

Name	Case No.
Piper Aircraft Corp.	RF300-19993
Radiant Oil Company	RF300-19988
Repetz Brothers ARCO	RF304-13134
Repetz Brothers ARCO	RF304-12910
Richard's Gulf Service	RF300-18709
Shahum Service Station	RF304-15060
Stratford ARCO	RF304-15050
Thor Lieungh	RF304-13536
Thrifty Oil Company	RF300-19922
Walt's ARCO	RF304-14667
Woodautomatic Gas Co	RF304-14996

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Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of July 1 through July 5, 1996

During the week of July 1 through July 5, 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: August 28, 1996.

Thomas O. Mann,
 Acting Director, Office of Hearings and Appeals.

Decision List No. 979

Week of July 1 through July 5, 1996

Appeals

Marlene Flor, 7/2/96, VFA-0175

The Department of Energy (DOE) issued a Decision and Order granting a Freedom of Information Act Appeal that was filed by Marlene Flor. In her Appeal, Ms. Flor contested the accuracy

of a cost estimate provided to her by the DOE's Albuquerque Operations Office for processing her request for information under the Freedom of Information Act. In the Decision, the OHA found that Ms. Flor fell into the "all other requesters" category of FOIA requesters, and that she could not be charged for time spent by DOE employees in reviewing responsive documents for exempt material. The DOE therefore remanded her request to the Albuquerque Office for the formulation of a new estimate.

Tenaska Washington Partners II, L.P., 7/2/96, VFA-0176

Tenaska Washington Partners II, L.P. (TWP) filed an Appeal from a determination issued to it on May 21, 1996 by the Deputy Inspector General for Audit Services of the Office of Inspector General (IG) of the Department of Energy (DOE). In that determination, the IG partially denied a request for information that TWP filed pursuant to the Freedom of Information Act (FOIA). In its Appeal, TWP contends that the IG improperly withheld factual information pursuant to FOIA Exemption 5 and that the IG "waived" its ability to withhold a document pursuant to FOIA Exemptions 6 and 7. In considering the Appeal, the DOE confirmed that the redacted information does not contain any factual information and that the IG properly withheld the requested information pursuant to Exemption 5. The DOE also found that there is no merit to TWP's argument that the IG "waived" its ability to withhold a document pursuant to FOIA Exemptions 6 and 7. Accordingly, the DOE denied the appellant's request.

Refund Applications

Moore Brothers, 7/2/96, RR272-232

Moore Brothers was a trucking company that filed an Application for Refund in the Subpart V crude oil refund proceeding. In its original

application (Case No. RF272-4527), Moore Brothers was denied a refund due to a lack of adequate documentation (January 26, 1990). On February 20, 1996, Moore Brothers filed a Motion for Reconsideration, requesting that the DOE reconsider its 1990 Decision. In the Motion for Reconsideration, Moore Brothers provided documentation adequate to substantiate the applicant's estimate of petroleum products consumed during the price control period. Accordingly, the Motion for Reconsideration was granted.

Perry Gas Processors, Inc./Alabama, RQ183-604, Charter Company/Alabama, RQ23-605, National Helium Corp./Alabama, RQ3-606, Coline Gasoline Corp./Alabama, 7/2/96, RQ2-607

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Alabama. Alabama requested that all remaining funds allocated to it in the Perry Gas Processors, Charter Company, National Helium Corp. And Coline Gasoline special refund proceedings be used to fund the state's Energy Conservation Loan Program. As of May 31, 1996, the amount of those funds totaled \$370,540 (\$102,445 in principal and \$268,095 in interest). The DOE found that Alabama's proposal would provide timely restitutionary benefits to injured consumers of refined petroleum products. Accordingly, Alabama's second-stage refund application was granted.

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.

Allied-Signal, Inc	RF272-77990	07/01/96
Bronaugh Motor Express, Inc. et al	RF272-89203	07/05/96
Crude Oil Supple. Ref	RB272-00082	07/01/96

First Piedmont Corp. et al	RF272-89011	07/03/96
Gulf Oil Corporation/Dearman's Grovery & Service Station et al	RF300-13743	07/02/96
Gulf Oil Corporation/Union Petroleum	RF300-17257	07/03/96
Kimbob, Inc. et al	RG272-00607	07/02/96
Montgomery Farmers Coop et al	RF272-94512	07/01/96
Virgin Air, Inc. et al	RF272-97969	07/03/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Allied Oil Company	RF339-14
Darigold, Inc.	RG272-368
Denholm Ship Management Ltd.	RG272-618
Heber Elementary	RF272-87065
Valley Materials Transport	RF272-98118

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Notice of Issuance of Decisions and Orders During the Week of April 8 through April 12, 1996

Office of Hearings and Appeals

During the week of April 8 through April 12, 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: August 30, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Decision List No. 967

Week of April 8 through April 12, 1996

Appeals

A. Victorian, 4/11/96, VFA-0142

Dr. A. Victorian filed an Appeal from a denial by the Office of Defense Programs of a request for information that he filed under the Freedom of

Information Act. Defense Programs responded by stating that it could neither confirm nor deny the existence of records responsive to Dr. Victorian's request. Based on its review of the nature of the request, and after considering the arguments that Dr. Victorian raised on appeal, the DOE determined that Defense Programs' Glomar response was appropriate. Accordingly, the Appeal was denied.

Petrucelli & Nadler, 4/11/96, VFA-0143

Petrucelli & Nadler (Petrucelli) filed an Appeal from a denial by the Oak Ridge Operations Office (DOE/OR) of the Department of Energy of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the documents requested by Petrucelli, information on all persons involved in radiation experiments performed on students at the Fernald State School in Massachusetts, could possibly have been located in a search of either another relevant DOE office or the DOE Archives. Thus, the Appeal was granted.

Personnel Security Hearing

Pittsburgh Naval Reactors Office, 4/12/96, VSA-0048

The Director of the Office of Hearings and Appeals issued an Opinion regarding a Request for Review of a Hearing Officer Opinion which recommended against restoring the level "L" access authorization of the Respondent seeking review of the matter. The Respondent had requested that the Director examine two issues: (1) Whether the Respondent's failure to file state and federal income taxes and pay miscellaneous local taxes raises a legitimate security concern; and (2) whether promises to repay loans to the Respondent and the Respondent's opportunity to satisfy his mortgage mitigate some of the DOE's security

concerns. With regard to the first issued, after reviewing the record regarding the Respondent's tax situation and considering the Respondent's purported efforts to take corrective action with respect to some of his tax liabilities, the Director found no reason to disturb the Hearing Officer's Opinion. As for the second issue raised on review, the Director first opined that the new evidence suggesting that some of the Respondent's relatives might repay the Respondent some time in the future is not sufficient to overcome the security concern raised by the DOE regarding the Respondent's financial problems. Moreover, the Director observed that the Respondent has not demonstrated that he will be able to satisfy his entire mortgage debt within the time frame prescribed by the Respondent's lending institution. In sum, the Director refused to conclude that the new evidence tendered by the Respondent regarding his attempt to redress his mortgage problems mitigates the DOE's security concerns regarding the Respondent's judgement in managing his financial affairs.

After carefully considering the record, the Director opined that the Respondent's access authorization should not be restored.

Refund Applications

Charter Co./Mississippi—RQ23-601
Standard Oil Co. (Indiana)/
Mississippi—RQ251-602

OKC Corp./Mississippi, 4/11/96, RQ13-603

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Mississippi. Mississippi requested that all remaining funds allocated to it in the Charter Company, Standard Oil Co. (Indiana), and OKC Corp. Special refund proceedings be used to fund the state's Energy-Efficient, Affordable Housing and Energy in Agriculture Programs. As