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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of April 21 Through April 25, 1997

During the week of April 21 through April 25, 1997, 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: May 5, 1997.

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

Decision List No. 30; Week of April 21 Through April 25, 1997

Appeals

Information Focus on Energy, 4/25/97, VFA-0281

The DOE issued a decision denying in part and granting in part a Freedom of Information Act (FOIA) Appeal filed by Information Focus on Energy (IFOE). IFOE sought Internet access to records of occurrence reports contained in a DOE database. The DOE's FOIA/Privacy Act Division (HQ) denied access to the database, but released some responsive records to the requester. In its decision, the DOE found that HQ did not release all responsive records to IFOE, and granted this portion of the Appeal. However, the DOE found that HQ had no obligation to provide the responsive

records on the Internet, and accordingly denied this portion of the Appeal.

Research Information Services, Inc., 04/25/97, VFA-0283

Research Information Services, Inc. (RIS) filed an Appeal from a determination issued by the Office of Arms Control and Nonproliferation (OACN). In that determination, OACN furnished RIS with lists of information that had been forwarded to other agencies and the DOE Office of Declassification. In its Appeal, the RIS contended that it was entitled to a list of information available in the FOIA Reading Room. The DOE rejected that contention, holding that it was not required to compile a list of the publicly available material. The RIS also contended that OACN had not released all responsive information. OACN determined that some information had not been released and requested that the matter be remanded to it for a new determination either justifying the withholding of that information under Exemption 4 or releasing it. Therefore, the Appeal was denied in part and granted in part.

Richard J. Levernier, 04/25/97, VFA-0282

The DOE issued a decision granting in part a Freedom of Information Act (FOIA) Appeal filed by Richard J. Levernier. Levernier sought documents concerning certain investigations by the DOE's Office of Inspector General (IG). In its decision, the DOE found that the IG's search for responsive documents was adequate and that the IG's withholdings under FOIA Exemptions 6, 7(C) and 7(D) were appropriate. However, the DOE questioned some of the IG's withholdings under Exemption 5. Accordingly, the Appeal was remanded to the IG and denied in all other aspects.

Robert B. Freeman, 04/24/97, VFA-0279

The DOE granted in part and denied in part an appeal of a determination withholding documents under Section 552a(d)(5) of the Privacy Act. The DOE found that certain records were not subject to the exemption set forth in 5 U.S.C. § 552a(d)(5), that information in these records must be released to the appellant unless it is exempt from disclosure under both the Privacy Act and Freedom of Information Act (FOIA), and that certain other records in the possession of a private physician were

not subject to the provisions of the Privacy Act or FOIA.

Supplemental Order

C. Lawrence Cornett, 4/24/97, VWX-0010

This Order supplements an Initial Agency Decision, dated December 19, 1996, issued by a DOE Hearing Officer involving a "whistleblower" complaint filed by C. Lawrence Cornett under the DOE Contractor Employee Protection Program, 10 C.F.R. Part 708. In the December 19 Decision, the Hearing Officer recommended that Cornett be awarded back pay lost as a result of the reprisals taken against him, as well as all costs and expenses reasonably incurred by him in bringing his complaint. Subsequently, Cornett submitted documentation pertaining to his claimed back pay, attorney fees and costs. In the Supplemental Order, the Hearing Officer awarded Cornett back pay of \$161,864 and interest of \$33,543. With regard to attorney fees, the Hearing Officer proportionally reduced Cornett's attorney fee claim because of duplication of effort and inefficiencies of the multiple attorneys involved in the case. The Hearing Officer awarded Cornett \$76,230 for attorney fees. After making reductions for costs not reasonably related to the bringing of his complaint, the Hearing Officer awarded Cornett \$8,963 for costs. In total, the Hearing Officer awarded Cornett \$280,600.

Refund Application

U.S. Department of Agriculture, 4/21/97, RF272-76126, RF272-78732

The DOE issued an order approving two Applications for Refund filed by the U.S. Department of Agriculture in the DOE's Subpart V crude oil refund proceeding. The DOE determined that the claimed volumes were not purchased through the Defense Logistics Agency (DLA) and, therefore, were not covered by the refund granted DLA in a separate case. The total refund granted to USDA was \$127,733.

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.

Beatrice M. Ferron et al	RK272-01603	4/24/97
Dart Trucking	RG272-43	4/22/97
Defiance Landmark et al	RG272-11	4/21/97
Lewis Coal & Coke Co., Inc. et al	RK272-03649	4/22/97

Monahan Transportation Co., Inc	RF272-97370	4/23/97
Qantas Airways Limited	RF272-93603	4/23/97
Roy Anderson Paint Co	RG272-12	4/23/97
Shippers Transports, Inc	RF272-69235	4/24/97
Township of Dover et al	RF272-86027	4/22/97
Vic Kimmel Inc. et al	RK272-02909	4/24/97
West Bldg Materials/Assoc Distributors	RR272-268	4/23/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Burbank Cooperative Creamery	RF272-895
Farmers Co-op Elevator Co	RG272-779
Grygle Cooperative Company	RG272-645
Inter-Lake Cooperative Association	RG272-697
Mesa Airlines, Inc	RF272-98792
Paramount Communications Realty Corp	RF272-98759
Personnel Security Hearing	VSO-0143

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-5824-2]

Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); In the Matter of A.E. Schnieder Scrap Yard, Chippewa Falls, WI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Settlement of CERCLA section 107 cost recovery matter.

SUMMARY: EPA is proposing to settle a cost recovery claim with a potentially responsible party (PRP) with regard to past costs at the A.E. Schnieder Scrap Yard site (the Site) in Chippewa Falls, Wisconsin. The EPA is authorized under Section 122(h) of the CERCLA to enter into this administrative settlement.

Response costs totaling \$345,080 were incurred by EPA in connection with an emergency removal action at the Site. On September 4, 1996, EPA sent the PRP a demand for reimbursement of the EPA's past costs. The Settling Party has agreed to pay \$300,000 to settle EPA's claim for reimbursement of response costs related to the Site. The EPA is proposing to approve this administrative settlement because it reimburses EPA, in part, for costs incurred during its response activities at this Site.

DATES: Comments on this administrative settlement must be received by no later than June 11, 1997.

ADDRESSES: Written comments relating to this settlement, Docket Number V-

W-97-C-395, should be sent to Brad J. Beeson, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code: C-29A, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

ADDITIONAL INFORMATION: Copies of the Agreement and the Administrative Record for this Site are available at U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. It is strongly recommended that you telephone Ms. Mila Bensing at (312) 353-2006 before visiting the Region 5 Office.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

Dated: April 28, 1997.

William E. Muno,
Director, Superfund Division.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-5824-4]

Notice of Proposed Administrative De Minimis Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Scientific Chemical Processing Superfund Site, in Rutherford, Bergen County, New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(i), the U.S. Environmental Protection Agency ("EPA"), Region II, announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Scientific Chemical Processing Superfund Site ("Site"). The Site is located in Carlstadt, Bergen County, New Jersey and is included on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed administrative *de minimis* settlement and of the opportunity to comment. This administrative *de minimis* settlement will not be final until formal approval by the Assistant Attorney General and signature by the Regional Administrator.

DATES: Comments must be provided on or before June 11, 1997.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007-1866 and should refer to: In the Matter of Scientific Chemical Processing Superfund Site, Index No. II-CERCLA-97-0106, Attn: Damaris Urdaz Cristiano, Assistant Regional Counsel.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed administrative settlement agreement may be obtained in person or by mail from Damaris Urdaz Cristiano, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New