

DEPARTMENT OF ENERGY**Office of Hearings and Appeals****Notice of Issuance of Decisions and Orders During the Week of September 28 Through October 2, 1998**

During the week of September 28 through October 2, 1998, 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, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, 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: November 3, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 105**Personnel Security**

Personnel Security Hearing, 9/30/98, VSO-0204

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 Hearing Officer found that the respondent did not have a personality disorder as diagnosed by a psychiatrist because the psychiatrist stated that it was a close case and had based his diagnosis upon some incorrect information. The Hearing Officer also found, however, that the respondent

had not provided convincing evidence to contradict the psychiatrist's diagnosis that he suffered from alcohol abuse. Under these circumstances, the Hearing Officer found that the respondent's access authorization should not be reinstated.

Personnel Security Hearing, 10/1/98, VSO-0205

After reviewing the record concerning the individual's rehabilitation from his bipolar-two mental condition, an OHA hearing officer issued an Opinion recommending that the individual's access authorization not be restored.

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 Refunds	RB272-00144	9/29/98
Don Nicolaysen et al	RK272-04820	9/29/98
Nueces Electric Coop, Inc.	RF272-94582	9/29/98

Dismissals

The following submissions were dismissed.

Case No.	Name
Jerry T. Ensminger	RK272-04395
Personnel Security Hearing	VSO-0231

[FR Doc. 98-30387 Filed 11-12-98; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Office of Hearings and Appeals****Notice of Issuance of Decisions and Orders During the Week of August 17 Through August 21, 1998**

During the week of August 17 through August 21, 1998, 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.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, 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: November 3, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 99**Appeals**

Baker, Donelson, Bearman & Caldwell, 8/20/98, VFA-0430

Baker, Donelson, Bearman & Caldwell filed an Appeal from a determination issued to it by the Golden Field Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act. The law firm request sought records related to the DOE's "Building America" program and a particular Request for Proposal issued pursuant to that program. The Golden Field Office released all responsive records except for one document which

it withheld in full pursuant to Exemption 4. In considering the Appeal, the DOE determined that the determination letter employed three, analytically distinct, Exemption 4 tests: for trade secrets, for commercial or financial information that is voluntarily submitted, and for commercial or financial information that is involuntarily submitted. Because the tests are analytically distinct, they are mutually exclusive, and cannot be melded together for the same information. In addition, the determination letter did not explain the application of any of these three standards. Accordingly, the DOE granted the appeal in part and remanded the matter to the Golden Field Office to issue a new determination.

Bernice McCulloch, 8/17/98, VFA-0427

The DOE issued a Decision and Order denying a Freedom of Information Act (FOIA) Appeal that was filed by Bernice McCulloch. In her Appeal, Ms. McCulloch challenged the adequacy of the search for responsive documents performed by the Oak Ridge Operations Office. In the Decision, the DOE found that the search was adequate.

*HANFORD EDUCATION ACTION
LEAGUE, 8/17/98 VFA-0431*

The DOE's Office of Hearings and Appeals (OHA) granted an appeal of a determination in response to a request for documents from the DOE's Richland Operations Office (DOE/RL). While finding that DOE/RL conducted an adequate search for documents, the OHA remanded the matter to the DOE's FOI and Privacy Group for a search of offices at DOE Headquarters.

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 Supple Refund Dist

RB272-00142

8/19/98

[FR Doc. 98-30394 Filed 11-12-98; 8:45 am]
BILLING CODE 6450-01-U

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of August 24 through August 28, 1998

During the week of September 24 through August 28, 1998, 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, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, 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: November 3, 1998.

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

Decision List No. 100

Appeal

*Neutron Technology Corporation, 8/27/
98, VFA-0432*

The OHA denied an appeal of a determination in response to a request for documents from the DOE's Brookhaven National Laboratory (BNL). The OHA found that, pursuant to the contract under which the requested documents were created, the documents were the property of the contractor and thus not agency records subject to the FOIA.

Personnel Security

*Personnel Security Hearing, 8/24/98,
VSO-0207*

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found the individual had not produced sufficient evidence to mitigate the security concern raised by a positive test result for marijuana. In particular, the Hearing Officer found that the individual's inconsistent statements regarding her knowledge and intention of marijuana use raised substantial doubt about whether she had falsified information that she provided in a Personnel Security Interview. On the basis of those unresolved security concerns, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Application

*Varity Kelsey-Hayes Company F/K/A
Fruehauf Corp., 8/26/98, RC272-
00391*

The DOE issued a Decision and Order rescinding half of a refund from one company and denying two Applications for Supplemental Refund and two

Applications for Refund from two other companies in the crude oil refund proceeding. The two latter companies, Fruehauf Trailer Corp. (FTC) and Fruehauf Trailer Services, Inc. (FTS) applied for refunds based on the original refund that the first company, Fruehauf Corp. (Fruehauf) had received. The OHA first found that FTC and FTS were ineligible for either supplemental or original refunds because those applicants were simply challenging the propriety of the grant of the original refund to Fruehauf. The OHA deemed this challenge to be untimely because FTS and FTC had failed to meet the June 30, 1995 crude oil proceeding filing deadline. Moreover, the OHA examined the material FTS and FTC submitted and found that Fruehauf had been ineligible to receive half the refund it had been granted. The OHA therefore rescinded half of Fruehauf's original refund. However, because the OHA also granted a supplemental refund based on the remaining gallonage, the successor corporation to Fruehauf was not required to repay any funds to the Department of Energy.

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.

Cherokee Brick Co. et al	RF272-98900	8/27/98
General Car & Truck Leasing	RF272-98964	8/28/98
Grumman Aerospace Corp.	RF272-52464	8/26/98
Grumman Aerospace Corp.	RD272-52464	
Ilene Deatherage et al	RK272-01586	8/28/98
Morton International et al	RK272-01965	8/28/98
Renaissance Westchester Hotel	RK272-04415	8/27/98
Twin County Service Co.	RG272-00151	8/27/98