

Crude Oil Supplemental Refund Distribution .....	RB272-87 .....	09/27/96
Crude Oil Supplemental Refund Distribution .....	RB272-89 .....	09/27/96
John Sexton Contractors Co. ....	RK272-03854 .....	09/24/96
Rock Road Companies, Inc., et al .....	RK272-01370 .....	09/27/96

## Dismissals

The following submissions were dismissed:

Name	Case No.
Almena Cooperative Association .....	RG272-600
George O'Nale .....	VFA-0216
Paul T. Freier .....	VF-0214
Richmond County .....	RF272-98121
State of New Hampshire .....	RF272-98133

[FR Doc. 96-28749 Filed 11-7-96; 8:45 am]

BILLING CODE 6450-01-P

### Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of proposed implementation of special refund procedures and solicitation of comments.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces proposed procedures and solicits comments concerning the refunding of \$214,236.37 (plus accrued interest) in consent order funds. The funds are being held in escrow pursuant to a Consent Judgment and a Bankruptcy Distribution involving Houma Oil Company and Jedco, Inc., respectively.

**DATE AND ADDRESS:** Comments must be filed within 30 days of publication of this in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107. All comments should conspicuously display a reference to Case Numbers VEF-0023 (Houma Oil Co.) or VEF-0024 (Jedco, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, (202) 426-1575.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy, 10 C.F.R. § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a Consent Judgment entered into by the Houma Oil Company which settled possible pricing violations in the firm's sales of motor gasoline during the period May 1, 1979 through

April 30, 1980. The Proposed Decision also relates to a Bankruptcy Distribution which settled pricing violations stemming from Jedco, Inc.'s sales of motor gasoline during the period November 1, 1973 through March 31, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by Houma and Jedco and being held in escrow. The DOE has tentatively decided that the funds should be distributed in two stages in the manner utilized with respect to consent order funds in similar proceedings.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107.

Dated: October 28, 1996.

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

Department of Energy  
Washington, DC 20585  
October 28, 1996

Proposed Decision and Order of the  
Department of Energy

#### *Special Refund Procedures*

*Name of Firms:* Houma Oil Company Jedco, Inc.

*Date of Filing:* September 1, 1995

*Case Numbers:* VEF-0023, VEF-0024

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Regulatory Litigation branch of the Office of General Counsel (OGC)(formerly the Economic Regulatory Administration (ERA)) filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 1, 1995. The petitions request that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Judgment and a Bankruptcy Distribution concerning Houma Oil Co. (Houma) and Jedco, Inc. (Jedco), respectively.

#### Background

Houma was a "reseller-retailer" during the period of price controls. The ERA audited Houma's business records and determined it violated DOE's regulations in its purchases and sales of motor gasoline during the period May 1, 1979 through April 30, 1980. On November 21, 1983, the ERA issued a Proposed Remedial Order (PRO) to Houma in which it determined the firm overcharged its customers by \$503,810 during the audit period. On August 1, 1984, Houma and DOE entered into a consent order in which Houma agreed to refund the overcharge amount, plus interest, in installment payments to DOE over a two year period. Houma ultimately defaulted on its repayment obligation and the matter was referred to the Department of Justice (DOJ) for enforcement. The DOJ then obtained a Consent Judgment against Houma on February 9, 1995. Pursuant to this Judgment, Houma remitted a total of \$210,414.73 to the DOE. Houma then stopped

making payment, and the DOE determined that further legal action against Houma was unlikely to result in meaningful benefits to the taxpayer. The residual payment obligation was therefore declared uncollectible. The collected monies will be distributed in accord with the procedures proposed herein.

The DOE issued a Remedial Order (RO) to Jedco on October 24, 1978. Like Houma, Jedco was a "reseller-retailer" during the audit period. The RO required the firm to implement a rollback of its motor gasoline prices, thereby restoring its overcharged customers to the position they would have been in absent the overcharges.\* Jedco failed to comply with the directives of the DOE in this matter and ultimately declared bankruptcy. The DOE's claim against the firm led to a final distribution to the DOE of \$3,821.64. Since OGC has been unable to identify the customers injured by the Jedco overcharges, it has petitioned OHA to distribute this amount pursuant to Subpart V along with the funds obtained from Houma.

The funds obtained from the two firms are presently in interest-bearing escrow accounts maintained by the Department of the Treasury.

#### Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of the settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the monies obtained from Houma and Jedco. We therefore propose to grant OGC's petitions and assume jurisdiction over distribution of the funds.

#### Proposed Refund Procedures

In cases where the DOE is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage of the proceeding, those who bought refined petroleum products from the consent order firm may apply for a refund, which is calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the consent order firm during the period covered by the consent order. In the second stage, any funds remaining after all first-stage claims are decided are distributed for indirect restitution in accordance with the provisions

of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07.

In the two cases covered by this Decision, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consent order firms. In particular, we have been unable to obtain any information on the volume of the relevant petroleum products sold by Houma and Jedco during the settlement period. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we propose to accept any refund claims submitted by persons who purchased motor gasoline from Houma during the period May 1, 1979 through April 30, 1980 or from Jedco during the period November 1, 1973 through March 31, 1974. We propose to work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts. See *Bell Fuels, Inc.* 25 DOE ¶ 85,020 (1995).

#### Injury Presumptions/Showing of Injury

As in previous Subpart V proceedings, we propose that Houma and Jedco customers who were ultimate consumers (end-users) of their motor gasoline be presumed injured by their alleged overcharges. These customers will therefore not be required to make a further demonstration of injury in order to receive a refund.

We propose that reseller claimants (including retailers and refiners) who purchased motor gasoline from either of the two firms on a regular (non-spot) basis and whose refund claim is \$10,000 or less will be presumed injured and therefore need not provide further demonstration of injury. See *E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We realize that the cost to an applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund. Consequently, in the absence of simplified procedures some injured parties would be denied an opportunity to obtain a refund.

We further propose that any refund claimant advancing a refund claim in excess of \$10,000 must establish that it did not pass the alleged Houma or Jedco overcharges along to its customers. See, e.g., *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which a claimant could make this showing, a successful claimant should demonstrate that at the time it purchased motor gasoline from the consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, such claimants must show that they had a "bank" of unrecovered product costs sufficient to support their refund claim in order to demonstrate that they did not subsequently recover those costs by increasing their product prices. However, the maintenance of a cost bank does not automatically establish injury. See *Tenneco Oil/Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10

DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982), *Motion for Modification denied*, 10 DOE ¶ 85,062 (1983).

#### Conclusion

Refund applications in this proceeding should not be filed until the issuance of a final Decision and Order pertaining to the instant OGC Implementation Petitions. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. A copy of this Proposed Decision and Order will be published in the Federal Register and public comments will be solicited.

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of PODRA. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies directly to injured parties in Subpart V proceedings and make those funds available to state governments as indirect restitution for use in energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Houma or Jedco escrow accounts the OHA determines will not be needed to effect direct restitution to injured customers of those firms will be distributed in accordance with the provisions of PODRA.

*It Is Therefore Ordered That:* The refund amounts remitted to the Department of Energy by Houma Oil Company and Jedco, Inc., pursuant to a Consent Judgment and a Bankruptcy Distribution respectively, will be distributed in accordance with the foregoing Decision.

[FR Doc. 96-28747 Filed 11-7-96; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5474-7]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 15, 1996 Through October 18, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

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\* After the deregulation of petroleum prices, the RO was modified and this requirement was replaced by an order requiring payment to the U.S. Treasury. *Jedco, Inc.*, 8 DOE ¶ 81,068 (1981).