

Crude Oil Supply Ref Dist .....	RB272-00070 .....	05/10/96
Daniel R. Hanson, Sr. ....	RJ272-11 .....	05/07/96
Gulf Oil Corporation/Carter Limited, Inc. et al .....	RF300-15031 .....	05/10/96
I.A. Construction Co .....	RK272-03515 .....	05/07/96
I.A. Construction Co .....	RC272-00339 .....	.....
Ioerger Brothers et al .....	RK272-01072 .....	05/10/96
Pacos Carrier, Inc .....	RF272-69902 .....	05/08/96
Sawyer Drilling & Service, Inc et al .....	RK272-3386 .....	05/08/96
Streckfus Steamers, Inc et al .....	RF272-90914 .....	05/10/96
Texaco Inc./Chuck Dahlem Texaco Service .....	RR321-195 .....	05/10/96
Williams & Young Construction Company et al .....	RK272-2939 .....	05/07/96

## Dismissals

The following submissions were dismissed:

Name	Case No.
Boise Cascade Corporation .....	RF272-97841
COM/Energy Services Company .....	RF300-19895
The Cincinnati Enquirer .....	VFA-0152

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### Notice of Issuance of Decisions and Orders From the Week of July 29 Through August 2, 1996

During the week of July 29 through August 2, 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, 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.

Decision List No. 983

#### Appeals

*Association of Public Agency Customers, 8/1/96, VFA-0174*

The Association of Public Agency Customers (Appellant) filed an Appeal of a Determination issued to it by the Department of Energy (DOE) in response to a request under the Freedom of

Information Act (FOIA) concerning documents related to power service contracts. In its Determination, Bonneville Power Administration (BPA) stated that, after release of several installment responses, it was discontinuing processing of the Appellant's request due to nonpayment of search and review costs. The Appellant appealed by challenging the amount of search and review fees it had been assessed. The Office of Hearings and Appeals (OHA) determined that DOE did not violate the FOIA either by failing to fully respond to the request in ten working days or by responding in installments. OHA further found that the amounts charged for search and review time were not exorbitant. However, the OHA found that BPA had incorrectly charged the Appellant the cost of the photocopier operator's time. The OHA also determined that DOE had not disregarded the Appellant's request not to be supplied with documents already located in the administrative record of six legal cases involving BPA. OHA also found the documents released by BPA to be responsive. Finally, the OHA found that because the response had not been completed, the Appellant was not entitled to a "privilege log." Accordingly, the DOE granted the Appeal in part because it ordered BPA to reduce its fees to the Appellant by the amount of the incorrect charges, but denied the Appeal in all other respects.

*U.S. Solar Roof, 7/31/96, VFA-0180, VFA-0181*

U.S. Solar Roof filed an Appeal from a determination issued to it by the Acting Deputy Assistant Secretary for Energy Efficiency and Renewable Energy (EE) of the Department of Energy (DOE) in response to two Requests for Information submitted under the Freedom of Information Act. In

considering the Appeal, the DOE found that in the first request, there was no evidence that the meetings for which U.S. Solar Roof had requested documents took place. Thus, there were no documents responsive to U.S. Solar Roof's request. Accordingly, Appeal No. VFA-0180 was denied. In its second request U.S. Solar Roof had not yet received a determination. In such cases, the Office of Hearings and Appeals (OHA) lacks jurisdiction to consider the Appeal. However, OHA consulted with EE which stated it would undertake an expeditious search for responsive records and respond directly to U.S. Solar Roof. Accordingly, Appeal No. VFA-0181 was dismissed.

#### Personnel Security Hearings

*Albuquerque Operations Office, 7/29/96, VSO-0085*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the continued eligibility of an individual for access authorization under 10 CFR Part 710. The individual admitted using illegal drugs and violating a DOE Drug Certification. See 10 CFR 710.8 (k) and (l). The individual presented insufficient evidence that 1) the use of cocaine was an isolated occurrence; (2) there were extenuating circumstances surrounding this drug use; and (3) he has been rehabilitated. As the individual failed to meet his burden of proving the existence of mitigating circumstances, the Hearing Officer found that the individual's security clearance should not be restored.

*Schenectady Naval Reactors Office, 7/30/96, VSO-0090*

An OHA Hearing Officer issued an opinion concerning the continued eligibility of an individual for access authorization under 10 CFR Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access Authorization to Classified Matter or Special Nuclear Material." The Schenectady Naval Reactors Office (SNR) had suspended the individual's access authorization based on the individual's drug use and financial problems. The Hearing Officer found the individual had not produced evidence that would mitigate those security concerns. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

#### *Request for Exception*

*Middleton Oil Company, Inc., 7/30/96, VEE-0025*

Middleton Oil Company, Inc. (Middleton) filed an Application for Exception from the Form EIA-782B monthly filing requirement. In considering Middleton's request OHA determined that the company was significantly more burdened by the filing requirement than were other similarly situated companies due to the long-term illness and recent death of Middleton's owner, coupled with the extremely small office staff employed by

the company. Accordingly, DOE granted exception relief for the term of one year, from July 1, 1996 to July 1, 1997.

#### *Refund Applications*

*A.C.B. Trucking, Inc., 7/30/96, RF272-97874*

The DOE issued a Decision and Order denying the Application for Refund on behalf of A.C.B. Trucking, Inc. (A.C.B.), filed in the crude oil proceeding. Prior to the filing of A.C.B.'s Application, A.C.B. had applied for a refund from the Surface Transporters' Escrow in the Stripper Well proceeding. After the DOE was told in 1987 that A.C.B.'s owner-operators had purchased their own fuel, and A.C.B. had itself purchased less than 250,000 gallons, the DOE found A.C.B. ineligible for a Surface Transporters' refund. In A.C.B.'s 1994 Subpart V crude oil refund, the applicant claimed that there had been a miscommunication regarding its Surface Transporters' application, and that A.C.B. had actually purchased all fuel its trucks consumed, including its owner-operators' trucks. In its Decision and Order, the DOE determined that because A.C.B. had now proved that it had bought more than 250,000 gallons, it had been eligible for a Surface Transporters' refund. Thus, because the applicant's Stripper Well waiver was effective, the DOE denied A.C.B.'s

Subpart V refund application. Further, the DOE could not approve a reopening of the Surface Transporters' proceeding, as that proceeding is long closed, and the applicant failed to present any adequate reason why it failed to submit a Motion for Reconsideration in that proceeding earlier.

*Stillman Management, et al., 8/2/96, RG272-1006, ET AL.*

The Office of Hearings and Appeals of the Department of Energy (DOE) issued a Decision and Order dismissing thirteen Applications for Refund submitted in the crude oil overcharge refund proceeding conducted under 10 CFR Part 205, Subpart V. The claims were dismissed because they were filed after the deadline for submitting applications. As published in the Federal Register on April 21, 1995, all applications were to be postmarked by June 30, 1995.

#### *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.

Carlisle Companies, Inc. et al .....	RK272-03616	07/29/96
Gulf Oil Corporation/Britton Oil Company .....	RF300-14549	08/01/96
Hobart Brothers Company et al .....	RF272-78618	08/01/96
Sea-Land Service, Inc .....	RG272-00961	08/01/96

#### *Dismissals*

The following submissions were dismissed:

Name	Case No.
Balair/CTA .....	RG272-810
Barry Cartage, Inc .....	RF272-95298
Foskett School Bus Service .....	RG272-938
Givaudan-Roure Corporation .....	RG272-531
Givaudan-Roure Corporation .....	RG272-857
Harry Robertson's Gulf Agency .....	RF300-21418
Merichem Company .....	RG272-856
Mobil Cab & Baggage Co., Inc .....	RF272-95226
Mutual Materials Company .....	RG272-881
New York State Electric & Gas Corporation .....	RG272-828
R.A. Hamilton Corporation .....	RG272-817
Southwestern Public Service Co .....	RF272-95116
Spence, Moriarty, & Schuster .....	VFA-0190

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#### **Notice of Issuance of Decisions and Orders From the Week of October 9 Through October 13, 1995**

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