

**Notice of Issuance of Decisions and Orders; Week of February 26 Through March 1, 1996**

During the week of February 26 through March 1, 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, DC 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. 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 6, 1996.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

**Appeals**

*Keith E. Loomis, 2/5/96, VFA-0125*

The DOE denied a Freedom of Information Act Appeal filed by Keith E. Loomis (Loomis). Loomis appealed the

Office of Naval Reactors' (ONR) withholding of information under Exemption 6. OHA found that Exemption 6 was properly applied.

*Nathaniel Hendricks, 2/29/96, VFA-0129*

Nathaniel Hendricks filed a Motion for Reconsideration of a Decision and Order issued to him by the Department of Energy that the remanded Appellant's Freedom of Information Act request to the DOE's Office of Environment, Safety and Health (DOE/EH). In the reconsideration Motion, the Appellant presented new material that required a further search by the Chicago Operations Office. The DOE granted the Motion and remanded the matter to the Chicago Operations Office for further action.

**Personnel Security Hearing**

*Oakland Operation Office, 2/26/96, VSO-0072*

A Hearing Officer of the Office of Hearings and Appeals issued an opinion concerning the continued eligibility of an individual for access authorization under 10 C.F.R. Part 710. The Hearing Officer found that the derogatory information presented under 10 C.F.R. §710.8(1) established that the individual misappropriated government property (a drill and some computer parts) and that he offered an explanation to a security guard concerning the drill that was not truthful. The Hearing Officer found that the individual

presented sufficient evidence to mitigate this derogatory information. Specifically, the Hearing Officer found that the individual had demonstrated that he intended only to briefly borrow the drill, and that he had removed the computer parts from the laboratory for a legitimate government purpose. The Hearing Officer also found that the individual had relied on a perceived tolerance by the laboratory for the borrowing of property when he failed to obtain proper authorization for the off site use of these articles. The Hearing Officer found that the individual's untruthful statement to the security guard was mitigated by the individual's excitement, fatigue, and mental confusion at the time the statement was made. Finally, the Hearing Officer found that the individual had demonstrated an ability and willingness to comply fully with the requirements of laboratory policy regarding off site use laboratory property subsequent to these events. Accordingly, the Hearing Officer concluded that the individual's access authorization should 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.

AMERICAN ORIGINAL CORPORATION/BORDEN, INC. ....	RK272-3239	02/27/96
ARAVA NATURAL RESOURCES .....	RK272-2715	02/27/96
ATLANTIC RICHFIELD COMPANY/SOUTH BAY PLAZA CAR WASH ET AL .....	RF304-13347	02/29/96
CAROLINA AIRCRAFT, INC. ET AL .....	RF272-90648	02/26/96
DADE COUNTY PUBLIC SCHOOLS DEPARTMENT OF TRANSPORTATION .....	RJ272-00007	02/27/96
DOWNEAST AIRLINES, INC. ET AL .....	RF272-97951	02/27/96
EARLE M. JORGENSEN COMPANY .....	RR272-227	02/26/96
ETHEL GOLDHAHN ET AL .....	RK272-01101	02/27/96
GULF OIL CORPORATION/NEICE'S GULF ET AL .....	RF300-16632	02/26/96
INTERNATIONAL FLAVORS & FRAGRANCES .....	RR272-211	02/26/96
INTERNATIONAL FLAVORS & FRAGRANCES .....	RD272-14036	
MEGALOPOLIS PROPERTY ASSOCIATION ET AL .....	RF272-78604	02/29/96
SHARON STEEL CORPORATION .....	RC272-334	02/26/96
VILLAGE OF HAZEL CREST ET AL .....	RK272-2850	02/26/96
WILLIAM M. HART ET AL .....	RK272-2689	02/26/96

**Dismissals**

The following submissions were dismissed:

Name	Case No
AIR PARK ASSOCIATES .....	RF300-20370
ALASKA COASTAL AIRLINES .....	RF272-97991
DICKMAN AVIATION SERVICES, INC .....	RF272-97998
ED'S GULF .....	RF300-13495
ED'S GULF .....	RF300-13043
GOVERNMENT ACCOUNTABILITY PROJECT .....	VFA-0134
JOHN C. MANCHESTER, INC. ....	RF300-20307
NEW YORK TIMES .....	RF272-78117
PROVIDENCE JOURNAL CO. ....	RF272-78127
TUCKER OIL CO. ....	RF304-15340

Name	Case No
VIC'S MONTEREY ARCO .....	RF304-15405

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**Notice of Issuance of Decisions and Orders; Week of May 13 Through May 17, 1996**

During the week of May 13 through May 17, 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 5, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

*Glen M. Jameson, 5/13/96, VFA-0147*

Glen M. Jameson filed an Appeal from a determination issued to him on March 5, 1996, by the DOE's Oak Ridge Operations Office (Oak Ridge) in response to a request for information that Mr. Jameson submitted under the Freedom of Information Act (FOIA). In that determination, Oak Ridge released the documents Mr. Jameson requested, but withheld portions on the basis that they were exempt from disclosure pursuant to Exemption 4 of the FOIA. Mr. Jameson argued that (i) PAI Corporation, whose contract and invoices he was requesting, should not have been permitted to have any input in the response to his request; (ii) the contract is not a prospective procurement; (iii) DOE procurement has been greatly curtailed, therefore, PAI is winding down and does not have a competitive advantage to be protected; (iv) he does not work in or with

anybody in the federal contracting arena, and is in no position to divulge the information to any of PAI's competitors; and (v) the information that has been withheld is not privileged or confidential. The DOE determined that the withheld information was exempt from disclosure under Exemption 4, because the information was privileged or confidential. Furthermore, the DOE indicated that (i) PAI's opportunity to comment on the releasability of the requested information was required by Executive Order No. 12,600, (ii) Mr. Jameson's identity and whether he works in the contracting arena are irrelevant and (iii) even though more information may be released after a contract is awarded, the DOE must consider whether Exemption 4 applies. Accordingly, the Appeal was denied.

*James Minter, 5/16/96, VFA-0153*

On April 19, 1996, James Minter filed an Appeal from a determination issued to him on April 3, 1996, by the Director of the Office of Public Affairs of the (DOE's) Albuquerque Operations Office. In that determination, the Director partially denied a request for information filed by Mr. Minter under the Freedom of Information Act (FOIA). In his Appeal, Mr. Minter contends that additional responsive information may exist. In considering the Appeal, the DOE confirmed that the Director followed procedures reasonably calculated to uncover any responsive information. Accordingly, the Appeal was denied.

*Martha Julian, 5/14/96, VFA-0121*

Martha Julian filed an Appeal from a determination issued to her daughter, Lisa Doyle, by the DOE's Albuquerque Operations Office, in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Albuquerque Operations Office performed an adequate search for radiation and other records of Mrs. Julian's father who worked at the Sandia Laboratory from 1951 to his death in 1958. Accordingly, the Appeal was denied.

Personnel Security Appeal

*Albuquerque Operations Office, 5/17/96, VSA-0051*

An individual whose access authorization was suspended filed a Request for Review of a DOE Hearing Officer's recommendation against

restoration of the access authorization. The individual's access authorization was suspended by the DOE's Albuquerque Operations Office upon its receipt of derogatory information indicating that the individual had a drug test that was positive for the use of marijuana. The Hearing Officer rejected the individual's position that the positive drug test was caused by inhaling second hand marijuana smoke in a night club. In the request for review, the individual stated that the Hearing Officer did not give proper weight to the testimony of an expert witness, who stated that it was possible for the individual to have a positive drug test based on passive inhalation of marijuana. In his Opinion, the Director of the Office of Hearings and Appeals found that even if it is theoretically possible to have a positive drug test through passive inhalation, it was proper for the Hearing Officer to require corroborating evidence showing that the positive drug test in this case resulted from second hand marijuana smoke. Accordingly, the Director did not recommend that the individual access authorization be restored.

Whistleblower Proceeding

*Daniel L. Holsinger K-Ray Security, Inc., 5/16/95, VWA-0005; VWA-0009*

Daniel L. Holsinger filed a whistleblower complaint against Watkins Security Agency, Inc. (WSA) in which he alleged that the contractor retaliated against him for making disclosures concerning possible thefts of DOE property by another WSA employee at the DOE's Morgantown Energy Technology Center. After investigating the complaint, the Office of Contractor Employee Protection (OCEP) found that Holsinger had made a protected disclosure and that thereafter the contractor had retaliated against him by suspending him and by terminating his employment as a part-time security guard. At the same time, OCEP found that Holsinger had not shown that WSA had retaliated against him with regard to two other disciplinary actions. OCEP proposed that WSA provide Holsinger with lost pay and legal fees and that the current contractor, K-Ray Security, Inc. (K-Ray), be required to reinstate Holsinger to his former position as a security guard.