

Waiver was dismissed because Tajon had repeatedly failed to provide information which DOE required in order to process the claim. The DOE has determined that a Waiver is binding in situations where the Stripper Well application was dismissed for lack of information and the applicant was otherwise eligible for a Stripper Well refund. Accordingly, the refund granted to Tajon, Inc. is rescinded.

*The 341 Tract Unit of the Citronelle Field, The 341 Tract Unit of the Citronelle Field/Litigating Refiners, 12/18/95, VFX-0006, RF345-50*

The Office of the Hearings and Appeals directed that the DOE Controller take steps to disburse funds into nine escrow accounts pursuant to a court-approved settlement of litigation involving a \$144 million escrow fund. That fund originated when exception

relief was approved for The 341 Tract Unit of the Citronelle Field.

**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.

Atlantic Richfield Company/Bassman, Mitchell & Alfano .....	RR304-0065	12/21/95
Atlantic Richfield Company/Del Real Arco Service et al .....	RF304-13302	12/18/95
Atlantic Richfield Company/General Equities, Inc. ....	RR304-00070	12/19/95
Catherine Barber .....	RJ272-00003	12/21/95
Crude Oil Supplemental Refund Distribution .....	RB272-00027	12/18/95
Farmers Coop Oil Co. ....	RF272-97922	12/19/95
Park Region Coop .....	RF272-97925	
Morrow County Grain Growers .....	RF272-97930	
Jacobson Transport, Inc. et al .....	RF272-74695	12/19/95
Lester Chambers et al .....	RK272-00459	12/21/95
Limoneira Co. et al .....	RK272-00024	12/18/95
Lyndon Town School District et al .....	RF272-96200	12/19/95
MacFarlane Co.—USA, L.L.C. et al .....	RK272-02496	12/18/95
Mary Jo Pihlstrom et al .....	RK272-02662	12/21/95
Pat Marple et al .....	RK272-00507	12/21/95
Salomon Valley Coop et al .....	RF272-00172	12/18/95
Texaco Inc./Engler's Texaco .....	RF321-20736	12/18/95
Wilbert Frye Residuary Trust et al .....	RK272-02808	12/21/95

**Dismissals**

The following submissions were dismissed:

Name	Case No.
Marol Realty, Inc. ....	RK272-00244
Montclair Arco .....	RF304-15389

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**Issuance of Decisions and Orders;  
Week of January 29 Through February  
2, 1996**

During the week of January 29 through February 2, 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: September 4, 1996.

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

**Appeal**

*PSI Energy, Inc., 1/30/96, VEA-0001*

PSI Energy, Inc. (PSI) filed an Appeal from a determination issued by the DOE's Office of Environmental Management (OEM). PSI claimed that: (i) the OEM erroneously determined its liability for payment into the Uranium Enrichment Decontamination and Decommissioning Fund (D&D Fund) established under the Energy Policy Act of 1992; (ii) Indiana state law would prohibit PSI from passing through its assessment to its ratepayers; and (iii) the assessment of utilities for payment into the D&D Fund was an unconstitutional taking of property. The DOE found that: (i) the firm was properly assessed for uranium enrichment services that it purchased from the DOE and did not sell in the secondary market; (ii) Indiana

state law would be preempted by the federal Energy Policy Act; and (iii) while the DOE will ultimately defer to the rulings of the federal courts, the collection of assessments will continue while the courts are considering the constitutionality of the relevant provisions of the Energy Policy Act. Accordingly, PSI's Appeal was denied.

**Personnel Security Hearings**

*Albuquerque Operations Office, 1/31/96, VSA-0020*

The Director of the Office of Hearings and Appeals issued an Opinion concerning a Request for Review that was filed by the DOE's Office of Security Affairs (OSA). In its submission, the OSA requested that a security clearance matter be remanded to the Hearing Officer so that the Hearing Officer could render an opinion concerning an individual's eligibility for access authorization. In the Hearing Officer's initial Opinion, she stated that because the individual attended, but did

not participate in, his security clearance hearing, she would not address the merits of the individual's eligibility for a clearance, but would instead transfer the proceeding to the Manager of DOE/Albuquerque for a final determination as to the individual's eligibility. In the Director's Opinion, he stated that the regulations governing these proceedings do not contemplate the transferral of a security clearance matter to a DOE Manager under the circumstances in this case. He added that because a hearing was held and additional testimony was received, an evaluation by the Hearing Officer of the individual's eligibility for access authorization was required. Accordingly, the Director remanded the matter to the Hearing Officer for the issuance of such an evaluation.

*Rocky Flats Field Office, 1/30/96, VSO-0046*

An Office of Hearings and Appeals Hearing Officer issued an opinion against restoring the security clearance of an individual whose clearance had been suspended because the Department had obtained derogatory information that fell within 10 C.F.R. § 710.8(f). In reaching his conclusion, the Hearing Officer found that the individual deliberately misrepresented, falsified, or omitted significant information during the Personnel Security Interview.

*Rocky Flats Field Office, 2/7/96, VSO-0060*

An OHA Hearing Officer issued an opinion on a request for review from an individual employed by a Rocky Flats

contractor whose DOE security clearance had been suspended. The individual's "Q" access authorization was suspended after Rocky Flats security officials had received information from Personnel Security Interviews (PSIs) with two confidential sources about the individual's extensive marijuana use in the five or six years immediately after he had signed a DOE Drug Certification in 1980. At the hearing which was held in this case, neither of the two sources would testify about the instances of marijuana use or distribution by the individual that they had reported in their PSIs. However, the individual himself refused to testify in his own behalf at the hearing, and submitted no direct evidence to contravene the derogatory information in the statements by the two sources in their PSIs. Instead, the individual relied upon statements made in his own PSIs with Rocky Flats security personnel, in which he categorically denied any post-1980 marijuana use. After considering the record in this case, the Hearing Officer concluded that the individual had failed to meet his burden of coming forward with evidence to show that restoring his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Implementation of Special Refund Procedures

*OXY USA, Inc., 01/31/96, VEF-0030*

The DOE issued a Decision and Order setting forth procedures for the distribution of \$275 million (plus interest) in alleged overcharges remitted or to be remitted to the DOE by Occidental Petroleum Corporation and its wholly owned subsidiary OXY USA, Inc. (OXY). The DOE determined that these funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986). Accordingly, the DOE determined that 20 percent should be reserved for Subpart V Claimants and the remaining 80 percent should be divided equally between the federal government and the states.

#### Refund Applications

*Citronelle/Texas Cities Refining, Inc., et al., 1/30/96, RF345-1, et. al.*

The DOE issued a Supplemental Order disbursing \$144,204,002 from an escrow account in connection with the 341 Tract Unit of the Citronelle Field. The disbursements were made pursuant to a Settlement Agreement that was approved by the U.S. District Court for the Southern District of Texas on December 6, 1995.

#### 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.

Alaska Gold Company et al .....	RC272-327	01/30/96
Atlantic Richfield Company/Oscar B. Chao et al .....	RF304-13239	01/30/96
Metromedia Co et al .....	RF272-95102	01/30/96

#### Dismissals

The following submissions were dismissed:

Name	Case No.
Airline Snack Bar .....	RF300-19839
Albuquerque Operations Office .....	VSO-0064
Anderson Super Gulf-Parkway .....	RF300-18803
Bayer & Mingolla Industries, Inc .....	RF300-21419
Brink's, Inc .....	RF300-15179
Buffalo Aeronautical .....	RF300-16947
Central Telephone Co. of Florida .....	RF300-14816
Charles F. Morris .....	RF300-21659
Continental Baking Co .....	RF300-21479
D.L. Stowe Trucking .....	RF300-18841
Daniels Gulf .....	RF300-19586
Dans Rental .....	RF300-19585
Dix Gulf .....	RF300-19588
Ellex Transportation .....	RF300-13113
Garden Street Gulf .....	RF300-15086
Garvie Marks Gulf .....	RF300-21406
Hilltop Gulf .....	RF300-18730
Honeywell Inc .....	RF272-67216
J.D.'s Gulf .....	RF300-13159
Jackson & Michael Gulf Service .....	RF300-19659

Name	Case No.
John L. Sutton, Jr .....	RF300-21420
Lake & Sam Williams Gulf Dist .....	RF300-13245
Lee-Hy Paving Corporation .....	RR272-137
Mart Gulf .....	RF300-16505
Minden City Oil & Gas Co .....	RF300-19560
Murphey's Gulf & U-Haul .....	RF300-19528
Richland Operations Office .....	VSO-0056
Sam's Auto Service .....	RF300-10924
Sanders Gulf .....	RF300-18795
Wade's Rent-a-Car .....	RF300-18092
Waite, Schneider, Bayless & Chesley .....	VFA-0118
Wiley Fuel Oil .....	RF300-19541
Williams Gulf .....	RF300-18405

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### **Issuance of Decisions and Orders; Week of August 5 Through August 9, 1996**

During the week of August 5 through August 9, 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: September 9, 1996.

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

Decision List No. 984

Appeals

*Marlene Flor, 8/5/96, VFA-0184*

Marlene Flor filed an Appeal from a determination issued to her on May 16, 1996 by the Department of Energy's Albuquerque Operations Office (AO) which denied a request for information she had filed under the Freedom of Information Act (FOIA). The request sought the time and attendance sheets for each employee of the Kirtland Area Office Contracts and Business

Management Organization (CBMO). AO released redacted copies of the requested records from which the leave codes and description of the type of leave were deleted. AO determined, pursuant to Exemption 6 of the FOIA, that disclosure of this information would violate the privacy of the employees and would not be in the public interest. Flor's Appeal challenged the application of Exemption 6 to the withheld information. She contended that the "type of leave one takes is not personal in the same sense as one's date of birth, employment history, etc., as AO claims \* \* \*." Flor further contended that release of the requested information would further the public interest because it would reveal how AO treats its whistleblowers. In considering the Appeal, the DOE found that although the requested information is not as significantly private as other personal information such as home addresses and social security numbers, the public release of this information will nevertheless result in, at the least, a minimal invasion of privacy. DOE further found that there was no apparent public interest to balance against the minimal invasion of personal privacy and therefore AO properly withheld the requested information. Accordingly, the Appeal was denied.

*Stand of Amarillo, Inc., 8/9/96, VFA-0157*

Stand of Amarillo, Inc. (STAND) filed an Appeal of a determination issued to it by the Albuquerque Operations Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). STAND had requested documents it saw as a protestant before the Texas Natural Resource Conservation Commission concerning two environmental permits for the Pantex Plant which the DOE and Mason & Hanger-Silas Mason Co. (Mason & Hanger), the prime contractor

for the Pantex Plant, had jointly requested. Although a few documents were released to STAND, Mason & Hanger claimed the vast majority are internal legal documents, contractually its property and not subject to the FOIA. In considering the Appeal, the DOE found that after STAND filed its Appeal, both environmental permits were issued. Under these conditions, both the DOE and Mason & Hanger previously had agreed to search and release records to STAND. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Albuquerque Operations Office for a new determination. However, because this is the second Appeal on STAND's request, the DOE believes that a new determination should be issued within ninety days of the Albuquerque Operations Office's receipt of this Decision and Order.

Personnel Security Hearing

*Oakland Operations Office, 8/7/96,  
VSO-0094*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because he had tested positive for use of amphetamines (speed). Although the individual admitted to using the illegal drug, he attempted to minimize the seriousness of the event by claiming he had only used a very small amount of speed on a one-time only basis with a friend from out of town. The Hearing Officer found that the individual had failed to corroborate his account of the drug use, because he did not produce witnesses to support his version of the events surrounding the use of speed, particularly the out of town friend. She also found that the testimony of the individual's psychologist did not strongly support the individual's claim of rehabilitation from drug use. Accordingly, the Hearing Officer found