

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

* 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).

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.

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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).

Draft EISs

ERP No. D-AFS-K65189-CA Rating EC2, Cavanah Multi-Resource Management Project, Implementation, Enhancing Forest Health and Productivity, Tahoe National Forest, Foresthill Ranger District, Placer County, CA.

Summary: EPA expressed environmental concerns that the proposed management activities in a watershed degraded water quality are not being taken under a fully integrated management plan.

ERP No. D-BLM-G67003-NM Rating LO, Little Rock Open-Pit Mine Project, Construction and Operation, Plan of Operations Approval, and several Permits Issuance, Grant County, NM.

Summary: EPA had no objection to the preferred alternative with the inclusion of the mitigation and monitoring measures presented in the Draft EIS addressing dust suppression as part of the mine plan operation.

ERP No. D-DOE-L09809-WA, Hanford Site Tank Waste Remediation Systems (TWRS), Management and Disposal of Radioactive, Hazardous, and Mixed Wastes, NPDES Permit and Approval of Several Permits, in the City of Richland, Grant County, WA.

Summary: EPA's previous endorsement of the single regulatory authority approach and the extensive involvement of the Washington Department of Ecology as a co-preparer of this draft EIS, EPA does not foresee having any critical environmental objections to the proposed project.

ERP No. D-NPS-L61211-AK Denali National Park and Reserve, "Frontcountry" Entrance Area and Road Corridor, Development Concept Plan, AK.

Summary: Our abbreviated review has revealed no EPA concerns on this project.

ERP No. DA-AFS-L65137-AK Rating EO2, Tongass Land Management Plan Revision (1996 DSEIS) New Information Concerning Changes to the Management Plan, Implementation, Tongass National Forest, AK.

Summary: EPA expressed environmental objections to the action as described in the preferred alternative because of potential adverse impacts to water quality and fish habitat.

ERP No. DR-SFW-K99026-CA Rating EC2, Multiple Species Conservation Program (MSCP) Planning Area, Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth, San Diego County, CA.

Summary: EPA expressed environmental concerns that tribal

governments were not consulted. EPA also noted that requirements of Clean Water Act Section 404 will continue to apply on lands which do not become part of the habitat conservation area.

Final EISs

ERP No. F-AFS-K82005-CA Placerville Nursery Pest Management Plan, Implementation, Camino, El Dorado County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-AFS-L65259-OR Foss Perkins Analysis Area, Vegetation Management and Timber Sale, Ochoco National Forest, Snow Mountain Ranger District, Harney County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-BLM-K67033-NV Lone Tree Gold Mine Expansion Project, Plan of Operations Approval and Permit Issuance, Winnemucca District, Humboldt County, NV.

Summary: EPA continued to express environmental concerns regarding impact due to waste rock and design of the tailings facility.

ERP No. F-FRC-L05209-WA Nisqually Hydroelectric Project (FERC No. 1862) Issuing New License (Relicense), Nisqually River, Pierce, Thurston and Lewis Counties, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-NPS-L65258-ID Hagerman Fossil Beds National Monument, General Management Plan, Implementation, Twin Falls and Gooding Counties, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Other

ERP No. LD-AFS-K65185-CA Rating EO2, Tahoe National Forest and Portion of Plumas and EL Dorado National Forests, Implementation, Twenty-Two Westside Rivers for Suitability and inclusion in the National Wild and Scenic Rivers System, Wild and Scenic River Study, Placer, Nevada, Sierra, Plumas, EL Dorado and Yuba Counties, CA.

Summary: EPA expressed environmental objections to the minimal protection and designation of exceptional ecological areas and the use of less protective classifications for acknowledged wild segments. EPA urge

the Forest Service to designate the Downieville complex or to actively seek Research Natural Area or Special Interest Area designation for this exceptional, biologically rich area and for reconsideration of the North Fork of the North Fork American River, North Fork of the Middle Fork American River, Fordyce Creek, Middle Yuba River, and the upper South Yuba River for designation into an ecosystem watershed management strategy.

Dated: November 5, 1996.

William D. Dickerson,
Director, NEPA Compliance Division, Office of Federal Activities.

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[ER-FRL-5474-6]

**Environmental Impact Statements;
Notice of Availability**

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed October 28, 1996 Through November 01, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960512, DRAFT EIS, AFS, ID, Musselshell Analysis Area, Implementation, Pierce Ranger District, Clearwater National Forest, Clearwater County, ID, Due: December 23, 1996, Contact: Douglas Gober (208) 935-2513.

EIS No. 960513, DRAFT EIS, FHW, WI, Milwaukee East-West Corridor, Transportation Improvements, IH-43 and Hampton Avenue to downtown Milwaukee and along IH-94 to WI-16, Major Investment Study, Funding, US Coast Guard and COE Section 404 Permits, Milwaukee and Waukesha Counties, WI, Due: January 10, 1997, Contact: Richard Madrzak (608) 829-7510.

EIS No. 960514, FINAL EIS, AFS, AK, Upper Carroll Timber Sale, Implementation, Tongass National Forest, Ketchikan Administrative Area, Ketchikan Ranger District, Revillagigedo Island, AK, Due: December 09, 1996, Contact: Bill Nightingale (907) 225-2148.

EIS No. 960515, DRAFT EIS, AFS, ID, Mosquito-Fly Project Area, Implementation, Harvest Timber, Road Construction and Grant Access to Private Land, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID, Due: December 23, 1996, Contact: Andy Schmidt (208) 245-4517.

EIS No. 960516, DRAFT SUPPLEMENT, FHW, WI, US 12 Highway