

evidence to mitigate the falsification charges against him, and that he had engaged in conduct that tends to show that he is not honest, reliable or trustworthy. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Request for Exception

Laney Oil Company, Inc., 4/4/97 VEE-0028

Laney Oil Company, Inc. of Monroe, North Carolina filed an Application for Exception requesting that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers" Monthly Petroleum Products Sales Report" because the firm had replaced

the employee with the responsibility for collecting the information contained in the Form. The DOE found that the filing requirement did not constitute a special hardship, inequity or unfair distribution of burdens and denied the firm's request that it be relieved of its obligation to file the Form. However, DOE also found that it would be difficult for the firm to file these Forms on time. As such, DOE granted the firm an extension of time to file the Forms required for April through December of 1996.

Refund Application

Crude Oil Supplemental Refund Distribution, 4/2/97 RB272-00104

The DOE granted supplemental refunds to 17 applicants. The applicants

were represented by a filing service in the crude oil refund proceeding. Because the filing agent did not send refund checks granted in previous decisions to applicants in a timely manner, the DOE decided to send the checks directly to the applicants.

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.

Apex Oil Co/Clark Oil Co/et al/Charlie's Clark Super 100	RF342-180	3/31/97
Apex Oil Co/Clark Oil Co/et al/Jack's Clarksuper 100	RF342-166	4/1/97
Atlantic Richfield Co./Joe's Arco et al	RF304-15202	3/31/97
Big Pine Trucking Co., Inc	RG272-89	4/2/97
Cassell Truck Lines, Inc. et al	RF272-85640	4/1/97
Colonial Trailways, Inc. et al	RG272-100	4/1/97
Continental Grain Co	RR272-00225	4/1/97
Crude Oil Supple Ref Dist	RB272-00105	4/4/97
Crude Oil Supple Ref Dist	RB272-00100	4/1/97
Douglas Cnty Farmers Coop et al	RF272-99117	4/2/97
Gulf Oil Corporation/United Refining Co	RF300-17886	4/1/97
Karnak Corporation	RG272-00864	4/4/97
Pharmhouse, Inc. et al	RF272-97796	4/2/97
Village of Sturtevant et al	RF272-83027	4/1/97
W.E. Bartholow & Son Construction	RJ272-39	3/31/97

Dismissals

The following submissions were dismissed:

Name	Case No.
Coastal Air	RF272-98713
Colony Oaks Associates	RF272-98787
Farm Bureau Driveway	RF272-98749
Harran Transportation Co., Inc	RF272-95755
Interlake Steel Corporation	RF272-88837
Kenton County Schools	RF272-79646
Moore McCormack, Inc	RF272-98745
National Steel Corporation	RR272-287
National Steel Corporation	VEG-0003
New Brunswick Township, NJ	RF272-88749
Personnel Security	VSO-0145
Richard W. Ghilotti	RG272-814
Sutherland Products, Inc	RG272-00143
W V Northern Railroad, Ltd	RK272-3951

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of March 24 Through March 28, 1997

During the week of March 24 through March 28, 1997, 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, 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: May 21, 1997.

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

Decision List No. 26

Appeals

Alexander German, 3/28/97, VFA-0275

The DOE denied a Freedom of Information Act (FOIA) Appeal filed by Alexander German. German sought information concerning a particular Office of the Inspector General (IG) investigation. In its decision, the DOE found that the IG's withholding of the identities of individuals who had provided information to the IG was appropriate under FOIA Exemptions 6 and 7(C).

Burlin McKinney, 3/28/97, VFA-0273

The DOE granted in part a Freedom of Information Act (FOIA) Appeal filed by Burlin McKinney. McKinney sought information concerning a particular Office of the Inspector General (IG) investigation. In its decision, the DOE found that the IG's withholding of the identities of individuals who had provided information to the IG was appropriate under FOIA Exemptions 6 and 7(C). The DOE also concluded that the IG's withholding of a portion of an internal DOE memorandum under Exemption 5 was proper. However, the DOE found that the IG redacted some information that it had released to McKinney previously and remanded the matter to the IG for a review of the withheld material.

Chemical Weapons Working Group, Inc., 3/25/97, VFA-0272

Chemical Weapons Working Group, Inc., filed an Appeal from a Federal Energy Technology Center (FETC) determination that partially granted a request for information made under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that certain cover sheets, background information and headings could not be withheld pursuant to any FOIA Exemption and ordered the release of this information or an explanation for withholding. The DOE also found that the FETC adequately searched for

responsive information and that the FETC properly withheld some material pursuant to Exemption 3, 4, and 5, of the FOIA.

Personnel Security Review

Personnel Security Review, 3/24/97, VSA-0102

An individual whose access authorization had been suspended filed a request for review of a DOE Hearing Officer's recommendation against its restoration. The individual's access authorization had been suspended by virtue of a DOE Office's receipt of derogatory information indicating that the individual had used marijuana, an illegal drug, and had provided DOE with false information in a Personnel Security Interview (PSI). At a hearing a DOE Hearing Officer found that the individual had failed to show sufficient mitigation from his recent drug use or the falsification. In his Appeal, the individual requested that he be given an opportunity of complete a year of rehabilitation and challenged the Hearing Officer's findings regarding the weight of evidence to be accorded his character witnesses. The individual also challenged the Hearing Officer's determination that he was a frequent or regular user of marijuana and argued that his recent job performance should be used in the decision regarding his clearance. Upon review, the Director found that the individual could not be given an opportunity to complete a year of rehabilitation and that the Hearing Officer had properly accorded the character witnesses sufficient evidentiary weight. The Director also found that the individual's recent job performance did not mitigate the security concerns raised by the individual's recent use of marijuana and falsification. However, the Director found that there was not sufficient evidence for the Hearing Officer to conclude that the individual was a frequent or regular user of marijuana. Despite this finding, the Director determined that the individual had failed to present sufficient evidence to mitigate the security concerns raised by

his recent marijuana use and that the Hearing Officer had sufficient grounds to support his finding regarding falsification. Consequently, the Director recommended that the individual's clearance not be restored.

Refund Applications

Enron Corp./H.C. Oil Company, Inc., 3/28/97, RF340-1

The DOE issued a Decision and Order concerning an application for refund in the Enron Corporation (Enron) special refund proceeding filed by H.C. Oil Company, Inc. (HCOC). The DOE found that HCOC was a reseller whose purchases from Enron were made on the spot market, were sporadic and discretionary in nature, and were unrelated to any of HCOC's business obligations to its regular customers. Accordingly, the DOE found that HCOC fit the spot market presumption of non-injury for resellers, and that the firm had not made a showing of injury to overcome this presumption. The DOE, therefore, denied the application for refund.

Oivind Lorentzen Shipping AS, 3/26/97, RR272-281

The DOE granted a Motion for Reconsideration filed on behalf of Oivind Lorentzen Shipping AS (Oivind) in the crude oil overcharge refund proceeding. Oivind's original Application for Refund was denied because the DOE found that the estimation method used by Oivind to determine its petroleum purchases was unreasonable. Upon reconsideration the DOE found that Oivind's new estimation method was reasonable and granted the firm a 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.

BUFFALO PAPERBOARD CORPORATION	RK272-04124	3/26/97
CENTRAL COAT & APRON, INC. ET AL	RK272-03646	3/28/97
DFDS A/S	RG272-00490	3/26/97
FT. THOMAS UNIFIED DISTRICT 7 ET AL	RF272-95354	3/28/97
HAROLD HENLEY	RJ272-41	3/26/97
JOSEPH B. HENDERSON ET AL	RK272-04135	3/28/97
ROGGEN FARMERS ELEVATOR ASSOC. ET AL	RG272-00009	3/26/97

Dismissals

The following submissions were dismissed:

Name	Case No.
AYRES CORP	RF272-98694

Name	Case No.
BERTIE COUNTY SCHOOL BUS GARAGE	RG272-739
BLUE BELL, INC	RF272-98666
CLARKSTOWN CENTRAL SCHOOL DISTRICT	RF272-98799
COLUMBUS COUNTY BD OF EDUCATION	RF272-89674
DAKOTA OIL COMPANY	RF355-24
FLEMING COMPANIES, INC	RK272-3910
GARDEN STATE ROAD MATERIALS, INC	RG272-282
GIBBEL BROTHERS, INC	RF272-98674
GRANITE ROCK CO	RF272-98649
GREEN COUNTY BD OF EDUCATION	RG272-989
H.B. FULLER AUTOMOTIVE CO	RK272-4061
KARL SCHMIDT UNISA, INC	RK272-4060
LAWRENCE TEXTILE, INC	RK272-3907
MARITIME OVERSEAS CORP	RF272-98775
PERSONNEL SECURITY HEARING	VSO-0127
PIONEER NURSERY	RK272-4059
SIMONDS INDUSTRIES, INC	RK272-4062
STEVEDORING SERVICES OF AMERICA, INC	RK272-3908
UNION COUNTY SCHOOL DISTRICT	RF272-88995
WESTERN CAROLINA UNIVERSITY	RF272-86876

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of April 28 Through May 2, 1997

During the week of April 28 through May 2, 1997, 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, 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: May 21, 1997.

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

Decision List No. 31

Personnel Security Hearings

*Personnel Security Hearing, 4/30/97,
VSO-0121*

An Office of Hearings and Appeals Hearing Officer issued an opinion regarding the eligibility of an individual employed by a contractor at a DOE facility to maintain an access authorization under the provisions of 10 C.F.R. Part 710. The individual's access authorization had been suspended because the individual had used crack cocaine extensively over a seven year period, drank alcohol to the point of abuse, and falsified information on a Questionnaire for Sensitive Positions. The Hearing Officer found that the individual failed to present any evidence to mitigate the concerns raised by the DOE with respect to the individual's drug use, alcohol abuse, and falsification. The Hearing Officer also opined that the individual had not presented any mitigating evidence to demonstrate he had not engaged in conduct that tends to show he is not honest, reliable, or trustworthy. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 5/1/97, VSO-0126

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain his access authorization under the provisions of 10 C.F.R. Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that the individual used an illegal drug, cocaine, deliberately provided false information to DOE Security Officials, and violated his DOE Drug Certification. These findings were based on the individual's positive drug test. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 5/2/97, VSO-0122

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 C.F.R. Part 710. The respondent was alleged to be unreliable based upon his frequent misuse over a period of three years of his office computer to view adult material on the internet. A psychiatrist testified that the individual felt compelled to view adult material in part because of marital stresses. Since the respondent lost his job three years ago as a result of this activity, he and his wife have resolved the most serious of their marital problems. Consequently, the motivating force behind his conduct has been removed. In addition, he has been open with his coworkers about what he did and its consequences and has admonished them to avoid misusing office equipment. Under these circumstances, the Hearing Officer found that the respondent should be granted an access authorization.

Supplemental Order

Benton County, Washington, Office of Civilian Radioactive Waste Management, 4/30/97, VPX-0011

The Office of Hearings and Appeals (OHA) issued a Supplemental Order adopting the Joint Stipulation filed on April 30, 1997 by Benton County, Washington and the Department of Energy, through its Office of Civilian Radioactive Waste Management. The Stipulation embodies the parties' agreement to settle any and all disputes