

May 8, 2007

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Supplemental Order

Name of Petitioner: Crude Oil Supplemental Refund Distribution

Date of Filing: April 30, 2007

Case Numbers: RB272-10110
RC272-00439

Pursuant to the long-standing policy of the Department of Energy (DOE), thousands of purchasers of petroleum products have applied for, and been granted, refunds from crude oil overcharge funds under the jurisdiction of the DOE's Office of Hearings and Appeals (OHA). See Modified Statement of Restitutionary Policy In Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986). The standards for considering Applications for Refund from these crude oil funds are set forth at 10 C.F.R. Part 205, Subpart V. The deadline for applications in the crude oil proceeding was June 30, 1995.

The OHA has approved more than 87,000 crude oil overcharge refund applications. A claimant is generally eligible for a refund equal to the number of gallons of eligible refined petroleum products it purchased during the period August 19, 1973 through January 27, 1981, multiplied by a per gallon refund amount. That per gallon refund amount, also referred to as the volumetric, is derived by dividing the total refund monies available by the total U.S. consumption of petroleum products during the crude oil price control period. Originally, the DOE calculated refunds at a \$0.0002 per gallon volumetric. In 1989, the DOE increased the volumetric to \$0.0008 per gallon, and applicants paid at the lower \$0.0002 per gallon rate were eligible for a \$0.0006 per gallon supplemental payment. See Crude Oil Supplemental Refund Distribution, 18 DOE ¶ 85,878 (1989). In 1995, the DOE increased the volumetric to \$0.0016 per gallon, and applicants paid at the lower \$0.0008 per gallon rate were eligible for a \$0.0008 per gallon supplemental payment.

On January 13, 2006, the DOE announced that applicants paid at the lower \$0.0016 per gallon rate are now eligible for an additional \$0.000695389 per gallon supplemental refund. 71 Fed. Reg. 2195 (January 13, 2006). Refunds are rounded to the nearest dollar.

In order to receive a supplemental refund check, applicants are required to verify that their name and address in our records are correct, to correct any information that is not accurate, and to verify whether the refund cannot be paid to the original applicant for any reason, e.g., due to death, divorce, bankruptcy or dissolution of a business.

This decision concerns the supplemental refund for Case No. RF272-41358, under which a refund had previously been granted to Hamakua Sugar Co., Inc. In the present proceeding, we received a submission on behalf of the former owner of Hamakua Sugar Co., Inc., David Morgan, requesting that he be paid the supplemental refund. Subsequently, we received a submission from the Office of the United States Trustee for the District of Hawaii, stating that the refund

should be paid to 'Trustee, Hamakua Sugar Co., Inc.' due to the Chapter 11 bankruptcy filing of Hamakua Sugar Co. in 1992. The Office of the United States Trustee is currently the Trustee in that case. Attached is a copy of the Order Reopening Case that was entered on December 10, 2004 in which the Office of the U.S. Trustee was appointed Trustee.

Memorandum from Curtis Ching, Office of the United States Trustee to Supplemental Crude Oil Refunds (December 22, 2004).

In cases in which a refund applicant is in bankruptcy, we have generally determined that the restitutionary purposes of the refund process are served by disbursing the refund to the trustee for appropriate distribution in accordance with the instructions of the bankruptcy court. Because the trustee is the appropriate person to receive the refund in such cases, we have directed that the refund be sent to the trustee even when he has not filed a formal Application for Refund. *See e.g., Murphy Oil Corp./Energy Cooperative, Inc.*, 23 DOE ¶ 85,104 at 88,271 (1993) ("the OHA has recognized the court-appointed bankruptcy trustee, not the individual creditors, as the appropriate recipient of the refund"); *see also Atlantic Richfield Co./Mid Continent Systems, Inc.*, 21 DOE ¶ 85,424 (1991).

Thus, we will disburse the refund in this case to Trustee, Hamakua Sugar Co., Inc. Since these funds will then fall within the jurisdiction of the bankruptcy court, it is that court that will have the responsibility for determining the ultimate disposition of these funds. We will also rescind our prior order granting this supplemental refund to David Morgan under Case No. RB272-10073.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take appropriate action to disburse a supplemental refund in the amount of \$42,769.00 to:

Trustee, Hamakua Sugar Co., Inc.,
c/o Curtis Ching
Office of the United States Trustee
District of Hawaii
1132 Bishop St., Suite 602
Honolulu, HI 96813

(2) The funds shall be disbursed from the escrow fund denominated Crude Tracking-Claimants 4, Account No. 999DOE010Z, maintained at the Department of the Treasury.

(3) The Decision and Order issued in Case No. RB272-10073 be and hereby is rescinded to the extent set forth in Paragraph (4) below.

(4) David Morgan shall remit the sum of \$42,769.00 to the Department of Energy within 30 days of this Decision and Order. The check shall be made payable to the "U.S. Department of Energy," shall prominently display Case No. RC272-00439, and shall be sent to:

US Department of Energy
Cash Deposits
P. O. Box 979019
St. Louis, MO 63197-9000

In the event that payment is not made within 30 days of the date of this Decision and Order, interest shall accrue on the amount due at the rate generally assessed by the Department of Energy on overdue receivables. Other charges generally assessed on overdue DOE receivables shall also apply.

(5) Upon notification by the Office of the Controller of the receipt of these funds, the Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy, shall deposit these funds into the deposit fund escrow account maintained at the Department of Treasury denominated Crude Tracking - Claimants IV, Account No. 999DOE010Z.

(6) Applicants shall notify the Office of Hearings and Appeals in the event that there is a change of address, or if an address correction is necessary. Such notification shall be sent to:

Director of Management Information
Office of Hearings and Appeals
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0107

(7) Any conditions imposed that applied to an applicant's receipt of the initial crude oil refund shall also apply to that applicant's receipt of this supplemental refund.

(8) The determinations made in this Decision and Order are based upon the presumed validity of the statements and documentary material submitted by the applicants. This Decision and Order may be revoked or modified at any time upon a determination that the basis underlying a refund application is incorrect.

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

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: May 8, 2007

Tuesday, May 08, 2007

Doc name: RB27210110.doc

Richard Cronin:

Steve Goering: