

concerning DOE's liability to Benton County for "payments-equal-to-taxes" (PETT) under the Nuclear Waste Policy Act of 1982, as amended (NWPA). The Supplemental Order and the incorporated Stipulation shall have the same force and effect as if the Order had been entered without a Stipulation and after a hearing in this matter. Since this

matter has been settled by the Stipulation, the appeal previously filed by Benton County on November 4, 1993, OHA Case No. LPA-0001, was dismissed with prejudice.

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.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and

AIR SIAM NO. 1	RG272-609	5/1/97
AIR SIAM NO. 2	RG272-610	
APEX OIL CO/CLARK OIL CO/ET AL/NGL SUPPLY, INC	RF342-305	4/30/97
MRS. CARL SCHROEDER JR. ET AL	RK272-01402	4/28/97
SOUTHWEST RESEARCH INSTITUTE ET AL	RF272-98706	5/1/97
TIMBOCS SERVICE STATION	RK272-3350	4/30/97
YANGMING MARINE TRANSPORT	RG272-413	5/1/97

Dismissals

The following submissions were dismissed:

Name	Case No.
CATOOSA COUNTY	RF272-98779
HIGHTOWERS APTS./PEABODY CORP	RK272-03825
MAIERS MOTOR FREIGHT	RK272-04121
MATERIALS TRANSPORT SERVICE	RK272-03659
PERSONNEL SECURITY HEARING	VSO-0144

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 5 Through May 9, 1997

During the week of May 5 through May 9, 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. 32

Appeals

Alfred G. Bell, 5/5/97, VFA-0286

Alfred G. Bell filed an Appeal from a determination issued to him on March 24, 1997, by the Department of Energy's Oak Ridge Operations Office (OR). That determination was issued in response to a request for information submitted by Mr. Bell under the Freedom of Information Act. The request sought a copy of an occurrence report completed as a result of Mr. Bell being diagnosed with Chronic Beryllium Disease in accordance with criteria outlined in DOE Order 5000.3B. OR conducted a search of its files and located a report entitled "Individual Accident/Incident Report." However, this was not the document Mr. Bell referred to in his request. The Appeal challenged the adequacy of the search conducted by OR. In considering the Appeal, the DOE found that OR conducted an adequate search which was reasonably calculated to discover documents responsive to Mr. Bell's request. Accordingly, the Appeal was denied.

Burns Concrete, Inc., 5/9/97, VFA-0284

DOE granted in part and denied in part an Appeal of withholding of documents submitted by a third-party in connection with a construction project at a DOE laboratory. DOE remanded the

request for release of non-exempt information.
John D. Kasprovicz, 5/9/97, VFA-0287

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by John D. Kasprovicz. In his Appeal, Mr. Kasprovicz argued that the Manager of the Chicago Operations Office improperly applied FOIA Exemption 5 in withholding portions of a document. In the Decision, the DOE upheld the Manager's determination, finding that the withheld portions are exempt from mandatory disclosure under the deliberative process and attorney work product privileges that are incorporated in Exemption 5.

Request for Exception

W. Gordon Smith Company, 5/7/97, VEE-0037

W. Gordon Smith Company (Smith) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Smith requested relief from the EIA reporting requirement because it believed the requirement was unduly burdensome to the company. In considering this request, the DOE found that the burden placed upon Smith, due to the temporary unavailability of personnel to complete the form, was greater than that encountered by other firms required to complete Form EIA-782B. Accordingly,

Smith was granted temporary relief from its obligation to file Form EIA-782B.

Refund Application

Wales Transportation, Inc., 5/7/97, RR272-291

Wales Transportation, Inc. filed a Motion for Reconsideration of the denial of its Application for Refund in the Subpart V crude oil overcharge refund proceeding. The Office of Hearings and Appeals denied that application because the firm had filed a claim and waiver in the Surface Transporter refund

proceeding, thereby giving up its right to a Subpart V refund. In reaching that conclusion, the OHA rejected Wales' contention that the filing of the ST claim and waiver were unauthorized. In the Motion for Reconsideration, Wales asked the OHA to reconsider its determination with respect to the authorization issue. In reviewing the Motion, the OHA noted that it is the burden of the applicant to substantiate that it is entitled to a refund. The OHA found that Wales had failed to submit any new information to corroborate its

contention that the filing of the claim and waiver were unauthorized. Accordingly, the Motion was denied.

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.

C.A. MEYER PAVING & CONST	RG272-00904	5/5/97
ARLINGTON SALVAGE & WECKER CO	RR272-00289	
ATLAS ASPHALT, INC	RG272-00911	
C.W. POSS, INC	RG272-00921	
CENTRAL NEBRASKA COOPERATIVE	RF272-93809	5/7/97
CORNWALL INDUSTRIES, INC. ET AL	RF272-98604	5/6/97
DANIEL GUNTER AND LOIS GUNTER	RK272-3145	5/7/97
EUGENE REZABEK	RJ272-43	5/9/97
FIRST DISTRICT ASSOCIATION	RG272-699	5/9/97
GULF OIL CORPORATION/GOODHUE LUMBER CO., INC	RF300-21838	5/7/97
GULF OIL CORPORATION/JEANE'S GULF SERVICE	RF300-21837	5/5/97
JAUNTY TEXT DIV OF ADVANCED TEXTILE CO	RK272-03583	5/5/97
KING GEORGE CNTY PUB SCHLS ET AL	RF272-96303	5/5/97

Dismissals

The following submissions were dismissed:

Name	Case No.
ARMCO, INC	RG272-528
O'CONNOR & YOUNG DRILLING COMPANY	RG272-16
PERSONNEL SECURITY HEARING	VSO-0149
TABLE ROCK ASPHALT CONSTRUCTION CO	RG272-751

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5480-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 12, 1997 Through May 16, 1997 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 04, 1997 (62 FR 16154).

Draft EISs

ERP No. D-COE-K36118-CA Rating EC2, Upper Guadalupe River Flood

Control Project, Construction, Santa Clara Valley Water District, Santa Clara County, CA.

Summary: EPA expressed environmental concerns about the lack of a full analysis of indirect and cumulative impacts; the need for more discussion of wetland and riparian-related mitigation; the lack of discussion of impacts associated with herbicide use; and the need to quantify construction-related air emissions. EPA suggested that the project can be improved by adopting pollution prevention measures in design, construction and operation of the flood control facility.

ERP No. D-COE-K67041-CA Rating EO2, Morrison Creek Mining Reach Downstream (South) of Jackson Highway, Mining and Reclamation Project, COE Section 404 Permit Issuance, Sacramento County, CA.

Summary: EPA expressed environmental objections with the proposed project base on adverse impacts to wetlands and other waters of the United States that would occur. EPA expressed concern that the draft EIS did not clearly demonstrate that all

appropriate measures were taken to avoid and minimize placing fill material in waters of the United States. EPA strongly recommended that the project be redesigned to avoid and minimize such adverse impacts.

ERP No. D-FHW-H40156-00 Rating LO, U.S. 61, U.S. 218 and IA-394 Highway Improvements, Construction, Funding, U.S. Army COE Section 404 Permit, Lewis and Clark Counties, MO and Lee and Henry Counties, IA.

Summary: EPA had no objections to the proposed action, and expressed preference for the "west alignment" as the preferred alternative.

ERP No. D-FHW-H40160-IA Rating EC2, US 34 Roadway and Bridge Improvements, I-29 in Mills County, IA to US 75 in Cass or Sarpy Counties, NB, COE Section 404 and US Coast Guard Permits, Mills County, Iowa and Cass or Sarpy Counties, Nebraska.

Summary: EPA expressed environmental concerns base on proposed impacts to wetlands, wildlife habitat and stormwater runoff, and questioned whether the proposed action supports the expressed purpose and