

**Register** on Monday, March 12, 2007 (72 FR 11092–11198).

**ADDRESSES:** U.S. Army Corps of Engineers, Attn: CECW–CO, 441 G Street NW., Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson at 202–761–4922 or by e-mail at [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil) or access the U.S. Army Corps of Engineers Regulatory Home Page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

On page 11172, third column, in the first sentence of the fourth full paragraph (the preamble discussion of the definition of “discharge”), delete the text following the word “clarify” and replace it with the following: “That this term is used in the NWP’s to refer to a discharge of dredged or fill material.” Delete the second sentence of this paragraph.

On page 11185, first column, in Note 2 of NWP 24, replace the reference to 33 CFR 322.3(a)(2) with 33 CFR 322.4(b).

On page 11194, third column, in the last sentence of paragraph (a) of general condition 27 insert the phrase “until either” between the word “activity” and the colon. In the first sentence of subparagraph (a)(1) of general condition 27, replace the word “Until” with the phrase “He or she is”. In the first sentence of subparagraph (a)(2) of general condition 27, delete the word “If” and replace the number 45 with the words “Forty-five”.

On page 11196, second column, in the definition of “discharge”, insert a period after the word “material” and delete the rest of the sentence.

Dated: May 3, 2007.

**Mark F. Sudol,**

*Acting Chief, Operations, Directorate of Civil Works.*

[FR Doc. E7–8782 Filed 5–7–07; 8:45 am]

**BILLING CODE 3710–92–P**

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Meeting

**AGENCY:** Department of Education, National Assessment Governing Board.

**ACTION:** Notice; correction.

**SUMMARY:** The National Assessment Governing Board published a document in the **Federal Register** of May 2, 2007, announcing the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. The meeting agenda has been revised.

**FOR FURTHER INFORMATION CONTACT:** Munira Mwalimu at (202) 357–6906.

## Correction

In the **Federal Register** of May 2, 2007, in FR DOCID: fr02my07–43, Volume 72, Number 84, page 24282, delete the sentence “Assessment Development Committee: Open Session 12 p.m. to 3 p.m.” and delete the sentence on page 24282 that reads “On May 17, the Assessment Development Committee will meet in open session from 12 p.m. to 3 p.m.” This meeting of the Assessment Development Committee is cancelled.

On page 24282, delete the paragraph that reads “On May 18, the full Board will meet in closed session from 12:15 p.m. to 1:45 p.m. The Board will receive a briefing provided by the National Center for Education Statistics on the NAEP 2006 U.S. History and Civics Report Cards. The Governing Board will be provided with embargoed data that cannot be discussed in an open meeting prior to their official release. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of The Nation’s Report Card initial release activities, as protected by exemption 9(B) of section 552(b)(3) of Title 5 U.S.C.” Replace this paragraph with the following sentence, “On May 18, the full Board will meet in open session from 12:15 p.m. to 1:45 p.m. to receive a briefing provided by the National Center for Education Statistics on the NAEP 2006 U.S. History and Civics Report Cards.” This session of the Board meeting is now open to the public.

### Electronic Access to This Document:

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister/index.html>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: May 3, 2007.

**Charles E. Smith,**

*Executive Director, U.S. Department of Education, National Assessment Governing Board.*

[FR Doc. E7–8800 Filed 5–7–07; 8:45 am]

**BILLING CODE 4000–01–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 Proposed Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of \$1,592,901, plus accrued interest, in motor gasoline overcharges obtained by the DOE pursuant to remedial orders issued to Powerine Oil Company, Case No. TEF–0006, and Storey Oil Company, Inc., Case No. TEF–0009. The OHA has tentatively determined that the funds will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V.

**DATES:** Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**.

**ADDRESSES:** Comments should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1615. All comments should display a reference to Case Nos. TEF–0006 or TEF–0009.

### FOR FURTHER INFORMATION CONTACT:

Richard A. Cronin, Jr., Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585–1615, (202) 287–1589, [richard.cronin@hq.doe.gov](mailto:richard.cronin@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants \$1,592,901, plus accrued interest, obtained by the DOE pursuant to Remedial Orders issued to Powerine Oil Company (Powerine) and Storey Oil Company, Inc. (Storey). The Remedial Orders issued to Powerine and Storey adjudicated allegations concerning violations of the federal petroleum price regulations involving the sale of motor gasoline during the

price control period, August 13, 1973 through January 27, 1981.

The OHA has proposes to distribute the Remedial Order funds in a refund proceeding described in the Proposed Decision and Order to provide restitution for those parties injured by Powerine or Storey's alleged violations of pricing regulations for motor gasoline. Purchasers of motor gasoline from Powerine or Storey 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 motor gasoline they purchased from one of the firms during the price control period.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submission, within 30 days of the publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments 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.

**Fred L. Brown,**

*Acting Director, Office of Hearings and Appeals.*

## **Proposed Decision and Order**

### *Department of Energy*

#### Implementation of Special Refund Procedures

Names of Firms: Powerine Oil Company, Storey Oil Company, Inc.  
Dates of Filing: June 23, 2005. June 23, 2005.

Case Numbers: TEF-0006. TEF-0009.

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 Powerine Oil Company (Powerine) and Storey Oil Company (Storey) pursuant to Remedial Orders DOE has issued regarding them

and have determined that such procedures are appropriate.

Under the terms of the Remedial Orders, Powerine's bankruptcy trustee has remitted a total of \$1,546,302 to the DOE to remedy motor gasoline retailer-reseller pricing violations which occurred during the price control period, August 13, 1973 through January 27, 1981. Storey has remitted a total of \$46,599 to remedy similar violations. 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 proposed plan to distribute those funds. The specific application requirements we propose appear in Section III of this Decision.

## **I. Background**

Powerine was a privately held corporation which operated a refinery located in Santa Fe Springs, California during the price control period. During this period, Storey, operating in Colorado, was a reseller of refined petroleum products. Economic Regulatory Administration audits of Powerine and Storey revealed possible violations of the Mandatory Petroleum Price Regulations (MPPR) in their sales of motor gasoline. Subsequently, OHA issued Remedial Orders in each case directing Powerine and Storey to remit to the DOE \$7,956,934 and \$64,639, respectively, in restitution for overcharges by each firm in sales to their customers during the period of price controls.<sup>1</sup>

## **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).

## **III. Refund Procedures**

### *A. Allocation of Consent Order Funds*

Both firms' violations of the MPPR involved sales of a refined petroleum product—motor gasoline. Consequently,

all of the funds that have been remitted by Powerine and Storey will be allocated for restitution to those parties injured by the firms' alleged violations of the pricing regulations for motor gasoline.

### *B. Refined Petroleum Product Refund Procedures*

#### 1. Application Requirements

In cases where the ERA is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage, those who bought refined petroleum products from the consenting firms may apply for refunds, which are typically calculated 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 price control period.

In the present case, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consenting firms. In particular, we have been unable to obtain any information on the volumes of motor gasoline products sold by the firms during the price control period. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we will accept any refund claims submitted by persons who purchased motor gasoline from Powerine or Storey during the settlement periods discussed above. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts.<sup>2</sup>

To apply for a refund from the Powerine or Storey Remedial Order funds, 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, social security number or 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

<sup>1</sup> See Powerine Oil Company, 21 DOE ¶ 83,008 (1991); Storey Oil Company, Inc., 16 DOE ¶ 83,007 (1987).

<sup>2</sup> Applications for Refund will be accepted only for motor gasoline pricing violations.

the name and address of the person who should receive any refund check;<sup>3</sup>

(2) A monthly motor gasoline gallonage purchase schedule covering the price control order 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 motor 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 that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization must be submitted;

(4) If the applicant is or was in any way affiliated with Powerine or Storey, it must explain this affiliation, including the time period in which it was affiliated;<sup>4</sup>

(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 made available at OHA.

<sup>3</sup> An applicant must submit the social security number or employer identification number of the person or legal entity that is seeking the refund. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and 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.

<sup>4</sup> As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of a Remedial Order firm 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 the Remedial Order firm 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 the Remedial Order firm were granted a refund, the remedial order firm would be indirectly compensated from a Remedial Order fund remitted to settle its own alleged violations.

All applications should be either typed or printed and clearly labeled with the name and case number of the relevant firm (Powerine Oil Company, Case No. TEF-0006 or Storey Oil Company, Inc., Case No. TEF-0009). 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 sent to the address below:

Office of Hearings and Appeals,  
Department of Energy, 1000  
Independence Ave., SW., Washington,  
DC 20585-0107.

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., Starks Shell Service, 23 DOE ¶ 85,017 (1993); Texaco Inc., 20 DOE ¶ 85,147 (1990) (Texaco); Shell Oil Co., 18 DOE ¶ 85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 C.F.R. § 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.

Finally, the OHA reserves the authority to require additional information from an applicant before granting any refund in these proceedings.

## 2. Allocation Claims

We may receive claims based upon Powerine's or Storey's failure to furnish motor gasoline that they were obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR Part 211. Any such application will be evaluated with reference to the standards set forth in Texaco (and cases cited therein). See Texaco, 20 DOE at 88,321.

## 3. Impact of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) Amendments on Powerine and Storey Refined Product 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 Powerine and Storey). 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 for the meritorious claimants in the Powerine and Storey refund proceedings.

*It is therefore ordered that:*

The payments remitted to the Department of Energy by Powerine Oil Company and Storey Oil Company, Inc., pursuant to remedial orders signed on August 30, 1991 and June 24, 1987 respectively, will be distributed in accordance with the forgoing Decision.

[FR Doc. E7-8771 Filed 5-7-07; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Energy Efficiency Building Technology Application Centers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Program notice.

**SUMMARY:** The National Energy Technology Laboratory, on behalf of the Office of Energy Efficiency and Renewable Energy's Building