

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

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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 implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of \$528,941, plus accrued interest, in crude oil and refined petroleum product overcharges obtained by the DOE pursuant to consent orders signed by Intercoastal Oil Corporation, Case No. LEF-0057, and Gulf States Oil & Refining, Case No. LEF-0073. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, subpart V and DOE's Modified Statement of Restitutory Policy in Crude Oil Cases.

DATE AND ADDRESS: Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585-0107. All applications should display a reference to Case Nos. LEF-0057 or LEF-0073.

FOR FURTHER INFORMATION CONTACT:

Richard A. Cronin, Jr. Assistant Director Office of Hearings and Appeals 1000 Independence Ave., SW, Washington, DC 20585-0107 (202) 287-1562 *richard.cronin@hq.doe.gov*

SUPPLEMENTARY INFORMATION:

In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants \$528,941, plus accrued interest, obtained by the DOE pursuant to Consent Orders entered into with Intercoastal Oil Corporation (Intercoastal) and Gulf States Oil & Refining (Gulf States). Under the Consent Orders, Intercoastal and Gulf States resolved all allegations concerning violations of the federal petroleum price regulations involving the sale of refined petroleum products and crude oil during the relevant audit periods.

The OHA will distribute one-half of the Consent Order funds in a refund proceeding described in the Decision and Order to provide restitution for those parties injured by Intercoastal's or Gulf States' alleged violations of pricing regulations for refined petroleum products. Purchasers of refined petroleum products from Intercoastal or Gulf States 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 refined petroleum products they purchased from one of the firms during the relevant consent order period.

The remaining one-half of the Consent Order funds will be distributed in accordance with the DOE's Modified Statement of Restitutory Policy in Crude Oil Cases. Because the deadline for filing crude oil refund applications has passed, no new applications for refund for the alleged crude oil pricing violations of Intercoastal and Gulf States will be accepted for these funds.

Applications should be postmarked by November 30, 2001. Applications 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

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy, Washington, DC 20585

September 6, 2001.

Decision and Order, Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Intercoastal Oil Corporation, Gulf States Oil & Refining.

Dates of Filing: July 20, 1993, July 20, 1993.

Case Numbers: LEF-0057, LEF-0073.

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 Intercoastal Oil Corporation (Intercoastal) and Gulf States Oil & Refining (Gulf States) pursuant to Consent Orders (the Consent Orders) the firms have entered into with the

DOE and have determined that such procedures are appropriate.

Under the terms of the Consent Orders, a total of \$528,941 has been remitted to DOE to remedy pricing violations which occurred during the relevant audit periods.¹ 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 plan to distribute those funds. The specific application requirements appear in Section III of this Decision.

I. Background

Gulf States, a firm with its home office in Houston, Texas, was a refiner during the period of price controls, August 13, 1973 through January 27, 1981. During this period, Intercoastal, a California corporation, was a reseller of crude oil and refined petroleum products. Economic Regulatory Administration audits of Intercoastal and Gulf States revealed possible violations of the Mandatory Petroleum Price Regulations (MPPR). Subsequently, each firm entered into a Consent Order to settle its disputes with the DOE concerning sales of crude oil and refined petroleum products. Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability with respect to sales to their customers during the settlement periods. The settlement period referenced in the Intercoastal Consent Order is the period October 25, 1973 through January 17, 1981.² For the Gulf States Consent Order the settlement period is August 19, 1973 through January 27, 1981.

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).

On July 16, 2001, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Consent Order funds. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 66 FR 38670 (July

¹ Pursuant to the Consent Orders, Gulf States remitted \$500,000 to DOE and Intercoastal has remitted \$28,941.

² The Intercoastal Consent Order resolves all possible violations of the petroleum price regulations for the period August 19, 1973 through January 27, 1981. However, the consent order goes on to state that Intercoastal was active as a reseller of crude oil and refined petroleum products from October 25, 1973 through January 27, 1981. See *Consent Order with Intercoastal Oil Corporation*, Case No. HRO-0083 (January 25, 1983) at ¶ 301.

25, 2001). More than 30 days have elapsed and OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Allocation of Consent Order Funds

Both firms sold crude oil and refined petroleum products. We have been unable to discover factual information concerning the actual amounts of the alleged pricing violations or the distribution of the violations between either firm's sales of crude oil and refined petroleum products. Under the circumstances, i.e., with no factual basis for a decision as to allocation of the consent order funds between crude oil and refined products, one-half of the Intercoastal and Gulf States consent order funds (\$264,471 total plus accrued interest) be allocated for restitution for parties injured by Intercoastal's and Gulf States' alleged violations of the pricing regulations for crude oil. The remaining portion of each of the sums remitted by Intercoastal and Gulf States (\$264,470 total plus interest) will be allocated for restitution for those parties injured by the firms' alleged violations of the pricing regulations for refined petroleum products.

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 period covered by the consent order.

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 the relevant petroleum products sold by the consenting firms during the settlement 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 refined petroleum products from Intercoastal or Gulf States 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.³

³ Applications for Refund from will be accepted only for refined product pricing violations. With regard to crude oil pricing violations the deadline for filing applications for refund has passed. See *infra*.

To apply for a refund from the Intercoastal or Gulf States Consent 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, 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 the name and address of the person who should receive any refund check.⁴

(2) A monthly gallonage purchase schedule covering the relevant consent 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 refined petroleum product 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 the consenting firm, it must explain this affiliation, including the time period in which it was affiliated;⁵

(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

⁴ Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not submit a social security number must submit an employer identification number if one exists. 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. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

⁵ As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of a consenting 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 consenting 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 consenting firm were granted a refund, the consenting firm would be indirectly compensated from a Consent Order fund remitted to settle its own alleged violations.

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 be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled with the name and case number of the relevant firm (Intercoastal Oil Corporation, Case No. LEF-0057 or Gulf States Oil & Refining, Case No. LEF-0073). 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 must be postmarked by November 30, 2001 and should be sent to the address below:

Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., 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 CFR 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 Intercoastal's or Gulf States' failure to furnish petroleum products 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 Intercoastal and Gulf States 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 Intercoastal and Gulf States). 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 Intercoastal and Gulf States refund proceedings. However, it could be several years before we know the full value of the meritorious claims and the precise total amount available for distribution. It will be some time before we are able to determine the amount that is available for distribution for each claimant.

In light of the above considerations, we will pay successful applicants using the following mechanism. All successful small claimants (refunds under \$10,000) will be paid in full. To require small claimants to wait several more years for their refunds would constitute an inordinate burden and would be inequitable. *See Brown*, 27 DOE at 88,244. For all others granted refunds, including reseller claimants who have elected to take presumption refunds, we will immediately pay the larger of \$10,000 or 50 percent of the refund granted. Once the other pending refund claims have been resolved, the remainder of the Intercoastal and Gulf States claims will be paid to claimants to the extent that it is possible through an equitable distribution of the funds remaining in the petroleum overcharge escrow account.

C. Refund Procedures for Crude Oil Pricing Violations

With regard to the portion of the consent order funds arising from alleged pricing violations of crude oil (\$264,471 plus accrued interest), these funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, (MSRP), *see* 51 FR 27899 (August 4, 1986).⁶ Pursuant to the MSRP,

OHA will distribute 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11,737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See City of Columbus Georgia*, 16 DOE ¶ 85,550 (1987).

1. Individual Refund Claims

The amount of money attributed for restitution of crude oil pricing violations is \$264,471 plus accrued interest. In accordance with the MSRP, we shall initially reserve 20 percent of those funds (\$52,894 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We shall base refunds on a volumetric amount which has been calculated in accordance with the methodology described in the April 10 Notice. That volumetric refund amount is currently \$0.0016 per gallon. *See* 57 FR 15562 (March 24, 1995).

The filing deadline for refund applications in the crude oil refund proceeding was June 30, 1994. This was subsequently changed to June 30, 1995. *See* Filing Deadline Notice, 60 FR 19914 (April 20, 1995); *see also* DMLP PDO, 60 FR 32004, 32007 (June 19, 1995). Because the June 30, 1995, deadline for crude oil refund applications has passed, no new applications for restitution from purchasers of refined petroleum products for the alleged crude oil pricing violations of Intercoastal and Gulf States will be accepted for these funds. Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.

2. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the crude oil violation amounts subject to this Decision, or

Implementing the MSRP, 51 FR 29,689 (August 20, 1986) (the August 1986 Order).

\$211,577 plus accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or \$105,788 plus interest, into an interest bearing subaccount for the states, and one-half or \$105,789 plus interest, into an interest bearing subaccount for the federal government.

It Is Therefore Ordered That:

(1) The payments remitted to the Department of Energy by Intercoastal Oil Corporation and Gulf States Oil & Refining, pursuant to consent orders signed on January 25, 1983 and February 1, 1983 respectively, will be distributed in accordance with the forgoing Decision.

(2) Applications for Refund in the Intercoastal Oil Corporation Refund Proceeding, Case No. LEF-0057, and the Gulf States Oil and Refining Refund Proceeding, Case No. LEF-0073, must be postmarked no later than November 30, 2001.

Dated: September 6, 2001.

George B. Breznay,

Director, Office of Hearings and Appeals.

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DEPARTMENT OF ENERGY

Western Area Power Administration

Casper Creek Crossing, Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV Transmission Lines

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Floodplain Statement of Findings.

SUMMARY: This Floodplain Statement of Findings for the Casper Creek Crossing, Spence-Thermopolis 230-kilovolt (kV) and Alcova-Copper Mountain 115-kV Transmission Lines was prepared in accordance with the U.S. Department of Energy's (DOE) Floodplain/Wetland Review Requirements (10 CFR part 1022). Western Area Power Administration (Western), a power marketing agency of the U.S. Department of Energy (DOE), is the lead Federal agency for a proposal to make repairs and correct erosion problems at the Casper Creek Crossing for the Spence-Thermopolis 230-kV and Alcova-Copper Mountain 115-kV

⁶ The MSRP was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. *See* Order