

Name	Case No.
ALLING & CORY PAPER	RF272-92101
BEST CANDLES OF FLORIDA	RF321-20326
BROKEN BOW TEXACO	RF321-20733
CITY OF BOLIVAR	RF272-88844
CITY OF CHICO	RF272-88545
CITY OF GULFPORT	RF272-88880
CITY OF RUSSELLVILLE	RF272-88058
CLAY CENTER PUBLIC SCHOOLS	RF272-88190
D&T TEXACO	RF321-17158
EDGEFIELD COUNTY	RF272-88929
EMBRY HILLS TEXACO	RF321-20118
FLORIDA CITY	RF272-88845
FLORIDA HOSPITAL	RF272-88662
FLORIDA STATE HOSPITAL	RF272-88717
G. PIERCE WOOD MEMORIAL HOSPITAL	RF272-88663
K & E WHISTLE STOP	RF304-14188
LOCKHEED ENVIRONMENTAL SYSTEMS AND TECHNOLOGIES COMPANY	VVA-0001
NORTHEAST FLORIDA STATE HOSPITAL	RF272-88652
PAUL ROYBAL TEXACO	RF321-20626
RALPH WATSON OIL COMPANY	RF304-14990
SIKESTON R VI	RF272-88735
SOUTH FLORIDA STATE HOSPITAL	RF272-88674
SPRINGFIELD TWP SCHOOL DISTRICT	RF272-88852
Yah Ta Hey Texaco	RF321-18009
Yellowstone Motel & Texaco	RF321-20077

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Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of November 20 Through November 24, 1995

During the week of November 20 through November 24, 1995, 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, DC 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: August 30, 1996.

Richard W. Dugan,
Acting Director, Office of Hearings and Appeals.

Personnel Security Hearings

*Oakland Operations Office, 11/22/95,
VSO-0039*

An Office of Hearings and Appeals Hearing Officer 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 holding a hearing and carefully considering all the evidence in the record in view of the standards set forth in Part 710, the Hearing Officer found that the individual had not intentionally overcharged the government for lodging expenses in connection with his official travel to Washington, DC from the Lawrence Livermore National Laboratory (LLNL). Rather, the Hearing Officer found that while the individual may not have complied with the LLNL travel regulations in his vouchering of the Washington apartment, his actions were the result of mistake or misunderstanding. In addition, the individual had approval from his supervisor to recover the full cost of the apartment even though it was not used for some portions of most months. Thus, the Hearing Officer concluded that the individual had not "[e]ngaged in unusual conduct * * * which tend to show that the individual is not honest, reliable or trustworthy, or * * * may be

subject to pressure, coercion or duress which may cause the individual to act contrary to the best interest of the national security." 10 C.F.R. § 710.8(l).

In addition, the Hearing Officer could not find that the individual had forged or altered documents in support of his travel claims because the DOE Counsel was unable to produce the originals of those documents at the hearing. However, the Hearing Officer noted that such information that was in the record on the subject strongly indicated that the individual had not altered or forged documents. Finally, the Hearing Officer found that the individual had not knowingly submitted invalid documents in support of his lodging costs. Thus, the Hearing Officer again found that the individual's actions were not contrary to the standard of 10 C.F.R. § 710.8(l). Accordingly, the Hearing Officer found that restoration of the access authorization would not be contrary to the national interest or endanger the common defense and security and recommended restoration of the access authorization.

*Richland Operations Office, 11/20/95,
VSO-0037*

An OHA Hearing Officer issued an opinion on a request for review from an individual employed by a Hanford contractor whose DOE security clearance had been suspended. The individual's "Q" access authorization was suspended after Richland security officials concluded that she had provided false or misleading information to the DOE about her arrest for driving while intoxicated (DWI) in

September 1993. At the hearing which was held in this case, the individual conceded that she failed to report her September 1993 DWI arrest to DOE security officials within the time required. However, the individual submitted evidence of unusual circumstances, which she contended mitigated the seriousness of her delay in reporting the arrest to Richland security personnel. She also showed that she had remembered to report it before DOE learned about the arrest from another source. In addition, the individual introduced evidence which showed that she had not given DOE security officials a false or misleading account of her arrest, even though her version of events differed in some minor respects from that given in the arresting police officer's report. After considering the record in this case, the Hearing Officer concluded that the individual had met her burden of coming forward with evidence to show that restoring her access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, the Hearing Officer recommended that the individual's access authorization should be restored.

Richland Operations Office, 11/22/95, VSO-0044

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain a level "L" access authorization under the provisions of 10 C.F.R. Part 710. The DOE Personnel Security Division alleged that the individual "[d]eliberately misrepresented, falsified, or omitted significant information" from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions and a Personnel Security Interview. Furthermore, the DOE Personnel Security Division alleged that the

individual "[e]ngaged in * * * unusual conduct or is subject to * * * circumstances which tend to show that the individual is not honest, reliable, or trustworthy * * * or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." On September 20, 1995, an evidentiary hearing was convened at which twelve witnesses testified. After carefully examining the record of the proceeding, the Hearing Officer determined that the individual deliberately withheld relevant information, or provided false information to the DOE repeatedly over the course of 16 years. Furthermore, the Hearing Officer found that several recent and significant incidents also raised serious doubts concerning the individual's honesty and reliability. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Applications

Aluminum Company of America, 11/22/95, RR272-95

The Aluminum Company of America (Alcoa) applied for a crude oil overcharge refund based on purchases of 181,799,790 gallons of green petroleum coke from crude oil refineries and 104,157,498 gallons of calcined petroleum coke. The DOE denied Alcoa's request for refunds of calcined petroleum coke purchased from crude oil refineries. The DOE found that the refiners who calcined green petroleum coke were the end-users of the green petroleum coke. The DOE therefore concluded that Alcoa was not injured by its purchases of calcined petroleum coke from crude oil refineries. However, the DOE granted the firm's request for a refund based on its purchases of green

petroleum coke, finding that this was an eligible product because Alcoa purchased this coke from crude oil refineries. Accordingly, the firm was granted a refund of \$290,880 based on those purchases.

Amerbelle Corporation, 11/22/95, RR272-00194

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted in the Subpart V crude oil refund proceeding by the Amerbelle Corporation. Amerbelle Corporation claimed that it did not receive the check issued to it in the *Crude Oil Supplemental Refund Distribution* 18 DOE ¶ 85,878 (1989). Amerbelle requested that the DOE reissue the check. Because the period during which Treasury maintains records and is able to trace the check had expired, we could not determine whether the check was cashed. Without a factual basis to believe that a check was not cashed, the DOE has determined that it will not reissue a check. Accordingly, the DOE denied Amerbelle's Motion for Reconsideration.

State Escrow Distribution, 11/22/95, RF302-17

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute \$15,400,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

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.

CRUDE OIL SUPPLE. REFUND DIST	RB272-58	11/20/95
EMPIRE MENHADEN COMPANY, INC. ET AL	RF272-77233	11/20/95
HAWKS NURSERY CO. ET AL	RK272-1305	11/20/95
JUNE STEPHENITCH ET AL	RK272-594	11/20/95
ROY FIGI ET AL	RK272-1432	11/20/95
SOUTH TOMS RIVER BOROUGH HALL ET AL	RK272-2465	11/20/95
SUNRISE TRANSPORTATION, INC	RF272-83153	11/22/95
TRIMOUNT BITUMINOUS PRODUCTS	RF272-77605	11/20/95
WAYNE WARD ET AL	RK272-42	11/20/95
WEATHERBEE FARMS, INC. ET AL	RK272-76	11/20/95

Dismissals

The following submissions were dismissed:

Name	Case No.
MINUTEMAN AVIATION	RF272-98013
PHILIP P. KALODNER	VSG-0002