

Texaco Inc./Pecan Shoppe of Plant City RF321-16233

11/01/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Branch Motor Express	RF300-12741
Cape Smythe Air Service	RF272-98003
Dolcito Quarry Company, Inc.	RK272-00246
Netumar Lines	RF272-97896
S.F. Transport, Inc.	RF272-97309
Terminal Transportation, Inc.	RF272-97334
The National Security Archive	VFA-0074
Western Electric Company	RF300-21568
York Shipping Corporation	RF272-97919
Center Equipment Company	RF272-96155
El Toro Express	RF272-77988
James J. Williams Trucking Co.	RF272-97883
Johnny Bowen Gulf Station #1	RF300-21710
New York State Electric & Gas	RF300-21566
Redi-Froz Dist. Co.	RF272-97821

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Office of Hearings and Appeals**Issuance of Decisions and Orders;
Week of September 11 Through
September 15, 1995**

During the week of September 11 through September 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, 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: October 7, 1996.

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

Decision List No. 937

Week of September 11 Through
September 15, 1995

Appeals

Jeffrey R. Leist, 9/14/95, VFA-0069

Jeffrey R. Leist filed an Appeal from a determination issued to him by the Manager of the Ohio Field Office partially denying a request for information filed by him pursuant to the Freedom of Information Act. The Manager had released copies of responsive documents, but had redacted all personal identifying information from them under Exemption 6. In considering the Appeal, the DOE determined that the Manager inadvertently redacted Mr. Leist's own name from one of the responsive documents. Accordingly, the DOE directed the Manager to send to Mr. Leist a copy of this document, without a redaction of his name. Since the DOE determined that Exemption 6 was otherwise properly applied to the responsive documents, the Appeal was denied in all other respects.

Jeffrey R. Leist, 9/12/95, VFA-0071

Jeffrey R. Leist filed an Appeal from a determination issued to him by the Ohio Field Office partially denying a request for information filed by him pursuant to the Freedom of Information Act. Specifically, the Manager released copies of responsive documents, but could not locate a letter Mr. Leist alleged was sent to him. In considering the Appeal, the DOE confirmed the existence of the responsive letter and remanded the case to the Manager to either release a copy of the letter or provide a detailed explanation as to why the letter is exempt from public disclosure.

State of Michigan, 9/15/95, VFA-0066

The State of Michigan, filed an Appeal from a determination issued by the Freedom of Information and Privacy Act Division in response to a request it

submitted under the Freedom of Information Act (FOIA). Michigan sought documents concerning the 1992-93 Presidential transition members and Cities Service Oil and Gas Corporation. It contended that additional responsive documents must exist. In considering the Appeal, the DOE found that the FOIA Division performed an adequate search for responsive documents. Accordingly, the Appeal was denied.

Personnel Security Hearing

Oak Ridge Operations Office, 9/15/95,
VSO-0035

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found that: (i) the individual used cocaine and marijuana in the past and used cocaine after assuring the DOE in writing that he would not have any involvement with illegal drugs; (ii) the individual deliberately provided false information to the DOE on three separate occasions; (iii) the acts of the individual tend to show that the individual may use illegal drugs in the future and that the individual is not honest, reliable, or trustworthy; and (iv) the DOE's security concerns regarding these behaviors were not overcome by the evidence mitigating the derogatory information underlying the DOE's charges. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

Atlantic Richfield Company/Nicot Oils Co., Inc., 9/14/95, RF304-4883

Nicot Oils Co., Inc. was denied a refund in the Atlantic Richfield Company special refund proceeding. After an investigation by the Inspector General's office, Mr. Nick Schnettler, the owner of Nicot, pled guilty to mail fraud regarding 16 applications he filed in the ARCO and Mobil Oil Company special refund proceedings. Because special refund proceedings are equitable proceedings and thus are subject to the equitable stricture against "unclean hands," the Nicot Refund Application was denied.

Spag Realty Associates, et al., 9/11/95, RC272-00298, et al.

A Supplemental Order was issued requiring Spag Realty Associates and three related firms to repay \$9,909 to the DOE. These firms received duplicate refunds in the crude oil refund proceeding. The first set of applications was filed on the companies' behalf by Recovery Resources, a private filing service. The second set of applications was filed by the companies' accountant. Both sets of applications were granted based on the purchase volume figures provided in the applications. In the Supplemental Order, the DOE determined that the applications filed by Recovery Resources contained inaccurate and inflated purchase

volume claims, and that the four firms were not entitled to refunds based on these purchase volume figures. The DOE also determined that the applications filed by the companies' accountant contained accurate purchase volume claims. The applicants would, therefore, have been eligible for supplemental crude oil refunds based on these applications. The DOE determined that the amount the firms will be required to remit should be reduced by the amount of the supplemental refunds they would have received. The Order also holds Recovery Resources jointly responsible for the repayment of the refunds.

Texaco Inc./Ryder Systems, Inc., 9/15/95, RF321-171

A Motion for Reconsideration filed by Ryder System, Inc., was granted. Ryder had previously received the maximum refund available under the retailer/reseller medium-range presumption of injury. Ryder requested that it be permitted to benefit from the end-user presumption of injury by receiving an additional refund for products that it consumed rather than resold. The DOE determined that Ryder was entitled to an additional refund based only on those consumed gallons purchased by Ryder-owned companies whose operations were unrelated to Ryder's renting and leasing operations.

Texaco, Inc./Self Enterprises, 9/15/95, RR321-192

Self Enterprises filed a Motion for Reconsideration in the Texaco Inc. special refund proceeding. Self had been granted a refund of \$10,000 in the Texaco proceeding under the medium-range presumption of injury for the purchases of 13 outlets. See Texaco Inc./Tabba Oil, 23 DOE ¶ 85,192 (1994). In its Motion, Self requested that Tabba be vacated in order that it may attempt to make an injury showing, or alternatively, that it be modified to include purchases of more gallons than were originally claimed. The DOE declined to consider any of these requests. Self had been put on notice by the DOE of the proposed disposition of its case, the time period to make objections to that disposition, and the February 28, 1994 deadline for filing applications in the Texaco proceeding, yet waited one and one-half years past that deadline to make its submission. The DOE determined that this delay was not excusable. Therefore, the Motion for Reconsideration was dismissed.

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 Supplemental Refund Distribution	RB272-40	09/11/95
Doe Run Company et al	RK272-151	09/12/95
Interstate Mushroom Co. et al	RF272-89291	09/11/95
Liberty Trucking Company	RF272-78467	09/14/95
Navistar International Transportation Corp.	RF272-77726	09/15/95
Nuclear Fuel Services, Inc.	RF272-91052	09/12/95
Spring Valley Farms of AL, Inc., et al	RF272-77533	09/14/95
Texaco Inc./Larmac Texaco, Inc.	RF321-20639	09/15/95
Texaco Service Station	RF321-20745
Texaco Inc./PEH Texaco	RR321-190	09/15/95
Princeton Circle	RR321-191
Texaco Inc./Temple & Temple Excavating & Paving, Inc.	RF321-20456	09/14/95
Texaco Inc./Texaco #8/Self Enterprises	RF321-18534	09/15/95
Theodor Pick et al	RK272-74	09/15/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Gulf Coast Petroleum, Inc.	RF321-20380
Karnack Chemical Corporation	RF272-78133
Laverne's Oil	RF272-89946
Margaret Klunk VFA-0070.	
Newton County, MS	RF300-21591
Southern Disposal, Inc.	RF272-99102
Southern Disposal, Inc.	RF272-95216
Virginia Concrete Company	RF272-78022

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Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of July 10 Through July 14, 1995

During the week of July 10 through July 14, 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.

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Dated: October 7, 1996.

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

Decision List No. 928

Week of July 10 Through July 14, 1995
Appeals

Albuquerque Journal, 7/11/95, LFA-0182

The Albuquerque Journal filed an appeal from a denial by the Office of Arms Control and Nonproliferation Technology Support of a request for information that it submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the initial determination did not consider all responsive documents.

Accordingly, the Appeal was granted in part and the matter was remanded for a new determination regarding additional responsive material.

Murray, Jacobs & Abel, 7/11/95, VFA-0050

Murray, Jacobs & Abel appealed the Inspector General's denial of its request for documents pertaining to an ongoing investigation into allegations that Technology Management Services, Inc., a government contractor, engaged in improper activities. The Office of the Inspector General had withheld the information under Exemption 7(A). In considering the Appeal, the DOE found that the OIG's determination did not contain sufficient specificity in its explanation for withholding the requested documents under Exemption 7(A) and the case was remanded for a new determination.

Interlocutory Order

Benton County, Washington, 7/11/95, VPZ-0002

Benton County, Washington filed a Motion to Strike certain portions of a post-hearing brief filed by the Department of Energy DOE Richland Operations Office (DOE/RL). The contested portions of the brief contained citations to the discovery depositions of four major Benton County witnesses who testified during the January 1995 hearing on the county's appeal of the amount of Payments-Equal-To-Taxes (PETT) it would receive under the Nuclear Waste Policy Act of 1982 for site characterization at the Basalt Waste Isolation project on the Hanford reservation. DOE/RL alleged that all depositions were a part of the evidentiary record of the proceeding, and requested that the deposition of the Benton County Assessor be considered that of a party pursuant to Fed. R. Civ. P. 32(a)(2). OHA granted the motion in part. The parties held supplemental telephone hearings to properly enter the contested references into the record. DOE/RL was given an opportunity to submit an amended post-hearing brief to

incorporate the new materials generated in the supplemental telephone hearings. OHA ruled that the discovery depositions at issue were not part of the evidentiary record, and denied the requests to admit the Assessor's deposition under Rule 32.

Refund Applications

Allegheny Power Service Corporation, 7/14/95, RF272-97910

The DOE issued a Decision and Order concerning an Application for Refund in the Subpart V crude oil overcharge refund proceeding filed by the Allegheny Power Service Corporation. The DOE determined that the Allegheny Power Service Corporation was not entitled to a crude oil refund since it had filed a Utilities Escrow Settlement Claim Form and Waiver, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Texaco Inc./Jimco Truck Plaza, 7/14/95, RF321-21065

The Department of Energy granted a refund to Jimco Truck Plaza in the Texaco refund proceeding despite the fact that Jimco did not inform the OHA that its bankruptcy proceeding was still pending at the time that the application was filed. The DOE determined that Mildred Pumphrey, who signed the application, did not know at that time that the bankruptcy proceeding involving her late husband's company was still pending. Furthermore, it appeared from the record that all of Jimco's creditors had been satisfied. The Decision also concerned the proper distribution of the refund among the members of the Pumphrey family.

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/B & N Arco et al	RF304-13748	07/11/95
C.M. Caraway & Sons, Inc. et al	RF272-94129	07/10/95
Columbia LNG Corporation	RF272-97572	07/11/95
Crude Oil Supplemental Refund Distribution	RB272-11	07/10/95
Crude Oil Supplemental Refund Distribution	RB272-7	07/11/95
Crude Oil Supplemental Refund Distribution	RB272-15	07/14/95
Crude Oil Supplemental Refund Distribution	RB272-22	07/14/95
Crude Oil Supplemental Refund Distribution	RB272-13	07/14/95
Farmers Union Oil Co. et al	RF272-86748	07/11/95
Gardner Asphalt Corporation	RF272-94635	07/10/95
Texaco Inc./Clem's Texaco Gasoline Mart & Service et al	RF321-20283	07/14/95
Texaco Inc./Cullum's Texaco	RF321-21076	07/14/95
Texaco Inc./Energy Delivery Systems, Inc	RF321-10872	07/14/95
Texfi Industries, Inc. et al	RF272-77338	07/14/95