

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 11 through November 15, 1996]

Date	Name and location of applicant	Case No.	Type of submission
11/13/96	James H. Stebbings, Naperville, Illinois	VFA-0242	Appeal of an Information Request Denial. If granted: The April 19, 1996 Freedom of Information Request Denial issued by the Argonne Area Office would be rescinded, and James H. Stebbings would receive access to certain Department of Energy information.

[FR Doc. 96-31419 Filed 12-10-96; 8:45 am]

BILLING CODE 6450-01-P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of October 21 Through October 25, 1996

During the week of October 21 through October 25, 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: December 4, 1996.

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

Decision List No. 4

Week of October 21 through October 25, 1996

Appeals

Perkins Coie, 10/25/96 VFA-0221

The law firm of Perkins Coie filed an Appeal from a determination issued to it on August 20, 1996 by the Bonneville Power Administration (BPA) of the Department of Energy (DOE). In that determination, BPA denied in part Perkins Coie's request for information filed under the Freedom of Information Act (FOIA). In its Appeal, Perkins Coie challenged BPA's application of Exemption 5 to three requested documents in dispute and requested

that the DOE direct BPA to release the documents. In considering the Appeal, the Office of Hearings and Appeals found that BPA properly applied the threshold requirements of Exemption 5 to the requested documents at issue, and that there was no public interest in its release. However, the Office of Hearings and Appeals remanded this Appeal to BPA to issue a new determination, either releasing reasonably segregable factual material or explaining the reasons for withholding any factual material contained in the documents. Therefore, the Department of Energy granted Perkins Coie's Appeal.

Radian International, 10/21/96 VFA-0220

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by Radian International. In its Appeal, Radian requested that we review a determination issued by the Oak Ridge Operations office that certain documents were not "agency records" and were therefore not subject to release under the FOIA. Radian also expanded the scope of its original request to include additional documents. In the Decision, the OHA found that the documents in question were not agency records, and that a FOIA appeal is not the appropriate venue for the consideration of an initial request for documents. The OHA therefore remanded Radian's request for additional documents to the Oak Ridge Office for processing under the FOIA, and denied Radian's appeal of Oak Ridge's original determination.

Personnel Security Hearing

Pittsburgh Naval Reactors Office, 10/24/96, VSO-0103

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. After carefully considering the record of the processing in view of the standards set forth in Part 710, the Hearing Officer found that: (i) the individual has a history of abuse of

illegal drugs; (ii) the individual provided false information to the DOE; (iii) the acts of the individual tend to show that the individual is not honest, reliable, or trustworthy; and (iv) the DOE's security concerns regarding these behaviors were not overcome by evidence mitigating the derogatory information underlying the DOE's charges. Accordingly, the Hearing Officer found that the individual's access authorization should not be granted.

Requests for Exception

J. Enterprises, Inc., 10/24/96, VEE-0027

J. Enterprises, Inc. filed an Application for Exception from the requirement that it file Form EIA-782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." The DOE found that the firm was not affected by the reporting requirement in a manner different from other similar firms, and consequently was not experiencing a special hardship, inequity, or unfair distribution of burdens. Accordingly, the firm's Application for Exception was denied.

Oil Products, Inc., 10/21/96, VEE-0023

Oil Products, Inc. filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Oil Product's request, the DOE found that the firm was not experiencing a serious hardship or gross inequity. Accordingly, exception relief was denied.

Interlocutory Order

Meta, Inc., 10/23/96, VWZ-0007

A Hearing Officer from the Office of Hearings and Appeals denied a Motion to Dismiss filed by Maria Elena Torano Associates, Inc. (META). In its Motion, META sought the dismissal of a complaint filed by C. Lawrence Cornett (Cornett) under the DOE's Contractor Employee Protection Program, 10 C.F.R. Part 708. META alleged that Cornett's complaint failed to state an actionable claim. Specifically, META asserted that Cornett failed to make a protected

disclosure under Part 708 since the information contained in his alleged disclosures was already known by DOE or META and that information disclosed did not involve any substantial and specific threats to health and safety. The Hearing Officer held that, under Part 708, a disclosure need not consist of unique information that is unknown to the recipient. Further, the Hearing Officer found that a disclosure, to be protected under Part 708, need not in fact involve a substantial and specific danger to employees or public health and safety as long as individual making the disclosure in good faith believes that the disclosure concerns a substantial

and specific danger. The Hearing Officer also found that the question regarding Cornett's beliefs was a factual matter. Consequently, the Hearing Officer denied the Motion.

Refund Application

Steuben Co. Farm Bureau, 10/21/96, RF272-97912

The DOE issued a Decision and Order concerning one Application for Refund filed by Steuben Co. Farm Bureau in the Subpart V crude oil overcharge refund proceeding. The DOE determined that Steuben Co. Farm Bureau was not entitled to a refund since it had filed a Retailer's Escrow Settlement Claim

Form and Waiver. In this filing, Steuben Co. Farm Bureau requested a Stripper Well refund from the Retailers' escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the DOE denied the Application for Refund.

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.

Aline Manire, et al	RF272-94540	10/23/96
Atlantic Richfield Co./Jerair Panosian	RF304-15505	10/24/96
Atlantic Richfield Co./Ron's ARCO	RF304-15506	10/24/96
Beaver Valley Builders Supply, Inc., et al	RF272-95100	10/24/96
Crude Oil Supple Ref Dist	RB272-00092	10/23/96
Holstein Coop Elevator, et al	RG272-6	10/23/96
Ruth A. Martinek	RJ272-24	10/24/96
W.E. Bartholw & Son Const., et al	RK272-01406	10/21/96

Dismissals

The following submissions were dismissed.

Name	Case No.
Craig W. Anderson	VFA-0207
Craid W. Anderson	VFA-0212
Loyd Jones Well Service	RF272-96591

[FR Doc. 96-31418 Filed 12-10-96; 8:45 am]
BILLING CODE 6450-01-P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of November 11 Through November 15, 1996

During the week of November 11 through November 15, 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.o.ha.doe.gov>.

Dated: December 4, 1996.

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

Decision List No. 7

Week of November 11 through November 15, 1996.

Appeals

Nathaniel Hendricks, 11/13/96, VFA-0229

The OHA denied an appeal of a Freedom of Information determination issued by the Chicago Operations Office (COO). Previously, the OHA had remanded to COO a request by the appellant so that COO could search for responsive documents concerning five specific events that occurred in Chicago in the 1940's. The appellant conjectured that the events were connected with Manhattan Project. When COO responded that it could find no responsive documents, the appellant claimed that COO had not conducted an adequate search. The OHA questioned personnel at COO about the search, and determined that there had been a search reasonably calculated to uncover

requested documents. Consequently, the OHA denied the appeal.

Personnel Security Hearings

Albuquerque Operations Office, 11/14/96, VSO-0102

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, "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 information presented by the DOE with respect to the individual's positive drug test for marijuana use was sufficient to raise a substantial concern that the individual may be a frequent recreational user of that drug and to support a denial of access authorization pursuant to 10 C.F.R. 710.8(k). The Hearing Officer also found that the individual had failed to present sufficient evidence to support his assertion that his marijuana use was