

Name	Case No.
"C" Ventures, Inc	RK272-4498
Carol Lina Bedford	RK272-4354
Charles E. Gay	RK272-4355
Daniel Products Company, Inc	RF272-98793
Dean Foods Products Co	RK272-4435
Edmund Aldrete	RK272-4352
Erie Lackawanna Railway Co	RK272-4474
Harley Clark Super 100	RF342-208
James Baehr Truck Service	RK272-4492
Loyd Salisbury/MYRL Salisbury	RK272-4502
Mount Pleasant Dairy, Inc	RK272-4454
Omc Johnson	RK272-4464
Paul W. Geisler	RK272-4356
Pepsi Cola Company	RK272-4499
Resource Net International	RK272-4491
Suprenant Wire & Cable	RK272-4494
T & W Forge, Inc	RK272-4473
Taos Gravel Products	RK272-4501
Texfie Industries	RK272-4497
Towry Enterprises, Inc	RK272-4493
University Gulf	RF300-21708
William D. Medlyn	RK272-4357

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of August 4 Through August 8, 1997

During the week of August 4 through August 8, 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: September 12, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 45; Week of August 4 Through August 8, 1997

Appeals

Arter & Hadden, 8/4/97, VFA-0309

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by Arter & Hadden (A&H). In its Appeal, A&H challenged the adequacy of the search for responsive documents that was conducted by the DOE's Albuquerque Operations Office. In the Decision, the OHA found that the search was adequate.

Charles L. Wilkinson, III, 8/8/97, VFA-0312

Charles L. Wilkinson, III, (Wilkinson) filed an Appeal from a determination issued to him by the Savannah River Operations Office (SR) of the Department of Energy (DOE). In its Appeal, Wilkinson asserted that SR failed to conduct an adequate search for documents pertaining to the utilization of non-union labor at the landfill and D-Area Powerhouse located at the DOE's Savannah River Site. Additionally, Wilkinson asserted that SR had improperly withheld 17 documents in their entirety pursuant to Exemption 5. After reviewing the search that was conducted for responsive documents, the DOE determined that SR conducted an adequate search for documents. However, while DOE determined that SR properly invoked Exemption 5 for 15 of the documents in question these documents were found to contain a small amount of material which could be released to Wilkinson. One document was properly withheld in its entirety pursuant to Exemption 5. With regard to the remaining document, SR requested that it be given an opportunity to make

another determination regarding that document. Consequently, Wilkinson's Appeal was granted in part.

Egan & Associates, 8/6/97, VFA-0318

The DOE's Office of Hearings and Appeals (OHA) issued a decision dismissing the Freedom of Information Act (FOIA) Appeal filed by Egan & Associates. The Appeal was dismissed because OHA does not have jurisdiction when the requester has not received an initial determination from an Authorizing Official, or when an appeal is based on the agency's failure to process a FOIA within the time specified by law.

Personnel Security Hearing

Personnel Security Hearing, 8/7/97, VSO-0150

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 CFR Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that the individual had been appropriately diagnosed with a mental illness affecting his judgment and reliability. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Request for Exception

Patriot Petroleum, Inc., 8/4/97, VEE-0045

Patriot Petroleum, Inc. (Patriot) 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." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Therefore, the DOE denied Patriot's Application for Exception.

Refund Application

Primerica Corporation, 8/8/97, RG272-1074

The Department of Energy considered a portion of a refund application filed by Primerica Corporation in Case No. RF272-68493. The DOE considered

whether Primerica, as the successor to the American Can Company, was entitled to a refund for two businesses sold by American Can after the refund period. The DOE determined that the agreement pursuant to which American Can sold the can business contained language sufficiently broad in scope to transfer the right to the refund. The DOE also determined that American Can's incorporation of its interest in Chemplex, a joint venture engaged in chemical production, and American Can's subsequent sale of the stock to another firm, transferred the right to a refund. The DOE provided Primerica

with an opportunity to file comments on whether its refund for the chemical business in *Geety Oil Company/Primerica*, 17 DOE ¶85,354 (1988), should be rescinded.

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.

Adeline Blumhorst Et Al	RK272-02270	8/7/97
Asamera Oil (U.S.) Inc	RC272-367	8/8/97
Steuart Transportation Co	RC272-368	
Asamera Oil (U.S.) Inc	RK272-4336	
Steuart Transportation Co	RK272-4337	
Branson R-V School District Et Al	RF272-96300	8/7/97
Fearnley & Eger AS Et Al	RA272-79	8/8/97
Morris Hertling & Co	RF272-79057	8/6/97
North Point Cab Co	RF272-97051	8/4/97
Plastics Universal Corp	RC272-366	8/7/97
Pet, Inc	RK272-4335	
Plastics Universal Corp	RK272-4069	
Pet, Inc	RC272-369	
Ray G. Andis Et Al	RF272-39798	8/4/97
Service America Corp	RK272-04232	8/4/97
Tri-County FS, Inc	RR272-00298	8/7/97

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-5896-2]

Agency Information Collection Activities: Proposed Collection; Emergency Clearance Request; Comment Request; State Use of EPA's Policy on Compliance Incentives for Small Businesses or Comparable State Policy on Reducing Penalties for Small Entities/State Use of Penalty Reduction Policies for Small Entities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA has submitted an emergency clearance request for the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): State Use of EPA's Policy on Compliance Incentives for Small Businesses or Comparable State Policy on Reducing Penalties for Small Entities. The emergency clearance request has been submitted for emergency processing

within 14 days. During this time period, EPA is soliciting comments on specific aspects of the proposed information collection. The Agency is seeking this Information Collection Request to cover a six month period. The Agency is preparing another Information Collection Request that will go through full approval process to cover subsequent requests for information concerning State use of EPA's Policy on Compliance Incentives for Small Businesses or similar State penalty reduction policies/programs for small entities.

DATES: Please submit comments on or before October 6, 1997.

ADDRESSES: U.S. EPA, Office of Enforcement and Compliance Assurance (2201A) 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Karin Leff, 202-564-7068/202-564-0037 fax, Leff.Karin @ EPAmail.EPA.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are the individuals in each state responsible for implementing EPA's Policy on Compliance Incentives for Small Businesses or comparable state policies reducing penalties for small entities.

Title: State Use of EPA's Policy on Compliance Incentives for Small Businesses or State Policy on Reducing Penalties for Small Entities.

Abstract: Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires EPA to report to Congress no later than March 29, 1998, on the impact of its program or policy to reduce/waive penalties for small entities including the scope of its program or policy, the number of enforcement actions against small entities that qualified/did not qualify for the program or policy and the total amount of penalty reductions/waivers. EPA's program consists of its Policy on Compliance Incentives for Small Businesses (Small Business Policy), Policy on Flexible State Enforcement Responses to Small Community Violations and Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations policy. These policies waive or reduce penalties for entities who discover first-time violations through on-site government-sponsored compliance assistance or audits, promptly disclose and correct the violations and meet certain other criteria. The Agency is tracking the use of these policies by the ten EPA Regions. However, the Policy on Compliance Incentives for Small Businesses (Small Business Policy) will