

Name	Case No.
BERTIE COUNTY SCHOOL BUS GARAGE .....	RG272-739
BLUE BELL, INC .....	RF272-98666
CLARKSTOWN CENTRAL SCHOOL DISTRICT .....	RF272-98799
COLUMBUS COUNTY BD OF EDUCATION .....	RF272-89674
DAKOTA OIL COMPANY .....	RF355-24
FLEMING COMPANIES, INC .....	RK272-3910
GARDEN STATE ROAD MATERIALS, INC .....	RG272-282
GIBBEL BROTHERS, INC .....	RF272-98674
GRANITE ROCK CO .....	RF272-98649
GREEN COUNTY BD OF EDUCATION .....	RG272-989
H.B. FULLER AUTOMOTIVE CO .....	RK272-4061
KARL SCHMIDT UNISA, INC .....	RK272-4060
LAWRENCE TEXTILE, INC .....	RK272-3907
MARITIME OVERSEAS CORP .....	RF272-98775
PERSONNEL SECURITY HEARING .....	VSO-0127
PIONEER NURSERY .....	RK272-4059
SIMONDS INDUSTRIES, INC .....	RK272-4062
STEVEDORING SERVICES OF AMERICA, INC .....	RK272-3908
UNION COUNTY SCHOOL DISTRICT .....	RF272-88995
WESTERN CAROLINA UNIVERSITY .....	RF272-86876

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## DEPARTMENT OF ENERGY

### Office of Hearings and Appeals

#### Notice of Issuance of Decisions and Orders During the Week of April 28 Through May 2, 1997

During the week of April 28 through May 2, 1997, 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: May 21, 1997.

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

#### Decision List No. 31

##### *Personnel Security Hearings*

*Personnel Security Hearing, 4/30/97,  
VSO-0121*

An Office of Hearings and Appeals Hearing Officer issued an opinion regarding the eligibility of an individual employed by a contractor at a DOE facility to maintain an access authorization under the provisions of 10 C.F.R. Part 710. The individual's access authorization had been suspended because the individual had used crack cocaine extensively over a seven year period, drank alcohol to the point of abuse, and falsified information on a Questionnaire for Sensitive Positions. The Hearing Officer found that the individual failed to present any evidence to mitigate the concerns raised by the DOE with respect to the individual's drug use, alcohol abuse, and falsification. The Hearing Officer also opined that the individual had not presented any mitigating evidence to demonstrate he had not engaged in conduct that tends to show he is not honest, reliable, or trustworthy. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

##### *Personnel Security Hearing, 5/1/97, VSO-0126*

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain his access authorization under the provisions of 10 C.F.R. Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that the individual used an illegal drug, cocaine, deliberately provided false information to DOE Security Officials, and violated his DOE Drug Certification. These findings were based on the individual's positive drug test. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

##### *Personnel Security Hearing, 5/2/97, VSO-0122*

A Hearing Officer 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 respondent was alleged to be unreliable based upon his frequent misuse over a period of three years of his office computer to view adult material on the internet. A psychiatrist testified that the individual felt compelled to view adult material in part because of marital stresses. Since the respondent lost his job three years ago as a result of this activity, he and his wife have resolved the most serious of their marital problems. Consequently, the motivating force behind his conduct has been removed. In addition, he has been open with his coworkers about what he did and its consequences and has admonished them to avoid misusing office equipment. Under these circumstances, the Hearing Officer found that the respondent should be granted an access authorization.

##### *Supplemental Order*

##### *Benton County, Washington, Office of Civilian Radioactive Waste Management, 4/30/97, VPX-0011*

The Office of Hearings and Appeals (OHA) issued a Supplemental Order adopting the Joint Stipulation filed on April 30, 1997 by Benton County, Washington and the Department of Energy, through its Office of Civilian Radioactive Waste Management. The Stipulation embodies the parties' agreement to settle any and all disputes

concerning DOE's liability to Benton County for "payments-equal-to-taxes" (PETT) under the Nuclear Waste Policy Act of 1982, as amended (NWPA). The Supplemental Order and the incorporated Stipulation shall have the same force and effect as if the Order had been entered without a Stipulation and after a hearing in this matter. Since this

matter has been settled by the Stipulation, the appeal previously filed by Benton County on November 4, 1993, OHA Case No. LPA-0001, was dismissed with prejudice.

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.

*Refund Applications*

The Office of Hearings and Appeals issued the following Decisions and

AIR SIAM NO. 1 .....	RG272-609	5/1/97
AIR SIAM NO. 2 .....	RG272-610	
APEX OIL CO/CLARK OIL CO/ET AL/NGL SUPPLY, INC .....	RF342-305	4/30/97
MRS. CARL SCHROEDER JR. ET AL .....	RK272-01402	4/28/97
SOUTHWEST RESEARCH INSTITUTE ET AL .....	RF272-98706	5/1/97
TIMBOCS SERVICE STATION .....	RK272-3350	4/30/97
YANGMING MARINE TRANSPORT .....	RG272-413	5/1/97

*Dismissals*

The following submissions were dismissed:

Name	Case No.
CATOOSA COUNTY .....	RF272-98779
HIGHTOWERS APTS./PEABODY CORP .....	RK272-03825
MAIERS MOTOR FREIGHT .....	RK272-04121
MATERIALS TRANSPORT SERVICE .....	RK272-03659
PERSONNEL SECURITY HEARING .....	VSO-0144

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**DEPARTMENT OF ENERGY**

**Office of Hearings and Appeals**

**Notice of Issuance of Decisions and Orders During the Week of May 5 Through May 9, 1997**

During the week of May 5 through May 9, 1997, 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: May 21, 1997.  
**George B. Breznay**,  
*Director, Office of Hearings and Appeals.*

**Decision List No. 32**

*Appeals*

*Alfred G. Bell, 5/5/97, VFA-0286*

Alfred G. Bell filed an Appeal from a determination issued to him on March 24, 1997, by the Department of Energy's Oak Ridge Operations Office (OR). That determination was issued in response to a request for information submitted by Mr. Bell under the Freedom of Information Act. The request sought a copy of an occurrence report completed as a result of Mr. Bell being diagnosed with Chronic Beryllium Disease in accordance with criteria outlined in DOE Order 5000.3B. OR conducted a search of its files and located a report entitled "Individual Accident/Incident Report." However, this was not the document Mr. Bell referred to in his request. The Appeal challenged the adequacy of the search conducted by OR. In considering the Appeal, the DOE found that OR conducted an adequate search which was reasonably calculated to discover documents responsive to Mr. Bell's request. Accordingly, the Appeal was denied.

*Burns Concrete, Inc., 5/9/97, VFA-0284*

DOE granted in part and denied in part an Appeal of withholding of documents submitted by a third-party in connection with a construction project at a DOE laboratory. DOE remanded the

request for release of non-exempt information.  
*John D. Kasprovicz, 5/9/97, VFA-0287*

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by John D. Kasprovicz. In his Appeal, Mr. Kasprovicz argued that the Manager of the Chicago Operations Office improperly applied FOIA Exemption 5 in withholding portions of a document. In the Decision, the DOE upheld the Manager's determination, finding that the withheld portions are exempt from mandatory disclosure under the deliberative process and attorney work product privileges that are incorporated in Exemption 5.

*Request for Exception*

*W. Gordon Smith Company, 5/7/97, VEE-0037*

W. Gordon Smith Company (Smith) 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." Smith requested relief from the EIA reporting requirement because it believed the requirement was unduly burdensome to the company. In considering this request, the DOE found that the burden placed upon Smith, due to the temporary unavailability of personnel to complete the form, was greater than that encountered by other firms required to complete Form EIA-782B. Accordingly,