September 12, 2001, hearing in Amargosa Valley, Nevada. The correct address is: Longstreet Inn and Casino, Highway 373, Amargosa Valley, Nevada 89020.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036–0307, 1–800–967–3477.

SUPPLEMENTARY INFORMATION: On May 7, 2001, the Department announced in the **Federal Register** (66 FR 23013–23016) the initiation of a public comment period on the Secretary's consideration of the Yucca Mountain site for recommendation as a spent nuclear fuel and high-level radioactive waste repository. In conjunction with the initiation of the comment period, the Department issued a report, the Yucca Mountain Science and Engineering Report (YMS&ER), summarizing the scientific and technical information compiled by the Department to date outlining the preliminary design and performance attributes of a potential geologic repository at the Yucca Mountain site. On August 21, 2001, the Department announced in the **Federal Register** (66 FR 43850–43851) the issuance of another report, the Preliminary Site Suitability Evaluation (PSSE). Each of these documents is intended to inform the public and facilitate public review and comment on a possible site recommendation. Also, in the August 21, 2001, **Federal Register** Notice the Department announced that the comment period would close on September 20, 2001. That comment period is now extended 15 days to October 5, 2001.

Issued in Washington, D.C. on September 10, 2001.

James H. Carlson,

Acting Director Office of Civilian Radioactive Waste Management.

[FR Doc. 01–23037 Filed 9–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $6,672,934, plus accrued interest, in refined petroleum product overcharges obtained by the DOE pursuant to a remedial order OHA issued to Hudson Oil Company, Inc., Case No. VEF–0011. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, Subpart V.

DATE AND ADDRESS: Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0107. All comments should conspicuously display a reference to Case No. VEF–0011.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr., Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585–0107, (202) 287–1562, *richard.cronin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $6,672,934, plus accrued interest, obtained by the DOE pursuant to a Remedial Order OHA issued to Hudson Oil Company, Inc. (Hudson) and Hudson Refining Company, Inc. (Hudson Refining), on March 15, 1985. Under the Remedial Order, Hudson and Hudson Refining were found to have violated the federal petroleum price regulations involving the sale of refined petroleum products during the relevant audit periods.

The OHA will distribute the Remedial Order funds in a refund proceeding described in the Decision and Order. Purchasers of motor gasoline from Hudson, Hudson Refining or its affiliated firms will have the opportunity to submit refund applications. Refunds will be granted to applicants who satisfactorily demonstrate that they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the Hudson-affiliated firms during the relevant audit period.

All applications must be postmarked by November 30, 2001. All applications received in this proceeding will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal Holidays, in Room 7132 (the public reference room), 950 L'Enfant Plaza, Washington, DC.

Dated: September 6, 2001.

George Breznay,

Director, Office of Hearings and Appeals.

Department of Energy, Washington, DC 20585,

September 6, 2001.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Hudson Oil Company, Inc.
Date of Filing: March 20, 1995.
Case Number: VEF–0011.

On March 20, 1995, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to an OHA Remedial Order issued to Hudson Oil Company, Inc. (Hudson) and Hudson Refining Company, Inc. (Hudson Refining). *See Hudson Oil Company, Inc.,* 12 DOE ¶ 83,035 (1985). In accordance with the provisions of the procedural regulations at 10 CFR part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order.

I. Background

ERA audits of Hudson, a retailer with headquarters in Kansas City, Kansas and Hudson Refining, a refiner located in Cushing, Oklahoma, revealed possible violations of the Mandatory Petroleum Price Regulations in Hudson's sales of gasoline during the period of price controls.[1] Subsequently, ERA issued a proposed remedial order (PRO) alleging that Hudson and its affiliated firms had violated the petroleum price regulations. Hudson challenged the PRO before OHA. In our March 15, 1985 Remedial Order, we found that Hudson had violated the price regulations and had overcharged its motor gasoline customers by $10,670,000 during the period June 1979 through August 1979 (refund period). *See Hudson,* 12 DOE at 86,479. Hudson and its affiliates were found to be jointly and severally liable for the overcharge amount.[2] Id. at 86,481. On March 20, 1995, the Office of General Counsel filed a Petition for the Implementation of Special Refund Proceeding for the $6,672,934 in funds Hudson has remitted to the DOE.[3]

[1] Hudson and its affiliates operated a widespread retail operation. While information in the available files is incomplete, Hudson gasoline may have been sold by retailers in Virginia, Florida, Pennsylvania, Maryland, New York, West Virginia and Georgia.

[2] The Remedial Order references Hudson Van Oil Company, Hudson Van Oil Company of Kansas City, Inc., Hudson Van Oil Company of Florida, Inc., Hudson Van Oil Company of California, Inc., Hudson Stations, Inc., Wind Stations, Inc., News, Inc. and Hudson Petroleum, Inc. as Hudson affiliates covered in ERA's PRO. *See Hudson,* 12 DOE at 86,483 n.1.

[3] Hudson and Hudson Refining filed for bankruptcy in 1984. In addition to the March 1985

Continued

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is 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, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (Vickers).

On July 5, 2001, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Consent Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 66 FR 36764 (July 13, 2001). More than 30 days have elapsed and OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed except for the deadline to submit applications for refund. The deadline will be extended to November 30, 2001.

III. Refund Procedures

A. Standards for the Evaluation of Claims

This section sets forth the standards to be used in evaluating refund claims in the Hudson refund proceeding. From our experience with Subpart V proceedings, we expect that refund applicants will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities and cooperatives; (iii) refiners, resellers and retailers (collectively referred to as ''resellers'') and (iv) consignees.

In order to receive a refund, each claimant will be required to submit a schedule of its gasoline purchases from Hudson during the refund period. If the gasoline was not purchased directly from Hudson, the claimant must establish that the gasoline originated from Hudson.[4]

In addition, a reseller, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Hudson's regulatory violations. This showing will consist of two distinct elements. First, a reseller claimant will be required to show, through credible, firm-specific data, that it had ''banks'' of unrecouped increased product costs beginning in June 1979 through August 1979. In addition, such a claimant must demonstrate that market conditions would not have allowed those costs to be passed through to its customers. This showing may be made in a comparative disadvantage analysis, which compares the price paid by the applicant with the average price paid for the same product at the relevant level of distribution. *See, e.g., Enron Corp./MAPCO, Inc.,* 27 DOE ¶ 85,018 (1998).

A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the overcharges, or is eligible for a refund of less than the applicable presumption-level amount, will not then be eligible for a presumption-based refund. Instead, such a claimant will receive a refund which reflects the level of injury established in its Application. No refund will be approved if its submission indicates that it was not injured as a result of its gasoline purchases from Hudson.

1. Presumptions for Claims Based Upon Hudson Gasoline Purchases

Our general practice is to grant refund 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 firm during the period covered by the consent order.

Based on the available ERA workpapers, we estimate that during the period June 1979 through August 1979 Hudson sold 80,207,000 gallons of gasoline. See Schedule II–Q–Summary of allowable cost recoveries at 3. Dividing the recovered overcharge amount of $6,672,934 by this estimated number of gallons sold by Hudson results in a volumetric refund amount (or allocable share) of $0.0832 per gallon. In addition, each successful applicant is entitled to receive a proportionate share of accrued interest.[5]

In order to expedite the processing of applications in this proceeding and to ensure that refund claims are evaluated in the most efficient and equitable manner possible, we will use the following presumptions in addition to the volumetric presumption described above.

a. End-Users

End-users of Hudson gasoline, i.e., consumers, whose use of the gasoline was unrelated to the petroleum business are presumed injured and need only document their purchase volumes from Hudson during the refund period to be eligible to receive a full allocable share.

b. Refiners, Resellers and Retailers Seeking Refunds of $10,000 or Less

Any reseller claimant whose allocable share is $10,000 or less, i.e. who purchased 120,192 gallons or less of Hudson gasoline during the refund period will be presumed injured and therefore need not provide a further demonstration of injury, besides documentation of its volumes, to receive its full allocable share.

c. Medium-Range Refiners, Reseller and Retailer Claimants

In lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000.[6] An applicant in this group will only be required to provide documentation of its purchase volumes of Hudson gasoline during the refund period in order to receive a refund of 40 percent of its total volumetric share, or $10,000, whichever is greater.

d. Regulated Firms and Cooperatives

We have determined that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of Hudson gasoline used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or cooperative whose allocable share is greater that $10,000 will also be required to certify that it will pass through any refund received to its customers or member-customers, provide us with a full explanation of how it plans to accomplish that restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund.

e. Spot Purchasers

We will establish a rebuttable presumption that a reseller that made only irregular or sporadic, i.e., spot, gasoline purchases from Hudson did not suffer injury as a result of those purchases. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases of Hudson gasoline. In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not sufficiently recouped through draw down of banks. See Texaco, 20 DOE at 88,320–21.

f. Consignees

Finally, as in previous cases, we will presume that consignees of Hudson gasoline,

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Remedial Order discussed above OHA issued another Remedial Order to Hudson on July 1, 1985, finding that Hudson had violated the price regulations concerning sales of crude oil and was liable for overcharges of $6,380,506. *See Hudson Oil Company,* 13 DOE ¶ 83,022 (1985). ERA's petition requests that we institute a refund proceeding covering both Remedial Orders. However, since Hudson has failed to remit sufficient money to fully comply with the March 1985 Remedial Order, and this Remedial Order was first in time, we will institute a refund proceeding that covers only Hudson's violation of price regulations concerning its sales of motor gasoline detailed in the March 1985 Remedial Order.

[4] Indirect purchasers who establish that their gasoline purchases originated with Hudson will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the Hudson overcharges to its customers. See Texaco, 20 DOE ¶ 85,147 at 88,319 n.39 (1990)(Texaco). As a result, applications from indirect purchasers will generally be considered only after evalauting the applications of their suppliers.

[5] The minimum refund amount that will be paid to a claimant is $15.00. We have found through our experience that the cost of processing claims for less than $15.00 outweighs the benefits of restitution in these cases. *See, e.g., Texaco*, 20 DOE at 88,320 n. 43.

[6] That is, claimants who purchased between 120,192 gallons and 1,502,404 gallons of Hudson gasoline during the refund period may elect to utilize the presumption. Claimants who purchased more than 1,502,404 gallons from Hudson may elect to limit their claims to $50,000.

if any exist, were not injured by the Hudson overcharges. *See Atlantic Richfield Company,* 17 DOE ¶ 85,069 at 88,153 (1988). A consignee agent is an entity that distributed its products pursuant to an agreement whereby its supplier established the prices to be paid and charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products distributed. This presumption may be rebutted by showing that the consignee's sales volumes and corresponding commission declined due to the alleged uncompetitiveness of Hudson's gasoline pricing practices. *See Gulf Oil Corporation/C.F. Canter Oil Company,* 13 DOE ¶ 85,388 at 88,962 (1986).

B. Refund Application Requirements

To apply for a refund from the Hudson monies paid to the DOE, a claimant should submit an Application for Refund containing the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[7]

(2) A monthly purchase schedule covering the refund period. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its Hudson gasoline purchases, but the estimation method must be reasonable and must be explained;

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Hudson refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with Hudson, it should explain this affiliation, including the time period in which it was affiliated;[8]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled with Hudson Oil Company, Inc. and Case No. VEF–0011. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for that information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked on or before November 30, 2001,[9] and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by ''representatives,'' including refund filing services, consulting firms, accountants, and attorneys. *See, e.g., Texaco; Starks Shell Service,* 23 DOE ¶ 85,017 (1993); *Shell Oil Co.,* 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant. The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated above.

Additionally, the OHA reserves the authority to require additional information to be submitted before granting any particular refund in the Hudson proceeding.

C. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Hudson Refund Claims

The Interior and Related Agencies Appropriations Act for FY 1999 amended certain provisions of the Petroleum Overcharge and Distribution and Restitution Act of 1986 (PODRA). These amendments extinguished rights that refund applicants had under PODRA to refunds for overcharges on the purchases of refined petroleum products. They also identified and appropriated a substantial portion of the funds being held by the DOE to pay refund claims (including the funds paid by Hudson). Congress specified that these funds were to be used to fund other DOE programs. As a result, the petroleum overcharge escrow accounts in the refined product area contain substantially less money than before. In fact they may not contain sufficient funds to pay in full all pending and future refund claims (including those in litigation) if they should all be found to be meritorious. *See Enron Corp./Shelia S. Brown,* 27 DOE ¶ 85,036 at 88,244 (2000) (Brown). Congress directed OHA to ''assure the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among all claimants.'' *Omnibus Consolidated and Emergency Supplemental Appropriation Act, 1999,* Pub. L. No. 105–277 § 337, 112 Stat 2681, 2681–295 (1998) (language added to PODRA); *Brown,* 27 DOE at 88,244. In view of this Congressional directive and the limited amount of funds available, it may become necessary to prorate the funds available among the meritorious Hudson claims. However, it could be several years before we know the full value of the meritorious claims and the precise total amount available for distribution. It will be some time before we are able to determine the amount that is available for distribution for each claimant.

In light of the considerations described above, we will pay successful claimants using the following mechanism. All successful small claimants (refunds under $10,000) will be paid in full. To require small claimants to wait several more years for their refunds would constitute an inordinate burden and would be inequitable. *See Brown,* 27 DOE at 88,244. For all others granted refunds, including reseller claimants who have elected to take presumption refunds, we will immediately pay the larger of $10,000 or 50 percent of the refund granted. Once the other pending refund claims have been resolved, the remainder of the Hudson claims will be paid to the extent that it is possible through an equitable distribution of the funds remaining in the petroleum overcharge escrow account.

It Is Therefore Ordered That:

(1) The payments remitted to the Department of Energy by Hudson Oil Company, Inc., pursuant to the remedial order issued on March 15, 1985, will be distributed in accordance with the forgoing Decision.

(2) Applications for Refund in the Hudson Oil Company, Inc. Refund Proceeding, Case No. VEF–0011, must be postmarked no later than November 30, 2001.

[7] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the regulations codified at 10 CFR part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[8] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of Hudson were not injured by the firm's overcharges. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.,* 15 DOE ¶ 85,288 (1987). This is because Hudson presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. *See Marathon Petroleum Co./Pilot Oil Corp.,* 16 DOE ¶ 85,611 (1987), *amended claim denied,* 17 DOE ¶ 85,291 (1988), *reconsideration denied,* 20 DOE ¶ 85,236 (1990). Furthermore, if an affiliate of Hudson were granted a refund, Hudson would be indirectly compensated from a remedial order fund remitted to settle its own alleged violations.

[9] We originally proposed a deadline of October 31, 2001. Given the date of our final decision establishing the Hudson refund proceeding, we will extend this deadline to November 30, 2001.

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 01–22974 Filed 9–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $528,941, plus accrued interest, in crude oil and refined petroleum product overcharges obtained by the DOE pursuant to consent orders signed by Intercoastal Oil Corporation, Case No. LEF–0057, and Gulf States Oil & Refining, Case No. LEF–0073. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, subpart V and DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

DATE AND ADDRESS: Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585–0107. All applications should display a reference to Case Nos. LEF–0057 or LEF–0073.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr. Assistant Director Office of Hearings and Appeals 1000 Independence Ave., SW. Washington, DC 20585–0107 (202) 287–1562 *richard.cronin@hq.doe.gov*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $528,941, plus accrued interest, obtained by the DOE pursuant to Consent Orders entered into with Intercoastal Oil Corporation (Intercoastal) and Gulf States Oil & Refining (Gulf States). Under the Consent Orders, Intercoastal and Gulf States resolved all allegations concerning violations of the federal petroleum price regulations involving the sale of refined petroleum products and crude oil during the relevant audit periods.

The OHA will distribute one-half of the Consent Order funds in a refund proceeding described in the Decision and Order to provide restitution for those parties injured by Intercoastal's or Gulf States' alleged violations of pricing regulations for refined petroleum products. Purchasers of refined petroleum products from Intercoastal or Gulf States will have the opportunity to submit refund applications. Refunds will be granted to applicants who satisfactorily demonstrate that they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the firms during the relevant consent order period.

The remaining one-half of the Consent Order funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. Because the deadline for filing crude oil refund applications has passed, no new applications for refund for the alleged crude oil pricing violations of Intercoastal and Gulf States will be accepted for these funds.

Applications should be postmarked by November 30, 2001. Applications so received will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal Holidays, in Room 7132 (the public reference room), 950 L'Enfant Plaza, Washington, DC

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy, Washington, DC 20585

September 6, 2001.

Decision and Order, Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Intercoastal Oil Corporation, Gulf States Oil & Refining.

Dates of Filing: July 20, 1993, July 20, 1993.

Case Numbers: LEF–0057, LEF–0073.

The Office of General Counsel (OGC) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR § 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by Intercoastal Oil Corporation (Intercoastal) and Gulf States Oil & Refining (Gulf States) pursuant to Consent Orders (the Consent Orders) the firms have entered into with the DOE and have determined that such procedures are appropriate.

Under the terms of the Consent Orders, a total of $528,941 has been remitted to DOE to remedy pricing violations which occurred during the relevant audit periods.[1] These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's plan to distribute those funds. The specific application requirements appear in Section III of this Decision.

I. Background

Gulf States, a firm with its home office in Houston, Texas, was a refiner during the period of price controls, August 13, 1973 through January 27, 1981. During this period, Intercoastal, a California corporation, was a reseller of crude oil and refined petroleum products. Economic Regulatory Administration audits of Intercoastal and Gulf States revealed possible violations of the Mandatory Petroleum Price Regulations (MPPR). Subsequently, each firm entered into a Consent Order to settle its disputes with the DOE concerning sales of crude oil and refined petroleum products. Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability with respect to sales to their customers during the settlement periods. The settlement period referenced in the Intercoastal Consent Order is the period October 25, 1973 through January 17, 1981.[2] For the Gulf States Consent Order the settlement period is August 19, 1973 through January 27, 1981.

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, Subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On July 16, 2001, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Consent Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. *See* 66 FR 38670 (July

[1] Pursuant to the Consent Orders, Gulf States remitted $500,000 to DOE and Intercoastal has remitted $28,941.

[2] The Intercoastal Consent Order resolves all possible violations of the petroleum price regulations for the period August 19, 1973 through January 27, 1981. However, the consent order goes on to state that Intercoastal was active as a reseller of crude oil and refined petroleum products from October 25, 1973 through January 27, 1981. *See Consent Order with Intercoastal Oil Corporation*, Case No. HRO–0083 (January 25, 1983) at ¶ 301.