

concerning Robert and Charlotte Serber. The DOE confirmed that no DOE offices possess responsive information beyond the information the DOE already provided to Mr. Kramish. Accordingly, the DOE denied Mr. Kramish's appeal.  
 Gary A. Davis, 8/14/98, VFA-0429

The DOE granted a Freedom of Information Act Appeal filed by Gary A. Davis. Davis sought a further search for responsive documents by the Oak Ridge Operations Office. DOE found that Oak Ridge failed to adequately explain why it did not find or release a document DOE and had not appropriately justified the adequacy of its search. Accordingly, the matter was remanded to Oak Ridge.  
 International Brotherhood of Electrical Workers, 8/11/98 VFA-0421

International Brotherhood of Electrical Workers appealed a Determination issued to it by the Savannah River Operations Office (SR),

in response to a request under the Freedom of Information Act (FOIA). The Appellant sought information concerning SR's and Wackenhut Services, Inc.'s activities concerning a union election that the Appellant participated in. The Appellant argued that SR's refusal to release certain withheld information was improper, SR's search was inadequate, and that SR should have granted the Appellant a fee waiver or reduced its fees. The Appellant also appealed an earlier FOIA determination by SR of a different request. DOE found with regard to the earlier request that SR had correctly determined that the responsive records were contractor, not agency, records. DOE upheld SR's denial of a fee waiver, and found with the exception of some improper photocopying charges, most of the fees charged to be reasonable. DOE further found that SR had (1) made an inadequate determination regarding

some requested videos and that it must conduct a further search, (2) improperly withheld a contractor-prepared document under Exemption 5 because it was neither intra-agency nor inter-agency, (3) some portions of attorney billing records were incorrectly withheld under Exemption 4, and (4) had made an inadequate determination regarding its Exemption 4 withholding of a labor consultant's normal rates. Accordingly, the Appeal of SR's determination was granted in part.

**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 Colloid Co .....	RK272-4531	8/14/98
Amertex Service Group .....	RK272-04833	8/14/98
Englewood City Board of Educ et al .....	RF272-96301	8/14/98
Enron Corp./Liquid Petroleum Corp .....	RR340-00006	8/11/98
Randolph Township Brd of Educ. et al .....	RK272-04834	8/14/98

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 BILLING CODE 6450-01-P

**DEPARTMENT OF ENERGY**

**Office of Hearings and Appeals**

**Notice of Issuance of Decisions and Orders During the Week of August 3 Through August 7, 1998**

During the week of August 3 through August 7, 1998, 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, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-

0107, Monday through Friday, 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: November 12, 1998.

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

**Decision List No. 97**

*Week of August 3 Through August 7, 1998*

**Refund Application**

*ENRON CORP./MAPCO, INC., 8/3/98, RF340-149*

DOE granted a refund to MAPCO, Inc. (MAPCO) in the Enron Corporation (Enron) special refund proceeding. DOE concluded that MAPCO's NGL purchases were not discretionary in

nature, and were dictated by the firm's need to supply its regular customers and maintain the flow of product in its pipeline system. However, DOE excluded purchases of ethane because they were insufficiently documented. DOE also excluded certain quantities of natural gasoline that appear to have been purchased pursuant to a fixed price contract. DOE then found that MAPCO had shown that it was injured by its purchases of propane from Enron to some extent, but limited the firm's refund to approximately 85.5% of its full volumetric refund for that product.

**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.

Army & Air Force Exch Svc .....	RF272-16333	8/3/98
Crude Oil Supplemental .....	RB272-00139	8/5/98
Crude Oil Supple Ref Dist .....	RB272-00141	8/6/98
Great Western Onshore Inc. ....	RF272-75456	8/3/98
Grooms Oil Co. Inc. ....	RF272-99087	.....
Valley Farmers Co-Op, Inc. et al .....	RF272-98907	8/5/98

**Dismissals**

The following submissions were dismissed.

Name	Case No.
Ellzey & Brooks, LLC .....	VFA-0433
Michael Ares .....	VWA-0022
Personnel Security Hearing .....	VSO-0210

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## DEPARTMENT OF ENERGY

### Office of Hearings and Appeals

#### Notice of Issuance of Decisions and Orders During the Week of July 20 Through July 24, 1998

During the week of July 20 through July 24, 1998, the decision and order summarized below was issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of this decision and order is available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, DC 20585-0107, Monday through Friday, 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: November 12, 1998.

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

#### Decision List No. 95

*Week of July 20 Through July 24, 1998*

#### Refund Application

*ENRON CORP./APEX OIL CO., 7/22/98  
RF340-136*

The DOE denied a refund application filed by Apex Oil Company in the Enron Corporation refund proceeding. The DOE determined that Apex was a spot purchaser of Enron product and that Apex had not rebutted the spot purchaser presumption of non-injury.

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## DEPARTMENT OF ENERGY

### Office of Hearings and Appeals

#### Notice of Issuance of Decisions and Orders During the Week of July 27 Through July 31, 1998

During the week of July 27 through July 31, 1998, 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, 950 L'Enfant Plaza, SW, Washington, D.C. 20585-0107, Monday through Friday, 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: November 12, 1998.

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

#### Decision List No. 96—Week of July 27 Through July 31, 1998

#### Appeals

*Charles W. Hemingway, 7/31/98, VFA-0424*

DOE denied a Freedom of Information Act (FOIA) Appeal filed by Charles W. Hemingway. Hemingway contended that the redacted information was wrongfully withheld under Exemption 6 of the FOIA because he filed his request under the Ethics in Government Act (EGA), to which FOIA exemptions are inapplicable. OHA dismissed this portion of the Appeal because it lacks jurisdiction to consider matters arising under the EGA. DOE denied Hemingway's claim that it had waived the right to withhold a social security number under Exemption 6 by previously releasing it in a proceeding before the Merit Systems Protection Board. DOE held that the submission to the MSPB did not dissolve the employee's privacy right.

*Edwin S. Rothschild, 7/28/98, VFA-0423*

The DOE denied a Freedom of Information Act (FOIA) Appeal filed by the Edwin S. Rothschild. Rothschild sought documents used to prepare a report to Congress pertaining to consideration of a regional petroleum product reserve. Responsive documents were located by the Office of the Deputy

Assistant Secretary for Strategic Petroleum Reserves (SPR), but were withheld under Exemption 5. Rothschild argued that release of the report mandated release of the preparatory material. DOE found that the status of the documents as predecisional was not altered by the release of the final report, DOE and that SPR had articulated the foreseeable harm that would result from release of the requested documents.

#### Personnel Security

*Personnel Security Review, 7/29/98,  
VSA-0186*

The Director of OHA issued an Opinion regarding the eligibility of an individual to maintain access authorization. The Director agreed with the Hearing Officer that the individual had failed to mitigate security concerns regarding his alcohol abuse, because while the individual had agreed not to use alcohol while participating in the Employee Assistance Program (EAPRO), he did so on ten occasions, and then lied about that use to his EAPRO counsel on eight occasions. Accordingly, the Director recommended that the individual's access authorization not be restored.

#### Refund Application

*Good Hope Refiners/Apex Oil  
Company 7/31/98, RF339-12*

DOE considered an Application for Refund filed by Apex Oil Company in the Good Hope Refineries Special Refund Proceeding. DOE denied that portion of the application based on Apex's purchases of middle distillates during the period, August 19, 1973 through July 31, 1976, because Apex was a spot purchaser during this period and had failed to rebut the spot purchaser presumption of non-injury. DOE granted Apex a refund based on Apex's purchases of 500,241.901 gallons of motor gasoline during the period, August 1976 through July 31, 1979. DOE found that Apex had demonstrated injury by showing it had positive banks of unrecovered increased product costs in excess of the refund sought, and had suffered a competitive disadvantage as a result of its purchases from Good Hope.