June 1, 2005

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Motion for Reconsideration

Name of Petitioner: International Steel Group, Inc.

Date of Filing: May 2, 2005

Case Number: RR272-00321

I. Background

On March 1, 1991 the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Decision and Order regarding a crude oil refund application filed by National Steel Corp (National Steel) for its petroleum purchases for its Weirton, West Virginia facility.[*] *National Steel Corp.-Weirton*, 21 DOE ¶ 85,134 (1991) (*NSC*). In *NSC*, the OHA denied the National Steel application based on purchases of 609,873,817 gallons of No. 6 residual fuel oil. Permian Corporation, an affiliate of National Steel's parent corporation, National Intergroup, Inc., in receiving a refund from the Surface Transporters escrow fund, had executed an agreement which waived its rights to receive a refund in any subsequent crude oil refund proceedings. *See NSC*, 21 DOE at 88,461. We determined that, in so waiving its rights, it also waived the rights of any of its affiliates, including National Steel, to receive a refund in the crude oil proceeding. *Id.*

International Steel Group, Inc. (ISG) has filed a Motion for Reconsideration concerning our decision in *NSC*. In its submissions accompanying its Motion, ISG asserts that in January 1984, National Steel sold its Weirton facility to Weirton Steel Corporation (Weirton Steel). Subsequently, in February 2004, ISG purchased the Weirton facility from Weirton Steel. In its Motion, ISG argues that it, and not National Steel, was the entity properly entitled to any refund for the petroleum purchases made for the Weirton facility. As discussed below, ISG's Motion for Reconsideration should be denied.

II. Analysis

The DOE regulations do not explicitly provide for reconsideration of a final Decision and Order in a refund proceeding. *See* 10 C.F.R Part 205, Subpart V. However, in prior cases, we have used our discretion to consider Motions for Reconsideration where a movant has alleged that a previous determination did not accurately characterize the movant's prior submissions or has provided other compelling reasons. *See Tenneco Oil Co./Kern Oil and Refining Co.*, 10 DOE ¶ 85,022 (1982); *Tenneco Oil Co./Major Oil Co. of Georgia*, 13 DOE ¶ 85,322 (1985).

[*] National Steel applied for a crude oil refund on June 2, 1989.

A. Timeliness of ISG's Motion for Reconsideration

ISG's Motion for Reconsideration should be denied because it has been filed too late. OHA announced in a April 21, 1995 Federal Register Notice that the final deadline for submitting applications for refund in the crude oil refund proceeding was June 30, 1995. 60 Fed. Reg. 19914 (April 21, 1995). In promulgating the final refund procedures for the crude oil refund proceeding in May 2004, OHA announced that only *previosuly successful claimants* are eligible to participate in the final refund distribution. 69 Fed. Reg. 29300 at 29304 (May 21, 2004) ("All successful claimants have already had extensive opportunities over many years to establish their respective purchase volumes of refined petroleum products, which form the bases for their respective refunds. There will be no further opportunities to revise volumes during the final distribution. No new applications will be accepted-- the final crude oil refund payment is available only to successful claimants."). ISG's Motion for Reconsideration, which, if granted, would have the effect of granting ISG an initial refund in the crude oil proceeding, has been filed almost 10 years after the date OHA has stopped accepting applications in the crude oil refund proceeding. Nevertheless, even if we would consider this Motion as timely filed, ISG would not be the proper party to receive the refund for the reasons presented below.

B. Validity of ISG's Claim of a Right to a Refund on behalf of the National Steel's purchases for the Weirton facility

The OHA presumes that with regard to an applicant's eligibility for a refund where changes of ownership are concerned, the owner *during the consent order period* should receive the refund. This is the period when "overcharges" occurred. This presumption may be rebutted if the present owner can show that either (a) the owner during the price control period was a corporation whose corporate stock was purchased by the current owner or (b) the business was transferred under a contract that specified potential refunds, either expressly or implicitly, as one of the assets being transferred. *Murphy/Aldrich and Love Service Station*, 23 DOE ¶ 85,025 (1993); *See also Texaco/Yankee Oil Co*, 23 DOE ¶ 85,162 (1993); *Texaco/Tenbarge Oil Co.*, 21 DOE ¶ 85,121 (1991); *A.H. Smith & Associates*, 22 DOE ¶ 85,036 (1992); *Shell/Magnatex*, 22 DOE ¶ 85,037 (1992). In the case at hand, ISG argues that the assignment and assumption agreement between National Steel and Weirton Steel transferred the right to a crude oil refund to Weirton Steel and consequently to ISG. After reviewing the sales agreement between National Steel and Weirton Steel, we find that any potential right to a refund would have belonged to National Steel and not to ISG.

Section 3.1 of the assignment and assumption agreement provides:

> Section 3.1 Refunds, Rebates, etc.
>
> . . . The Seller [National Steel] will retain for its own account any payments received from Columbia Gas, Conrail or any other Person representing overcharges or refunds prior to the purchase date [January 11, 1984] . . . .

Assignment and Assumption Agreement between Weirton Steel Corporation and National Steel Corporation (cover dated April 29, 1983) (*Agreement)* at Section 3.1. The glossary to the assignment and assumption agreement includes in its definition of "Person" any "government or any agency or political subdivision thereof." *Agreement Schedule A* at 16. Because the crude oil refund proceeding seeks to provide restitution for petroleum product overcharges for purchases made during the period August 1973 through January 1981 (a period prior to the purchase date), Section 3.1 indicates that National Steel would be entitled to retain such refunds.

Even if we were to assume that Section 3.1 is not applicable, Section 7.2 of the assignment and assumption agreement between National Steel and Weirton Steel would indicate that National Steel would be the sole possessor of any potential crude oil refund claim. Section 7.2 of the agreement states:

> Section 7.2 Proceedings Based on Facts Prior to the Purchase Date
>
> Except as provided otherwise in this Article, the Seller [National Steel] will take full responsibility for, conduct at its own expense, discharge any liability relating to, and retain any recovery from, all Proceedings which are not Pending Proceedings, to the extent such Proceedings involve claims based on facts occurring or existing prior to the Purchase Date [January 11, 1984].

Assignment and Assumption Agreement between Weirton Steel Corporation and National Steel Corporation (cover dated April 29, 1983) at Section 7.2. With regard to a crude oil refund, purchases of covered petroleum products during the period August 1973 through January 1981 constitute the facts that give rise to a potential claim in the crude oil proceeding. Therefore the facts giving rise to a potential crude oil refund occurred *before* the purchase date. Further, the contract defines "Pending Proceeding" as a proceeding listed on Schedule D of the assignment and assumption agreement. *Assignment and Assumption Agreement between Weirton Steel Corporation and National Steel Corporation (cover dated April 29, 1983)* at Schedule A p. 15. Schedule D does not list the crude oil refund proceeding and therefore the crude oil refund proceeding can not be considered a "Pending Proceeding" for purposes of the assignment and assumption agreement. Consequently, for all the foregoing reasons, any crude oil refund claim that may have been

potentially generated by National Steel's purchases of petroleum products for the Weirton facility would belong to National Steel under the assignment and assumption agreement.

Our analysis of Sections 3.1 and 7.2 of the assignment and assumption agreement clearly indicates that National Steel did not intend to transfer claims arising from pre-1984 events except those arising from the pending proceedings specifically referenced in Schedule D. As mentioned above, the purchases giving rise to any potential crude oil claim occurred during August 1973 through January 1981. Consequently, National Steel and *not* ISG would be the proper party to receive a refund for the National Steel purchases of No. 6 residual fuel oil in the crude oil refund proceeding.

III. Conclusion

In sum, the deadline for ISG to file a claim in the crude oil proceeding has already elapsed. Even if we assume ISG's Motion was timely filed, we find that pursuant to the assignment and assumption contract agreement between National Steel and Weirton Steel, ISG would *not* be the proper party to receive a refund for the purchases of No. 6 residual fuel oil made by National Steel for its Weirton, West Virginia facility. Therefore, ISG's Motion for Reconsideration should be denied.

It Is Therefore Ordered That:

(1) The Motion for Reconsideration submitted by International Steel Group, Inc., Case No. RR272-00321, is hereby denied.

(2) This is a final Order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: June 1, 2005