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# **Notice of Issuance of Decisions and Orders; Week of January 15 Through January 19, 1996**

During the week of January 15 through January 19, 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, 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: September 9, 1996.

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

## **Appeals**

### ***Dennis McQuade, 1/16/96, VFA-0092***

Dennis McQuade filed an Appeal from determinations issued by several DOE Offices concerning personnel problems at the Oak Ridge Operations office. In considering the Appeal, the DOE found that (1) documents created as a result of a personnel inquiry were not properly withheld under FOIA Exemption 7(C) & (D) because they were not law enforcement records; (2)

documents may not be withheld under Exemption 6 unless the privacy interest in the withheld information outweighs the public interest in the release of the information; and (3) names and negative information about individuals were properly withheld under FOIA Exemption 6.

### ***Jeffrey R. Leist, 1/18/96, VFA-0107***

Jeffrey R. Leist filed an Appeal from a determination issued to him on November 15, 1995 by the Manager of the Ohio Field Office of the Department of Energy (DOE). In that determination, the Manager partially denied a request for information filed by Mr. Leist pursuant to a Freedom of Information Act request. Specifically, the Manager provided Mr. Leist with a copy of an employee list responsive to a part of Mr. Leist's request, but he redacted all names in accordance with Exemption 6 of the FOIA. Furthermore, the Manager was unable to locate any documents responsive to another part of Mr. Leist's request. In considering the Appeal, the DOE determined that the Manager properly withheld the names of employees from disclosure. With regard to the inability of the Manager to locate additional responsive documents, the DOE determined that the Manager is in the process of reviewing an amended request provided by Mr. Leist. Accordingly, the DOE directed the Manager of the Ohio Field Office to complete his review of Mr. Leist's amended request and send to Mr. Leist any responsive documents he may find or state the reasons why any responsive documents are exempt from mandatory disclosure. Since the DOE determined that Exemption 6 was otherwise properly applied to the names of employees, the Appeal was denied in all other respects.

### ***Vectra Government Services, Inc., 1/18/96 VFA-0097***

VECTRA Government Services filed an Appeal from a determination issued by the Rocky Flats Field Office concerning a procurement. In considering the Appeal, the DOE found that Rocky Flats properly withheld the evaluative portion of the Source Evaluation Board Report (SEB) under FOIA Exemption 5. DOE also held that the search conducted by Rocky Flats for documents concerning whether the SEB selection was overridden was adequate.

### ***William Kuntz III, 1/16/96, VFA-0105***

William Kuntz III filed an Appeal from a determination issued to him on November 3, 1995 by the Department of Energy's Albuquerque Field Office (DOE/AL). In that determination, the DOE/AL denied a request for information filed by Mr. Kuntz on October 12, 1995, under the Freedom of Information Act (FOIA). The DOE/AL stated the records sought by Mr. Kuntz are "agency records," and thus are not subject to the FOIA. In his Appeal, Mr. Kuntz challenged DOE/AL denial of the requested information and asked the OHA to direct DOE/AL to release the requested information. In considering the Appeal, the Office of Hearings and Appeals found that the records sought by Mr. Kuntz are neither "agency records" within the meaning of the FOIA, nor subject to the FOIA under the DOE regulations. Therefore, the Department of Energy denied Mr. Kuntz's Appeal.

## **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.

ABBOTT TRUCKING, INC .....	RF272-78473	01/16/96
ALDEN ASSOCIATES .....	RK272-242	01/16/96
AMERICAN ENKA COMPANY, ET AL .....	RF272-77453	01/16/96
CARLETON G. WHITAKER, INC., ET AL .....	RK272-883	01/16/96
CRUDE OIL SUPPLE. REFUND DIST .....	RB272-59	01/16/96
DANIEL INTERNATIONAL CORP., ET AL .....	RF272-86103	01/16/96
GOLDEN CAT DIVISION/RALSTON PURINA COMPANY .....	RK272-319	01/16/96
GULF OIL CORPORATION/WOOD RIVER OIL & REFINING .....	RF300-13355	01/16/96
HOME LINES CRUISES, INC .....	RK272-259	01/16/96
ICI EXPLOSIVES, ET AL .....	RK272-00550	01/17/96
MOSCOW SCHOOL DISTRICT #281, ET AL .....	RF272-99100	01/17/96
NORANDEX, INC., ET AL .....	RK272-2827	01/16/96
SIOUX TRANSPORTATION .....	RF272-78493	01/17/96
SPIRIT OF AMERICA AIRLINES .....	RF272-97968	01/16/96
DAL JET INC .....	RF272-97979	

## **Dismissals**

The following submissions were dismissed:

Name	Case No.
AUTOMATIC GAS COMPANY, INC .....	RF304-14250
DISCOUNT FUEL .....	LEE-0090
DIXIE ELECTRIC MEMBERSHIP CORP .....	RF272-78389
FRANK THOMPSON TRANSPORT .....	RF272-78153
IDAHO OPERATIONS OFFICE .....	VSO-0070
MCDONALD & DONOVAN HEATING .....	RF304-15001
NATIONAL FRUIT PRODUCT COMPANY .....	RF272-78120

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### Notice of Issuance of Decisions and Orders; Week of April 29 Through May 3, 1996

During the week of April 29 through May 3, 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: September 10, 1996.

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

#### Appeal

*Stoel, Rives LLP, 4/29/96, VFA-0145*

A Freedom of Information Act (FOIA) Appeal from a determination issued by the DOE's Office of Inspector General (OIG) with respect to a request for information concerning the OIG's audit of the Bonneville Power Authority's (BPA) Energy Resource programs was considered by the Office of Hearings and Appeals. The Office of Hearings and Appeals issued a decision on April 29, 1996 remanding part of the Appeal to OIG and denying the Appeal in all other aspects. In reaching its determination, the Office of Hearings and Appeals found that: (1) the identities of audit information sources were properly withheld under Exemptions 6 and 7(C); and (2) the DOE is not required to

produce a *Vaughn* index at the administrative appeal level.

#### Personnel Security Hearing

*Albuquerque Operations Office, 5/1/96, VSO-0079*

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 C.F.R. Part 710 concerning eligibility of an individual for access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the record, the Hearing Officer found that the individual has been a user of alcohol habitually to excess, which is derogatory information under 10 C.F.R. § 710.8(j), and has an illness or mental condition, Substance Dependence, Alcohol, which, in the opinion of a board-certified psychiatrist, causes or may cause a significant in judgment or reliability and is thus derogatory information under 10 C.F.R. § 710.8(h). The Hearing Officer further found that the individual failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information. Specifically, the Hearing Officer found that the individual's abstention from alcohol for five months and participation in alcohol abuse counseling for two and a half months were not of sufficient duration to significantly reduce the risk that the Individual might resume drinking. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

*Oak Ridge Operations Office, 5/2/96 VSO-0068*

A Hearing Officer from the Office of Hearings and Appeals 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 individual was alleged to be alcohol dependent, based upon the diagnosis of a board-certified psychiatrist. The Hearing Officer found that the term "alcohol dependence" as used in DOE regulations meant alcohol dependence as it is commonly understood in the mental health community. However, the psychiatrist

did not apply generally accepted standards in making his diagnosis of alcohol dependence. The Hearing Officer, consequently, could not find that the individual was alcohol dependent. However, the Hearing Officer did find that the individual was a user of alcohol habitually to excess. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

*Pittsburgh Naval Reactors Office, 5/3/96, VSO-0081*

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because of doubts concerning his financial situation and his reliability and trustworthiness. The Hearing Officer found that the individual had failed to mitigate the DOE's concerns arising from the individual's unpaid debts of approximately \$32,000. She found that although the individual's financial crisis appeared to have been caused by the loss of employment, the individual had failed to take any steps to reduce or eliminate the debt once he was reemployed. Accordingly, the Hearings Officer found that the individual had done nothing to mitigate the DOE's concerns regarding his reliability and trustworthiness, and that his access authorization should not be restored.

#### Request for Exception

*Lakes Gas Company, 4/30/96, VEE-0018*

Lakes Gas Company (Lakes) 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 Lake's Application for Exception.

*Visa Petroleum, Inc., 4/30/96, VEE-0017*

Visa Petroleum, Inc., filed an Application for extension of the exception relief previously granted the firm from the requirement that it file Form EIA-782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In view of the firm's precarious