

evidence in the record indicated that the employee had a lengthy history of arrests and convictions for alcohol-related traffic offenses, including two within the last 18 months. At the hearing, the employee admitted that he had been an alcohol abuser, but introduced evidence of his progress towards rehabilitation during the six month period immediately prior to the hearing. The Hearing Officer concluded that the employee had not as yet abstained from alcohol long enough to demonstrate that he was rehabilitated from his drinking problem, and that as a result, the employee's history of alcohol abuse still raised serious security concerns. For these reasons, the Hearing Officer concluded that the

employee had failed to show that restoring the employee's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

*Albuquerque Operations Office, 5/25/95, VSO-0019*

A DOE Hearing Officer issued an Opinion concerning the eligibility of an individual for continued "Q" access authorization. Tests conducted as part of a routine annual physical examination indicated that the individual had used cocaine. The individual claimed that he had not used cocaine. He argued that this use of certain over-the-counter medications prior to the drug test should have

resulted in positive results for drugs other than cocaine, and that the lack of such results proved that the tested specimen was not his. After reviewing the chain-of-custody documentation for the specimen and considering expert testimony on the effects of over-the-counter medications on drug tests, the Hearing Officer found that the tested specimen was the individual's and the individual must have used cocaine. The Hearing Officer, therefore, found that the individual's denials of cocaine use were falsifications and that the individual had violated a drug certification which he had signed. The Hearing Officer concluded that the individual's access authorization should 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 Supple. Refund Distribution et al .....	RB272-4	05/23/95
Crude Oil Supplemental Refund Distribution et al .....	RB272-3	05/23/95
Gloucester Trucking .....	RF272-97259	05/23/95
Kessler Institute for Rehab et al .....	RF272-92130	05/23/95
Squaw Transit Co .....	RF272-74580	05/23/95
Squaw Transit Co .....	RD272-74580	
Texaco Inc./Al's Texaco .....	RF321-13059	05/22/95
Texaco Inc./Associated Transport, Inc .....	RF321-13106	05/23/95

**Dismissals**

The following submissions were dismissed:

Name	Case No.
Albany Independent School District .....	RF272-97390
Andy's Texaco .....	RF321-20772
Bill Clendening Texaco .....	RF321-20749
Energy Cooperative, Inc .....	RF340-120
Gall Silica Mining Co., Inc .....	RF272-97436
Harvey Texaco .....	RF321-20766
Leaseway Transportation Corp .....	RF272-97308
Liberty County Board of Commissioners .....	RF272-97432
Oklahoma State University .....	RF272-98486
Richard M. Ross .....	VFA-0042
Roaring Spring, PA .....	RF272-86781
Texaco Gas Station .....	RF321-20762
The Gates Rubber Company .....	RF272-88647
The Gates Rubber Company .....	RF272-93720
Unico, Inc .....	RF321-6384
Valley Line Company .....	RF272-98124
Victoria Independent School District .....	RF272-97440

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, 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.

Dated: February 14, 1996.  
 George B. Breznay,  
*Director, Office of Hearings and Appeals.*  
 [FR Doc. 96-4407 Filed 2-26-96; 8:45 am]  
**BILLING CODE 6450-01-P**

**Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 21 through August 25, 1995**

During the week of August 21 through August 25, 1995 the decisions and orders summarized below were issued with respect to applications for other relief 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.

#### Appeal

*Murray, Jacobs & Abel, 8/22/94, VFA-0061*

The DOE's Office of Inspector General (OIG) requested reconsideration of a July 1995 Decision and Order issued to Murray, Jacobs & Abel (MJ&A), Case No. VFA-0050. That Decision remanded a Freedom of Information Act (FOIA) request to the OIG for a new determination pursuant to Exemption 7(A) of the FOIA, and consistent with *Albuquerque Journal*, 22 DOE ¶ 80,148 (1992). The OIG argued that under federal court decisions the government met its burden if it demonstrated that release of the types of documents at issue could reasonably be expected to interfere with enforcement proceedings generally and that the government need not make a particularized showing of harm with respect to the enforcement proceeding at issue. Upon reconsideration, the DOE agreed and overturned the *Albuquerque* decision to the extent that it required such a particularized showing.

#### Refund Applications

*GS Roofing Products Company, Inc., 8/23/95, RF272-93215*

The DOE issued a Decision and Order granting an Application for Refund filed by GS Roofing Products Company, Inc. in the Subpart V crude oil refund proceeding. The DOE determined that in addition to GS's asphalt products, slate oil was a covered product eligible for a refund because it was made from naphthenic crude oil and came from a refinery. The refund granted to GS in this Decision was \$378,610.

*Standard Oil Co. (Indiana)/Nebraska, 8/23/95, RM251-295*

The DOE issued a Decision and Order granting a Motion for Modification of a previously-approved refund plan filed

by the State of Nebraska in the Standard Oil Co. (Indiana) second stage refund proceeding. Nebraska requested permission to reallocate \$50,000 in previously disbursed Amoco II monies to the business sector of the Dollar and Energy Saving Loan Program. The program is a revolving loan program that provides low interest loans to Nebraska citizens for energy efficiency improvements to homes, businesses, farms, local government structures, and rural nursing homes. In accordance with a prior Decision that approved the use of second stage funds for the program, the DOE granted Nebraska's Motion.

*Texaco Inc./Gasolinera Melendez, Inc., 8/23/95, RR321-180*

The DOE issued a Decision and Order concerning a Motion for Reconsideration regarding an Application for Refund filed by Gasolinera Melendez, Inc. (GM) filed in the Texaco Inc. special refund proceeding. GM's Application for Refund had been dismissed in a prior Decision because its Application had been submitted to the DOE several months after the February 28, 1994 final deadline for the Texaco proceeding. In the prior Decision, the DOE rejected GM's arguments that the lack of notice given to applicants in Puerto Rico about the existence of the Texaco refund proceeding constituted a compelling reason to process its application. In its Motion for Reconsideration, GM argued again that Puerto Rican retailers had little knowledge concerning the Texaco proceeding while retailers in the 50 States had much more notice about the proceeding and that this disparity was fundamentally unfair and constituted an equitable consideration favoring the processing of its application. The DOE held that retailers in Puerto Rico had the opportunity to learn about the existence of the Texaco proceeding since proper Notices were published in the Federal Register regarding the establishment of the Texaco proceeding and that many

retailers in the United States also did not receive actual notice. The DOE found that any disparity in notice provided to Puerto Rican retailers was not a sufficient equitable consideration sufficient to warrant processing GM's application since the DOE, in consideration of this disparity, accepted applications from Puerto Rico retailers received in the month of March 1994. The DOE also rejected GM's claim that processing its claim after the final deadline would cause no harm to the refund process. Because DOE found that GM had presented no equitable consideration meriting the processing of its Application for Refund, GM's Motion for Reconsideration was dismissed.

*Texaco Inc./Pea Ridge Iron Ore Co., Inc., 8/23/95, RF321-8850*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding. Pea Ridge Iron Ore Co., Inc. (Pea Ridge) applied for a refund based upon direct Texaco purchases made by another corporation, Meramec Mining Co. In support of its application, Pea Ridge argued that it was entitled to Meramec's refund by virtue of the fact that Meramec was wholly owned subsidiary of St. Joe Mineral Corporation (St. Joe) which dissolved Meramec and transferred all of its assets and facilities to another wholly owned corporation it created, Pea Ridge. The DOE held that Pea Ridge was created by St. Joe to continue the business operations of the prior dissolved corporation, Meramec, and that since St. Joe owned all of the outstanding stock of both Meramec and Pea Ridge, the entire transaction was simply a change in corporate form rather than a true ownership change. Consequently, the DOE held that, given the above transaction, Meramec's right to a refund was transferred to Pea Ridge. The DOE approved a refund for Pea Ridge totalling \$24,875, representing \$16,669 in principal plus \$8,206 in interest.

#### 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/Maple Canyon Arco et al .....	RF304-13663	08/23/95
Bethel Utilities Corporation .....	RF272-2638	08/23/95
Enron Corp./Kay & Herring Gas Company .....	RF340-132	08/23/95
Texaco Inc./Arroyo Service Station .....	RF321-21069	08/23/95
Texaco Inc./Dravo Corp. et al .....	RF321-18353	08/23/95
Texaco Inc./Red Carpet Car Wash .....	RF321-7893	08/23/95
Tom Inman Trucking, Inc. ....	RK272-239	08/23/95
Boss-Linco Lines, Inc. ....	RK272-240	.....
Uniroyal Technology Corp. ....	RF272-97573	08/23/95

## Dismissals

The following submissions were dismissed:

Name	Case No.
Clarke County, Virginia .....	RF272-86668
Mort Hall Aviation .....	RF304-15150

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, 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.

Dated: February 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

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#### Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of August 14 through August 18, 1995

During the week of August 14 through August 18, 1995 the decisions and orders summarized below were issued with respect to applications for relief 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.

#### Appeal

*Greg Long, 8/15/95, VFA-0060*

Greg Long filed an Appeal from a determination issued to him by the Office of Public Affairs of the DOE's Albuquerque Operations Office in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In that determination, the Albuquerque Operations Office had withheld under the Exemption 5 "deliberative process privilege" a draft of a never-finalized or issued report investigating a mysterious "hum" reported in and around Taos, New Mexico. In considering the Appeal, the DOE found that the Albuquerque Operations Office had not determined whether the document contained deliberative material. In addition, the DOE had not determined whether the document contained segregable non-exempt material or whether the document qualified for withholding

under the standard articulated in the October 1993 Memorandum of Attorney General Janet Reno concerning the FOIA. Accordingly, the Appeal was granted in part, denied in part, and remanded to the Albuquerque Operations Office for a new determination in accordance with the guidance set forth in the Decision and Order.

#### Personnel Security Hearing

*Rocky Flats Field Office, 8/14/95, VSO-0027*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the eligibility of an individual for access authorization under 10 CFR Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." After considering the record in view of the standards set forth in Part 710, the Hearing Officer found that the individual adequately demonstrated rehabilitation from a history of alcohol abuse. Accordingly, the Hearing Officer found that the individual's access authorization should be granted.

#### Refund Applications

*Enron Corp./Ozona Butane Company, Inc., Bob's L.P. Gas, Inc., B.F. Goodrich Chemical Group, 8/16/95, RF340-58, RF340-110, RF340-144*

The DOE issued a Decision and Order concerning refund applications that Ozona Butane Company, Inc. (Ozona), Bob's LP Gas, Inc. (Bob's), and B.F. Goodrich Chemical Group (GCG) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that Ozona and Bob's were retailers of Enron products who qualified for refunds under the small claim presumption of injury. However, both firms purchased Enron product indirectly through Gartman Butane Company, Inc. (Gartman). The DOE collected information from Gartman in order to determine the portion of Gartman purchases by Ozona and Bob's that were Enron products. The DOE found that GCG used Enron propane as a feedstock to produce vinyl, and therefore that GCG was entitled to a refund for its purchases from Enron

under the presumption of injury for end-users of Enron products. The total refund granted to Ozona, Bob's and GCG, including interest, is \$10,914.

*General Electric Company, 8/16/95, RF272-25357, RD272-25357*

The DOE issued a Decision and Order granting an Application for Refund filed by General Electric Company (GE), a large diversified industrial corporation, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. Noting that the applicant did business in many markets, the States contended that a claim of 100% absorption of overcharges by a conglomerate such as GE is not reasonable. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. In addition, the DOE found that GE's purchases of ethane, chlorobenzene, acetic anhydride, polypropylene, isopropanol, isopropyl alcohol, methyl cellosolve, cresylic acid, phenol, acetone, cumene, styrene, EPON 828/829, tetra-bromo bisphenol, and butadiene were not eligible for a crude oil refund. Finally, the DOE considered the validity of a waiver of the right to a crude oil refund filed in the Stripper Well Surface Transporters (ST) proceeding on behalf of RCA Corporation, which had been acquired by GE in a merger completed on June 9, 1986. The DOE found that where a dismissed ST application had not been filed by an authorized representative, the waiver had not been validly executed, and, therefore, the claimant had not waived its right to a Subpart V refund. The refund granted to the applicant in this Decision was \$2,536,874.

*Texaco Inc./J.E. Meintzer & Sons, Inc., 8/15/95, RF321-4048*

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning J.E. Meintzer &