

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Highway Oil, Inc.)
)
) Case No.: RFA-14-0002
Filing Date: December 2, 2014)
_____)

Issued: December 10, 2014

Supplemental Order

This Decision will distribute funds held in escrow by the Department of Energy to Highway Oil, Inc. (Highway). Highway submitted a number of applications in the Subpart V refined petroleum product refund proceeding and was granted refunds in five Subpart V refund proceedings.¹

Prompted by rapid increases in world oil prices in 1973, a predecessor agency of DOE, the Cost of Living Council, acting pursuant to the Economic Stabilization Act of 1970, Pub. L. No. 91-39, 84 Stat. 796, 799, on August 22, 1973, issued a system of price controls on the first sale of all domestic production of crude oil. Eventually, regulations were promulgated controlling the allocation and prices of many refined petroleum products in addition to crude oil and providing for enforcement of these regulations.² See 10 C.F.R. 210 *et seq.*; see also Emergency Petroleum Allocation Act of 1973, Pub. L. No. 93-159, Exec. Order 11,748, 38 Fed. Reg. 33,577 (December 6, 1973) (EPAA); Economic Stabilization Act of 1970, as amended, Pub. L. No. 92-210, 85 Stat. 743; Pub. L. No. 93-28, 87 Stat. 27, Exec. Order 11,748, 38 Fed. Reg. 33,575 (December 4, 1973) (ESA); Cost of Living Council Order No. 47, 39 Fed. Reg. 24 (January 2, 1974).

The Department of Energy's (DOE) Economic Regulatory Administration (ERA) was tasked to enforce the EPAA. As part of its enforcement responsibility, ERA was authorized to initiate enforcement actions that would lead to the collection of money obtained by producers of crude and refined petroleum products in violation of the price control regulations to remedy actual or alleged violations of the EPAA and ESA. In 1986, Congress passed the Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter PODRA), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509. PODRA established procedures for the disbursement of these funds.

¹ As of October 31, 2014, the escrow funds held by the Department of Energy totaled \$ 91,570.

² The price control regulation ended in January 1981.

PODRA required the DOE, through the Office of Hearings and Appeals (hereinafter OHA), to conduct proceedings under 10 CFR Part 205, Subpart V (Subpart V), to accept claims for restitution from the public and to refund oil overcharge monies to persons injured by violations of the EPAA or the ESA. Under PODRA, the ERA would petition OHA to establish a special refund proceeding under Subpart V to distribute monies collected from a specific firm who allegedly violated the price control regulations. Generally, consumers who purchased petroleum products from the firm and who could demonstrate economic injury by the alleged price violations could apply to OHA to receive a refund from these funds.

Highway submitted five applications for refunds in five different Subpart V proceedings and was granted refunds in each proceeding. The OHA Decisions granting refunds to Highway are listed below:

<u>Case Name</u>	<u>Case No.</u>	<u>Citation</u>	<u>Amount Granted</u>
<i>Peterson Petroleum Products/Johnson Products, Inc. et al.</i>	RF199-0002	15 DOE ¶ 85,162 (1989)	\$8,483
<i>Placid Oil Company/Highway Oil, Inc.</i>	RF314-0006	21 DOE ¶ 85,170 (1991)	\$3,175
<i>King and King Enterprises, Inc./ Highway Oil, Inc.</i>	RF256-0003	15 DOE ¶ 85,420 (1989)	\$7,328
<i>La Gloria Oil and Gas Company/ Highway Oil, Inc.</i>	RF263-0017	16 DOE ¶ 85,371 (1989)	\$9,183
<i>Pacer Oil Company of Florida, Inc./ Highway Oil, Inc.</i>	RF218-0002	19 DOE ¶ 85,243 (1989)	\$7,670

During the time that these refunds were granted to Highway, Highway was the subject of a Proposed Remedial Order (PRO) (Case No. HRO-0123) issued by the ERA on October 29, 1982. The PRO alleged that, during the period of a DOE audit conducted in 1978 and early 1979, Highway violated the pricing provisions of 6 C.F.R. § 150.359 and 10 C.F.R. § 212.93 by selling regular and premium gasoline to its retail customers at prices that exceeded the maximum lawful selling price permitted under the regulations. According to the ERA, these violations resulted in

overcharges totaling \$1,335,810.66. The PRO contemplated that Highway refund this amount, plus interest, in a manner to be determined by the ERA in accordance with the options set forth in the PRO.³ The alleged violation amount exceeded the refund amount that Highway is eligible to receive. Given this, OHA decided in the above referenced refund decisions not to issue the refunds directly to Highway but to place any refunds Highway would have been awarded in an interest bearing escrow account. *See, e.g., Placid Oil Company/Highway Oil, Inc.* 21 DOE ¶ 85,170 at 88,574 (1991). If Highway was found to be liable for the overcharges, the escrowed monies would be available to satisfy the proposed ERA-determined overcharge amount to be refunded by Highway. In the alternative, if ERA terminated its enforcement action against Highway, the escrowed monies could be disbursed to Highway.

We have recently been informed that no further action is contemplated to be taken against Highway for its alleged overcharges. Consequently, we will order the disbursement of all of the escrowed Highway refund monies to Highway.

It Is Therefore Ordered That:

(1) The Office of Finance and Accounting, Office of the Chief Financial Officer, of the Department of Energy shall take appropriate action to transfer all funds contained in the DOE deposit fund escrow accounts maintained at the Department of Energy and funded by Highway Oil, Inc., Consent Order Nos. BRBBBBBBBB, AVAAAAAAAA, and BKBBBBBBBB to Highway Oil, Inc. (Highway). Such transfer to Highway shall be made by check.

(2) The determination made in this Decision and Order is based on the presumed validity of statements and documentary material submitted by the Highway Oil, Inc. (Highway). This determination may be revoked or modified at any time upon a determination that the factual bases underlying any of Highway's refund applications are incorrect.

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

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: December 10, 2014

³ The PRO was remanded to the ERA by an Interlocutory Order issued by the OHA on September 24, 1990. *Economic Regulatory Administration*, 20 DOE ¶ 83,009 (1990).