

[FR Doc. 96-26422 Filed 10-15-96; 8:45 am]
BILLING CODE 6450-01-P

Notice of Issuance of Decisions and Orders During the Week of June 10 Through June 14, 1996

During the week of June 10 through June 14, 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, 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: October 7, 1996.

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

Decision List No. 976

Personnel Security Hearings

Albuquerque Operations Office, 6/10/96, VSO-0083

A DOE Hearing Officer issued an Opinion concerning the eligibility of an individual for continued access authorization. The Hearing Officer found that the individual had not mitigated the security concern arising from his occasional use of marijuana

over a 14-year period. Most importantly, the Hearing Officer concluded that there had not been sufficient time since the individual's last use of marijuana to indicate that he will refrain in the future from the use of illegal drugs. The Hearing Officer also found that the individual had failed to mitigate the security concerns associated with (1) his deliberate falsification of significant information concerning his prior drug use on his QSP or (2) his recent arrest for speeding, evading arrest, and possession of drug paraphernalia. Accordingly, the Hearing Officer recommended that the individual's access authorization should not be restored.

Albuquerque Operations Office, 6/12/96, VSA-0061

An individual filed a request for review of a DOE Hearing Officer's recommendation against restoring his access authorization. The access authorization had been suspended by the Department of Energy's Albuquerque Operations Office (DOE/AL) upon its receipt of derogatory information indicating that the individual had engaged in unusual conduct tending to show that he is not honest, reliable, or trustworthy.

Upon review, the individual claimed (1) that he did not commit any crimes related to the non-filing of income tax returns and the non-payment of income tax, and (2) that his actions did not constitute unusual conduct. The Director found that the issues presented by the individual did not mitigate the DOE's security concerns. Accordingly, the Director found that the individual's access authorization should not be restored.

Request for Exception

Mercury Fuel Service, Inc., 6/14/96, VEE-0020

The Department of Energy granted exception relief to Mercury Fuel Service, Inc., from its obligation to file Form EIA-782B. In the Decision, the DOE determined that the filing requirement imposed a severe burden on Mercury because the owner and other key administrative personnel who could complete the form were experiencing severe health problems. The DOE, therefore, relieved Mercury of its obligation to file the form until September 1997.

Supplemental Order

C. Lawrence Cornett, 6/13/96, VWX-0009

A Hearing Officer from the Office of Hearings and Appeals issued an Order to Show Cause regarding a Motion to Dismiss filed by Maria Elena Torano Associates, Inc. (META). META sought the dismissal of a complaint filed by C. Lawrence Cornett under the DOE's Contractor Employee Protection Program, 10 C.F.R. Part 708. In its Motion, META alleged that it did not perform work at DOE sites as defined by Section 708.4, and thus it was not subject to Part 708 jurisdiction. After reviewing the affidavits submitted by the parties on the nature and extent of work activities performed by META employees, the Hearing Officer issued an Order to Show Cause and scheduled a hearing on the jurisdictional issue raised by META.

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.

| | | |
|--|-------------------|----------|
| Boston Buffalo Express, Inc | RG272-325 | 06/13/96 |
| City of NAPA et al | RA272-73 | 06/11/96 |
| Cravat Coal Co., Inc | RG272-318 | 06/13/96 |
| Equitable Gas Company et al | RF272-77197 | 06/13/96 |
| Golden Cat Division/Ralston Purina Company | RJ272-00012 | 06/13/96 |
| Gulf Oil Corporation/Bob's Gulf | RF300-16872 | 06/13/96 |
| Gulf Oil Corporation/C.B. Hughes | RF300-21832 | 06/14/96 |
| Kenneth Whipple et al | RK272-02055 | 06/14/96 |
| Lacrescent Oil Company | RG272-328 | 06/13/96 |
| New Orleans Public Service, Inc | RF272-88742 | 06/11/96 |
| North Florida Transport Service, Inc | RG272-311 | 06/13/96 |
| Silvey Refrigerated Carriers, Inc | RF272-77714 | 06/13/96 |
| St. Peter's Parish et al | RF272-97803 | 06/11/96 |
| Yellow Freight System, Inc | RG272-355 | 06/13/96 |

Dismissals

The following submissions were dismissed:

| Name | Case No. |
|---|-------------|
| Affiliated Aggregates | RF272-98169 |
| American Safety Service, Inc | RF272-98198 |
| Blachowske Truck Line, Inc | RG272-330 |
| Brisbane Elementary School | RF272-95933 |
| Central Sand & Gravel | RF272-98241 |
| Chaseburg Farmers Union Co-op | RG272-344 |
| Choi Aviation Inc | RF272-97993 |
| County Concrete Co | RF272-98254 |
| Davidson Supply Co | RF272-98161 |
| F. Randandt & Sons | RF272-98176 |
| Fairchild-Florida Construction Co | RF272-98257 |
| Farmers Union Oil | RG272-292 |
| Farmers Union Oil Co | RG272-317 |
| Francis J. Palo, Inc | RF272-98206 |
| Frank Silha & Sons Excavating | RF272-98246 |
| H.B. Rowe & Co., Inc | RF272-98251 |
| Herlihy Mid-Continent Co | RF272-98248 |
| Highways, Inc | RF272-98173 |
| J.D. Eckman, Inc | RF272-98205 |
| J.F. Allen Co | RF272-98258 |
| John J. Mudge | VFA-0158 |
| L.A.B. Flying Services Inc | RF272-97987 |
| Lang Bros., Inc | RF272-98244 |
| Louis & Armando Bolli | RF300-14605 |
| McKay Contractors, Inc | RF272-98247 |
| Miller Cable Co | RF272-98172 |
| Modale Cooperative Assn. | RG272-354 |
| Northern Pipeline Construction Co | RF272-98252 |
| P.J. Construction Co | RF272-98240 |
| P.S. & F. Construction Co | RF272-98170 |
| Pan American Construction Co | RF272-98243 |
| Rosebud Farmers Union Co-op | RG272-322 |
| Ryan Air Services, Inc | RF272-97999 |
| S.G. Hayes and Co | RF272-98253 |
| Saint Charles County Co-op Co | RG272-587 |
| Saudi Arabian Airlines Corp | RG272-743 |
| Schuykill, Inc | RF272-98174 |
| Sheboygan Sand & Gravel | RF272-98177 |
| Spartan Express | RG272-619 |
| Unalakleet Air Taxi | RF272-97978 |
| V.O. Menezes & Son, Inc | RF272-98255 |
| Valley Seeding Co, Inc | RF272-98259 |
| Wayne W. Sell Corp | RG272-343 |
| Wilbur's Inc | RF272-97970 |
| Zambia Airways Corp | RF272-97947 |

[FR Doc. 96-26423 Filed 10-15-96; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Decisions and Orders; Week of August 12 Through August 16, 1996

During the week of August 12 through August 16, 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.

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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: October 7, 1996.

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

Decision List No. 985

Appeal

Greenpeace, 8/12/96, VFA-0186

The Department of Energy denied a Freedom of Information Act Appeal that was filed by Greenpeace. In its Appeal, Greenpeace sought the release of

transcripts of certain electronic mail communications. In the decision, the DOE found that the transcripts were properly withheld under Exemption 5.

Refund Application

Midwest Specialized Transportation, Inc., 8/14/96, RF272-97965

The DOE denied an Application for Refund filed on behalf of Midwest Specialized Transportation, Inc. (MST) in the crude oil refund proceeding. Prior to the filing of MST's Application, MST had applied for a refund in the Surface Transporters proceeding. After MST informed the DOE in 1987 that MST's owner-operators had purchased more than 99 percent of the fuel used in MST's surface transportation activities, and MST had itself purchased less than 250,000 gallons, the DOE found MST