

**Notice of Issuance of Decisions and Orders During the Week of February 12 through February 16, 1996**

During the week of February 12 through February 16, 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 29, 1996.

Richard W. Dugan,

*Acting Director, Office of Hearings and Appeals.*

Decision List No. 959

**Appeals*****ITECH, Inc., 2/13/96, VFA-0113***

ITech, Inc. filed an Appeal from a determination by the Western Area Power Administration (WAPA) under the Freedom of Information Act (FOIA). Itch sought a copy of a technical proposal that had been submitted to WAPA. WAPA released to ITech responsive documents, but withheld portions of the material requested pursuant to FOIA Exemption 4. In its Appeal, Itch objected to being charged \$147.38 for WAPA's processing of the request. In considering the Appeal, the DOE found that the fees imposed were reasonable and necessary to recoup the cost of the processing the request. Accordingly, the Appeal was denied.

***Knolls Action Project, 2/14/96, VFA-0112***

The Knolls Action Project (KAP) filed an Appeal from a determination issued to it by the Department of Energy's Office of Naval Reactors (NR) on November 29, 1995. In that determination, NR provided information to KAP under the terms of a fee waiver originally sought in a request for

information filed by KAP under the Freedom of Information Act (FOIA). In its Appeal, KAP asserted that NR did not provide two categories of information which it argued are encompassed by the scope of the fee waiver granted by the Office of Hearings and Appeals in a previous decision. In considering the Appeal, the Office of Hearings and Appeals found that NR properly provided relevant information within the scope of the fee waiver granted to KAP. Therefore, the Department of Energy denied KAP's Appeal.

***Stand of Amarillo, Inc., 2/12/96, VFA-0115***

On January 16, 1996, STAND of Amarillo, Inc. (STAND) filed an Appeal from a determination issued to it on December 5, 1995, by the FOIA Officer of the Department of Energy's Albuquerque Field Office. In that determination, the FOIA Officer stated that the legal files sought by STAND are "records in the possession and control of Mason & Hanger, Silas Mason Co., Inc., and are therefore not 'agency records' subject to the provisions of the FOIA." In considering the Appeal, the DOE discovered the possible existence of "agency records" responsive to the appellant's request and subject to the FOIA. Accordingly, the DOE remanded the case to the FOIA Officer for a new search for responsive documents.

***Williams & Trine, P.C., 2/10/96, VFA-0110***

Williams & Trine, P.C. (Williams) filed an Appeal from a denial issued by the FOIA/Privacy Act Division (DOE/HQ) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the information requested by Williams, documentation of the shipment of hazardous or radioactive material from any DOE facility to any facility of Williams' client, Cotter Corporation, did not exist because no shipments of such material were ever made. Therefore, the Appeal was denied.

***Personnel Security Hearing******Albuquerque Operations Office, 2/13/96, VSO-0061***

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual to maintain a level "Q" access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found that the

individual had consciously failed to submit federal income tax returns, thereby violating commonly understood federal tax requirements. The Hearing Officer further found that the individual had not chosen to resolve his disagreements with the Internal Revenue Service through the refund process, but instead had required the IRS to bring an enforcement action against him. The Hearing Officer also found that the individual's conduct in submitting a substitute form to his employer and thereby ending his withholding was also a violation of commonly understood tax requirements. Finally, the Hearing Officer found that the individual's recent contacts and correspondence with the IRS indicate that his actions and positions on tax matters have not been mitigated by any effort on his part to cooperate with the IRS and resolve his tax problems. The Hearing Officer concluded that the individual's conduct in these matters was not reliable or trustworthy for purposes of access authorization. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

**Refund Applications*****Dayco Products, Inc., 2/15/96, RJ272-5; RC272-332***

The DOE issued a Decision and Order in the crude oil refund proceeding concerning Dayco Products, Inc. (Dayco). In the course of processing supplemental crude oil refunds, the DOE discovered that Dayco had submitted one application on behalf of its headquarters and another application for a subsidiary. It was further discovered that the subsidiary's volume claim was duplicative of its headquarters claim but that both had been granted. Therefore, the DOE notified Dayco and Dayco's representative for the headquarters application that in the supplemental proceeding, the subsidiary would not receive a supplemental refund, and Dayco headquarters' volume would be reduced by the amount of duplicative gallonage. However, through an oversight, Dayco headquarters received an unreduced refund. In order to correct the error, the OHA determined that both the representative and Dayco were jointly and severally responsible for repaying the DOE the amount of \$2,308. Further, the Dayco subsidiary's original refund was rescinded.

*Perry Gas Processors, Inc./State of Missouri—RQ183-598*

*Vickers Energy Corp./State of Missouri—RQ1-599*

*Coline Gasoline Corp./State of Missouri, 2/15/96, RQ2-600*

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Missouri. Missouri requested that all remaining funds allocated to it in the Perry Gas Processors, Vickers Energy,

and Coline Gasoline special refund proceedings be used to fund the state's low-income home weatherization assistance program. As of January 31, 1996, the allocation totaled \$264,409 (\$92,564 in principal and \$171,845 in interest), but the allocation will be slightly higher at the time of disbursement due to interest earned between January 31, 1996 and the date of disbursement. The DOE found that Missouri's proposal would provide timely restitutionary benefits to injured consumers of refined petroleum

products. Accordingly, Missouri'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.

American Hoist & Derrick Co .....	RK272-01851	02/13/96
Crude Oil Supple. Ref. Dist .....	RB272-00061	02/13/96
Crude Oil Supple. Ref. Dist .....	RB272-00065	02/13/96
Frank Thompson Transport, Inc .....	RR272-230	02/15/96
Gulf Oil Corporation/Corey Bros. et al .....	RF300-18002	02/15/96
Gulf Oil Corporation/Goodhew Ambulance Co. et al .....	RF300-16556	02/15/96
Kraft Food Service et al .....	RK272-01156	02/13/96
Lahoma-Imo Farmers Co-op et al .....	RF272-99108	02/12/96
Moore's Inc .....	RF272-78065	02/12/96
Newport Hospital et al .....	RF272-86523	02/12/96
The BOC Group, Inc .....	RF272-72861	02/15/96
Airco Industrial Gases .....	RF272-75518	
Theisen Supply, Inc .....	RF272-77994	02/12/96
Transportation & Material Handling Div. of Natl Steel .....	RF272-78119	02/12/96
Vigoro Industries, Inc. et al .....	RK272-1627	02/15/96

#### Dismissals

The following submissions were dismissed:

Name	Case No.
Adeline Blumhorst .....	RK272-2422
Carmany's Gulf .....	RF300-16655
Crosstown Arco .....	RF304-15178
East Valley Arco .....	RF304-15182
Eaton Bulk Plant .....	RF304-15183
Franklin Park Gulf .....	RF300-16777
Gasp Realty Assoc .....	RR272-215
Goval Realty Assoc .....	RR272-216
Jeffrey R. Leist .....	VFA-0119
Joe Manchac Grocery and Service Station .....	RF300-16806
Kew Towers Co .....	RR272-217
Ohio Barge Lines, Inc .....	RF272-91401
Paul Yesik .....	RF300-16766
Point Bay fuel, Inc .....	RF304-15041
Rubel Fuel .....	RF304-15064
Shacklette Oil Co .....	RF304-15068
Spag Realty Assoc .....	RR272-214
Spicer Gas Co., Inc .....	RF304-15067
Transco, Inc .....	RF272-98658
Tri State Gas and Appliance Co., Inc .....	RF300-16600
V.G. Mullins .....	RF300-16968
Ward Air Canada .....	RF300-18145
Warrior & Gulf Navigation Co .....	RF272-91402
Zapata Coal .....	RF300-16830

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