Name	Case No
VIC'S MONTEREY ARCO	RF304–15405

[FR Doc. 96–23888 Filed 9–17–96; 8:45 am]

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Notice of Issuance of Decisions and Orders; Week of May 13 Through May 17, 1996

During the week of May 13 through May 17, 1996, 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, S.W., 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: September 5, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

Glen M. Jameson, 5/13/96, VFA–0147

Glen M. Jameson filed an Appeal from a determination issued to him on March 5, 1996, by the DOE's Oak Ridge Operations Office (Oak Ridge) in response to a request for information that Mr. Jameson submitted under the Freedom of Information Act (FOIA). In that determination, Oak Ridge released the documents Mr. Jameson requested, but withheld portions on the basis that they were exempt from disclosure pursuant to Exemption 4 of the FOIA. Mr. Jameson argued that (i) PAI Corporation, whose contract and invoices he was requesting, should not have been permitted to have any input in the response to his request; (ii) the contract is not a prospective procurement; (iii) DOE procurement has been greatly curtailed, therefore, PAI is winding down and does not have a competitive advantage to be protected; (iv) he does not work in or with anybody in the federal contracting arena, and is in no position to divulge the information to any of PAI's competitors; and (v) the information that has been withheld is not privileged or confidential. The DOE determined that the withheld information was exempt from disclosure under Exemption 4, because the information was privileged or confidential. Furthermore, the DOE indicated that (i) PAI's opportunity to comment on the releasability of the requested information was required by Executive Order No. 12,600, (ii) Mr. Jameson's identity and whether he works in the contracting arena are irrelevant and (iii) even though more information may be released after a contract is awarded, the DOE must consider whether Exemption 4 applies. Accordingly, the Appeal was denied.

James Minter, 5/16/96, VFA–0153

On April 19, 1996, James Minter filed an Appeal from a determination issued to him on April 3, 1996, by the Director of the Office of Public Affairs of the (DOE's) Albuquerque Operations Office. In that determination, the Director partially denied a request for information filed by Mr. Minter under the Freedom of Information Act (FOIA). In his Appeal, Mr. Minter contends that additional responsive information may exist. In considering the Appeal, the DOE confirmed that the Director followed procedures reasonably calculated to uncover any responsive information. Accordingly, the Appeal was denied.

Martha Julian, 5/14/96, VFA–0121

Martha Julian filed an Appeal from a determination issued to her daughter, Lisa Doyle, by the DOE's Albuquerque Operations Office, in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Albuquerque Operations Office performed an adequate search for radiation and other records of Mrs. Julian's father who worked at the Sandia Laboratory from 1951 to his death in 1958. Accordingly, the Appeal was denied.

Personnel Security Appeal

Albuquerque Operations Office, 5/17/96, VSA–0051

An individual whose access authorization was suspended filed a Request for Review of a DOE Hearing Officer's recommendation against restoration of the access authorization. The individual's access authorization was suspended by the DOE's Albuquerque Operations Office upon its receipt of derogatory information indicating that the individual had a drug test that was positive for the use of marijuana. The Hearing Officer rejected the individual's position that the positive drug test was caused by inhaling second hand marijuana smoke in a night club. In the request for review, the individual stated that the Hearing Officer did not give proper weight to the testimony of an expert witness, who stated that it was possible for the individual to have a positive drug test based on passive inhalation of marijuana. In his Opinion, the Director of the Office of Hearings and Appeals found that even if it is theoretically possible to have a positive drug test through passive inhalation, it was proper for the Hearing Officer to require corroborating evidence showing that the positive drug test in this case resulted from second hand marijuana smoke. Accordingly, the Director did not recommend that the individual access authorization be restored.

Whistleblower Proceeding

Daniel L. Holsinger K-Ray Security, Inc., 5/16/95, VWA–0005; VWA–0009

Daniel L. Holsinger filed a whistleblower complaint against Watkins Security Agency, Inc. (WSA) in which he alleged that the contractor retaliated against him for making disclosures concerning possible thefts of DOE property by another WSA employee at the DOE's Morgantown Energy Technology Center. After investigating the complaint, the Office of Contractor Employee Protection (OCEP) found that Holsinger had made a protected disclosure and that thereafter the contractor had retaliated against him by suspending him and by terminating his employment as a part-time security guard. At the same time, OCEP found that Holsinger had not shown that WSA had retaliated against him with regard to two other disciplinary actions. OCEP proposed that WSA provide Holsinger with lost pay and legal fees and that the current contractor, K-Ray Security, Inc. (K-Ray), be required to reinstate Holsinger to his former position as a security guard.

WSA, K-Ray and Holsinger all requested a hearing to challenge these findings and conclusions.

Prior to the hearing, Holsinger and WSA entered into a monetary settlement concerning Holsinger's claims against WSA. As a result, WSA did not participate in the hearing and was later dismissed as a party to the proceeding, and Holsinger dropped his objections to the findings in OCEP's Report and Proposed Disposition. The hearing focused on the issue of Holsinger's reinstatement by K-Ray.

The OHA Hearing Officer found that a violation of 10 C.F.R. § 708.5 had occurred. Specifically, he found that Holsinger had proven by a preponderance of the evidence that he engaged in protected activity under 10 C.F.R. Part 708 and that this activity was a contributing factor to his suspension and his dismissal from employment by WSA. He also found that WSA and K-Ray had failed to prove by clear and convincing evidence that WSA would have taken these adverse personnel actions absent Holsinger's protected activity. The Hearing Officer evaluated the arguments presented by K-Ray and Holsinger and concluded that reinstatement of Holsinger by K-Ray was a necessary and appropriate action to effect full relief for Holsinger. He therefore ordered K-Ray to reinstate Holsinger.

Implementation of Special Refund Procedures

Gil-Mc Oil Corporation, et al., 5/16/96, LEF–0054 ET AL.

The DOE issued a Decision and Order implementing procedures for the distribution of $1,140,553 (plus accrued interest) obtained from Gil-Mc Oil Corporation, LeClair Operating Company, SRG Corporation, Petroleum Carrier Company, and Dane Energy Company. These funds were remitted by each firm to the DOE to settle possible pricing violations with respect to sales of crude oil. The DOE determined that these monies will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27,899 (August 4, 1986). Under that policy, 20% will be reserved for injured purchasers of refined products, 40% will be distributed to the federal government, and 40% of the states.

Texas American Oil Corp., 5/14/96, VEF–0019

The DOE issued a Decision and Order implementing procedures for disbursement of $48,307.13 in crude oil overcharge funds obtained from the bankrupt estate of Texas American Oil Corporation. The DOE ordered that these funds, plus accrued interest, be disbursed to individual claimants. The DOE determined that this allocation is required by the decision of the United States Court of Appeals for the Federal Circuit in *Texas American Oil Corp.* v. *DOE,* 44 F.3d 1557 (Fed. Cir. 1995) (en banc). In that case, the court held that the DOE's claim in the Texas American bankruptcy proceeding on behalf of individual claimants should have a higher priority than its claim on behalf of the states and federal government. Pursuant to that decision, the bankruptcy court distributed to the DOE an amount equivalent to 20 percent of its liquidated claim in the Texas American bankruptcy proceeding, since under the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986), a maximum of 20 per cent of the crude oil overcharge funds remitted to the DOE is reserved for injured purchasers of refined petroleum products.

Request for Exception

Jacobs Oil Company, 5/13/96 VEE–0021

Jacobs Oil Company filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' Jacobs argued that filing these surveys was time consuming and onerous. However, the DOE determined that Jacobs was not suffering a special hardship, inequity or unfair distribution of burdens. Accordingly, exception relief was denied.

Refund Application

State Escrow Distribution, 5/17/96, RF302–18

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $44,100,000 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.

BAYLY CORP.	RC272–0335	05/15/96
CITY OF NORTH EASTON ET AL	RF272–98102	05/15/96
CRUDE OIL SUPPLE REF DIST	RB272–00076	05/17/96
GULF OIL CORPORATION/EDDY GALLUCCI'S GULF	RF300–19982	05/16/96
IRENE VORA	RJ272–00008	05/17/96
MOTOR TRANSPORT CO. ET AL	RF272–78490	05/17/96
TOWNSEND BROS. ET AL	RK272–02405	05/16/96

Dismissals

The following submissions were dismissed:

Name	Case No.
ALBUQUERQUE OPERATIONS OFFICE	VSO–0086
CHESAPEAKE & OHIO RAILROAD	RF272–3439
CINTAS CORP.	RK272–3499
KONCZAL ENTERPRISES, INC.	RF304–15007

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