

April 1, 2008

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Supplemental Order

Name of Petitioner: Crude Oil Supplemental Refund Distribution

Date of Filing: March 31, 2008

Case Numbers: RB272-10181
RC272-00441

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 were 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. RK272-03883, under which a refund previously had been paid to Kavanaugh Products, Inc. In 2006, the DOE disbursed a supplemental refund in this case to Kavanaugh Products, Inc., and the refund check was sent to Valley Proteins, Inc., a company that had previously purchased “substantially all of [the former company’s] property and assets.” Articles of Transfer of Kavanaugh Products, Inc. (August 31, 1984).

With regard to an applicant's eligibility for a refund where changes of ownership are concerned, the OHA presumes that the owner during the price control period should receive the refund. 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 at 88,059 (1993). However, an agreement which only transfers the assets of the business, without further elaboration, generally will not be deemed to have transferred the right to a refund. *See Texaco/Wolfrom's Garage*, 22 DOE ¶ 85,164 (1992); *Texaco/Douglas E. Howie*, 23 DOE ¶ 85,079 (1993). Because the asset transfer agreement at issue did not specify potential refunds, either expressly or implicitly, as one of the assets being transferred, Kavanaugh Products, Inc., not Valley Proteins, Inc., is eligible for the refund in this case.

However, we have also been informed that Kavanaugh Products, Inc., is no longer in business, and the corporation has been dissolved. In the case of a dissolved corporation, OHA presumes that any refund should be distributed to the shareholders of the dissolved corporation in proportion to their stock ownership of the company. *Texaco/Van Tex, Inc.*, 22 DOE ¶ 85,183 (1992); *Apex, Clark/Tom Soyk's Super 100, Inc.*, 22 DOE ¶ 85,192 (1992); *Murphy/Armstrong & Troutwine, Inc.*, 22 DOE ¶ 85,203 (1992); *Shell/Parkway Shell*, 22 DOE ¶ 85,222 at 88,591 n.3 (1992), reconsideration granted on other grounds, 22 DOE ¶ 85,244 (1992).

Based on the above facts, we will rescind our prior order granting a supplemental refund of \$3,453.00 under Case No. RB272-10100, and order the disbursement or refund in these cases to the former shareholders of the corporation in proportion to their stock ownership of the company. Thus, Randy Norton, the owner of 53% of the stock of Kavanaugh Products, Inc., will receive a refund of \$1,830.00, and the Estate of Helen A. Hutson, the owner of 47% of the stock of the corporation, will receive a refund of \$1,623.00.

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 supplemental refunds totaling \$3,453.00 to P. L. McMickle CPA Refund Escrow, on behalf of Randy Norton (\$1,830.00) and the

Estate of Helen A. Hutson (\$1,623.00), via ACH payment, as set forth in a memorandum accompanying this Decision and Order.

(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. RB272-10100 be and hereby is rescinded to the extent set forth in Paragraph (4) below.

(4) Valley Proteins, Inc., shall remit the sum of \$3,453.00 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. RC272-00441, 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: