant awarded to it by DOE/RL. During the course of the appeal, OHA permitted the parties detailed pre-hearing discovery, a four-day evidentiary hearing held in Seattle, Washington in January 1995, extensive briefing, post hearing depositions, and an oral argument held in Washington, DC in October 1995.

The OHA addressed the following issues in its decision on the Benton County appeal: (1) the starting date for Benton County's PETT eligibility under the NWPA; (2) the authority of the County under the NWPA to assess interest penalties against the DOE for late payment of the PETT amounts for the tax years involved; (3) the authority of the County to collect personal property taxes for the 1986 tax year; (4) when the BWIP should have been appraised; (5) the DOE Nevada Operations Office's (DOE/NV) approach to its PETT obligation vis-à-vis Nye County, Nevada, specifically, whether DOE/NV properly considered the appraised value of the Yucca Mountain real estate at the beginning of the PETT eligibility period; (6) generally-accepted principles of real estate appraisal relevant to the Benton County appeal; (7) the highest and best use of the BWIP site; (8) the proper appraisal of one portion of the bare land on the BWIP site; and (9) the proper appraisal of the improvements to real estate on the BWIP site.

In resolving these issues, the OHA made the following determinations: (1) DOE/RL was correct in beginning with May 28, 1986 in calculating the amount of Benton County's PETT grant; (2) DOE/RL was correct in excluding statutory interest penalties calculated under Washington State law from the amount of Benton County's PETT grant; (3) DOE/RL was correct in excluding personal property taxes for 1986 from the amount of Benton County's PETT grant; (4) DOE/RL erred in basing its PETT determination on an appraisal of the BWIP through hindsight as it existed in 1993, rather than on a retrospective appraisal of the BWIP as it existed during the period of PETT eligibility (May 28, 1986 through March 21, 1988); (5) DOE/RL erred in determining that the highest and best use of the BWIP was other than "industrial use" for site characterization as a potential high level nuclear waste repository; (6) DOE/RL correctly determined that the purported "Maximum Potential Underground Facility" was only a theoretical concept during the PETT eligibility period, and should not have been appraised on the basis of properties sold for landfills and related uses in nearby areas of the Pacific Northwest; (7) DOE/RL erred in failing to measure properly the residual value of improvements to the BWIP under the cost approach to real estate appraisal as of the beginning of the period of PETT eligibility; and (8) DOE/RL erred in failing to treat the determination of Benton County's PETT amount for the BWIP site characterization in the same general manner as DOE's Nevada Operations Office treated the determination of Nye County's PETT amount for the Yucca Mountain site characterization. Accordingly, the Benton County appeal was denied in part, and granted in part.

OHA concluded the decision by directing DOE/RL to confer in good faith with Benton County and apply the approach used to negotiate the Nye County PETT settlement to resolve this case within a specified time period, according to principles of alternative dispute resolution applicable to government agencies. The parties are