



U.S. DEPARTMENT OF  
**ENERGY**

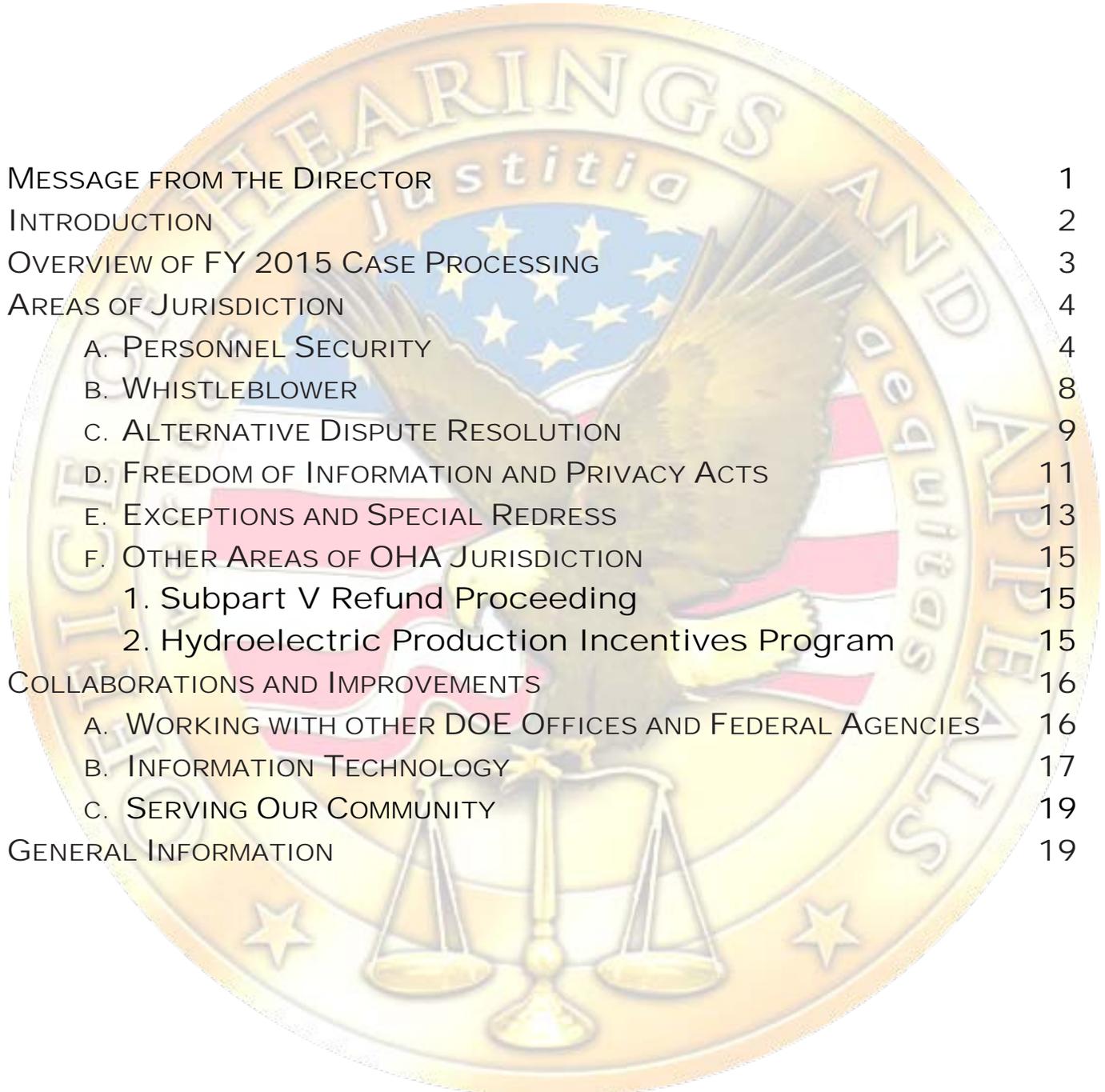
# Office of Hearings & Appeals



Annual  
Report  
FY 2015

DOE/HG-0027

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## MESSAGE FROM THE DIRECTOR

I am pleased to report on the FY 2015 operations of the Office of Hearings and Appeals (OHA). OHA's mission is to provide adjudicatory and dispute resolution services to the Department. All of OHA's work supports one or more of DOE's Strategic Goals.

During FY 2015, our average case processing times achieved historically low levels. Timeliness highlights include:

**Personnel security decisions.** Our average time for issuing a decision after the receipt of the hearing transcript stood at 19 days, over 22 percent below our five-year average, and over 61 percent below our ten-year average.

**Freedom of Information Act (FOIA) and Privacy Act Appeals decisions.** Our FOIA and Privacy Act average case-processing time was 12 working days, a figure below our most recent five-year average and less than half of our average for the last ten years.

We also conducted an increased number of mediations, achieving a settlement rate of 59%. For the first time, over 50% of our mediations were conducted by OHA Administrative Judges and mediation staff.

We continued using information technology to efficiently provide our services. We conducted 86 percent of our hearings via video teleconferencing, and we completed our transition to an electronic records system.

As we begin FY 2016, we are committed to continued improvement and to meeting any new Departmental needs for our services. To these ends, we will continue to review our operations to identify opportunities for increased efficiency and productivity.

We note that while we will continue to look for opportunities to improve productivity and efficiency, we will never compromise our commitment to excellence or the outstanding quality of our work.

We hope that this report is informative. If you have any comments or suggestions for future improvements, please contact Fred Brown at [fred.brown@hq.doe.gov](mailto:fred.brown@hq.doe.gov), or 202-287-1545.

Sincerely,

Poli A. Marmolejos

# INTRODUCTION



The Office of Hearings and Appeals is the central adjudicative forum for the Department of Energy. The Secretary of Energy has delegated to the OHA Director the authority to act for him in many different areas. The OHA Director's decision typically serves as final agency action.

During its over 35-year history, OHA has had broad-ranging subject matter jurisdiction. Originally, OHA's primary function was to consider exceptions and other petitions related to the petroleum pricing and allocation regulations, as well as Freedom of Information Act (FOIA) and Privacy Act appeals. From that point onward, OHA's jurisdiction has evolved to meet the needs of various DOE programs.

Over the years, OHA has adjudicated appeals from a variety of DOE determinations, including those related to the Department's Alternative Fuel Transportation Program, physician panel reviews of DOE worker occupational illness claims, payment-equal-to-taxes claims under the Nuclear Waste Policy Act of 1982, civil penalties imposed for violations of DOE's worker safety and health rule, and the equity interests in production from Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1.

In FY 2015, OHA continued to conduct personnel security and whistleblower proceedings, consider FOIA and Privacy Act Appeals, rule on requests for exceptions from energy efficiency regulations, and promote the understanding and facilitate the use of Alternative Dispute Resolution (ADR) throughout the Department. In addition, OHA conducted a number of high level fact-finding reviews and issued a decision in a Hydroelectric Incentives Program Appeal.

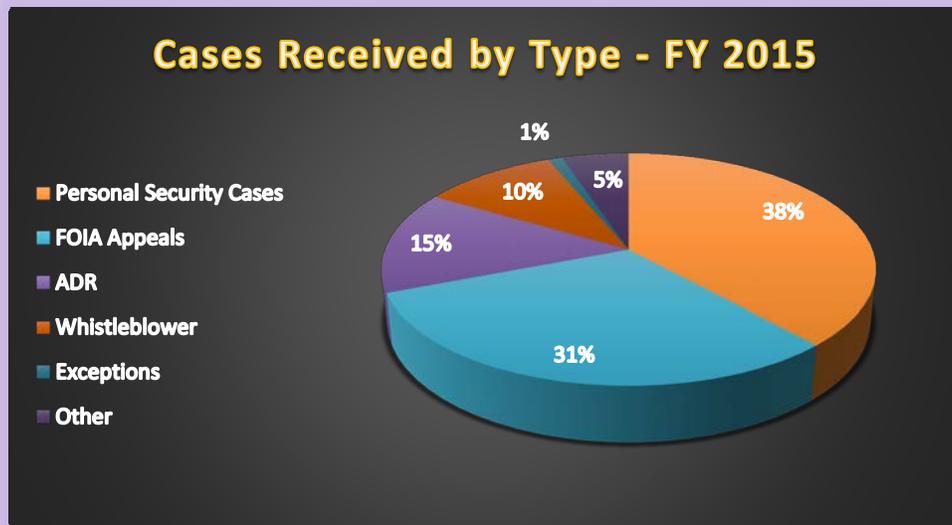
The procedures that OHA uses vary, depending on the type of case involved. OHA procedures are flexible and easily adaptable to new situations, allowing OHA to minimize "start-up" times and to produce high-quality work in new areas. OHA's general procedures and those used for specific proceedings can be found on our web site at <http://energy.gov/oha> under "Services."

In the end, OHA's work involves more than resolving disputes. It also serves to inform affected parties and the public about the Department's programs. The decisions reflect the balancing of important and varied interests, including those of the public, the Department, state and local governments, and individual litigants.

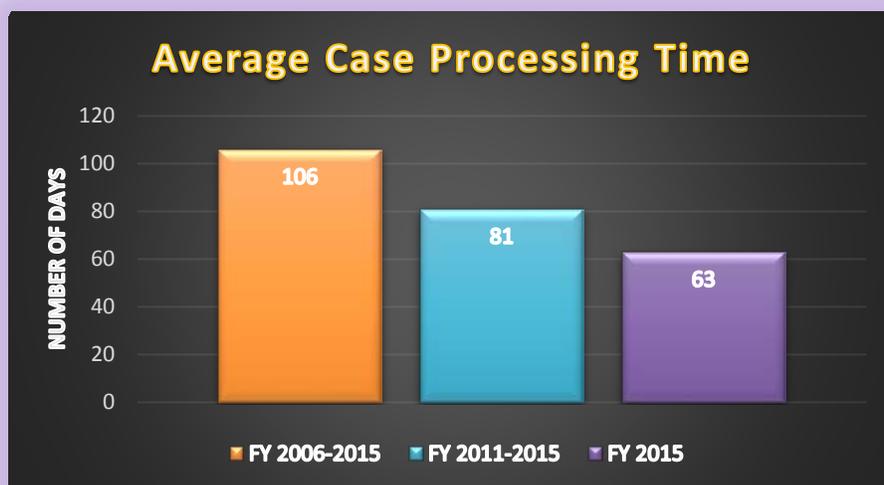


## OVERVIEW OF FY 2015 CASE PROCESSING

In FY 2015, OHA received a total of 272 cases. The greatest number of these were personnel security hearings, followed by FOIA and Privacy Act appeals, ADR inquiries and mediations, whistleblower cases (investigations, hearings, and appeals), and exception applications. The following chart shows the volume of cases, by type.



In FY 2015, OHA closed a total of 222 cases. The chart below shows the average case-processing time for cases closed in FY 2015, and over the last five and ten fiscal years. Our average case-processing time was over 22 percent below our most recent five-year average and 40 percent less than our ten-year average. We attribute these results to a continued emphasis on timeliness, without sacrificing the quality of our adjudicative work.





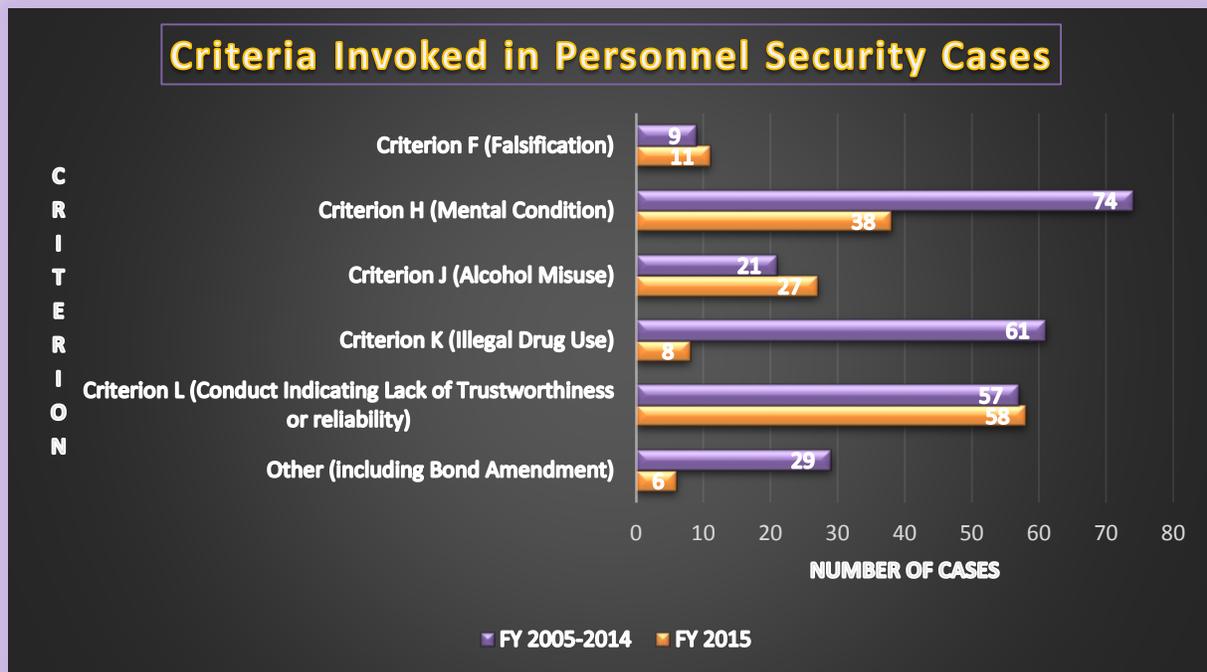
## AREAS OF JURISDICTION

### A. PERSONNEL SECURITY

In FY 2015, 104 cases, over 38 percent of those received by OHA, concerned a federal or contractor employee's eligibility for a DOE security clearance. Included in this type of case are reviews for eligibility for the Human Reliability Program, a security and safety reliability program for individuals who may have access to certain material, nuclear devices, or facilities. The governing regulations are set forth at 10 C.F.R. Parts 710 and 712, respectively. OHA's web site contains a "Frequently Asked Questions" page to assist individuals in understanding the personnel security hearing process. Upon request, OHA also conducts security clearance hearings for the Nuclear Regulatory Commission (NRC).

Personnel security hearings typically involve concerns about excessive alcohol use, substance abuse, mental illness, financial irresponsibility, or conduct raising doubt about an individual's honesty and reliability, among other issues. Evidence and testimony may include expert medical opinion. The OHA Administrative Judge assigned to the case conducts a hearing, analyzes the evidence, and renders a decision, which may be appealed to an Appeal Panel within the DOE.

The following chart shows the number of cases in which various types of concerns - also referred to as criteria - were raised. Some cases involve multiple criteria. For example, a case may involve a concern about excessive alcohol use (Criterion J) and related or different

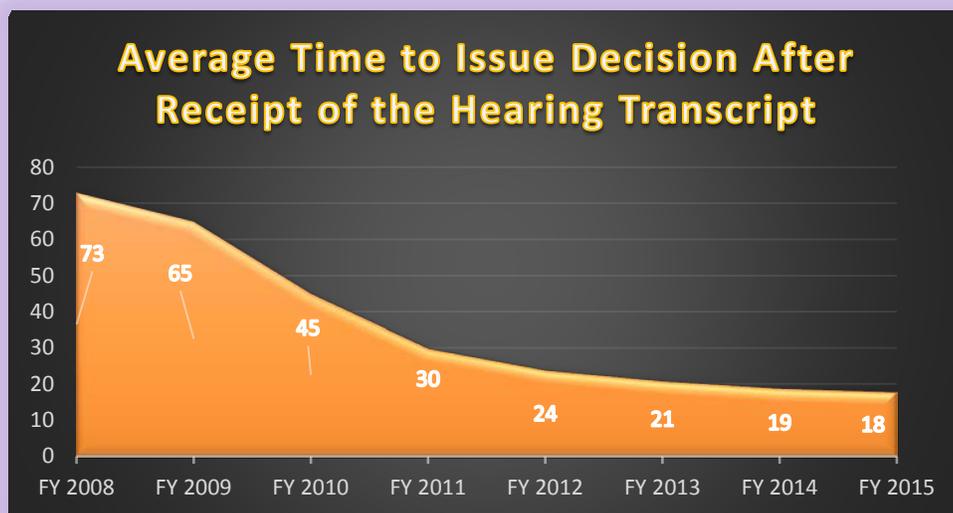


concerns about honesty and trustworthiness (Criterion L). Notable in FY 2015 was the relatively lower number, compared to our ten-year average, of cases involving concerns raised by mental conditions and use of illegal drugs. However, the number of concerns regarding conduct indicating lack of trustworthiness or reliability has remained relatively stable.

The following chart shows the number of personnel security cases received during each of the last ten years. OHA received 104 personnel security cases in FY 2015, fewer than FY 2014 and prior years, but a number that we expect to increase.

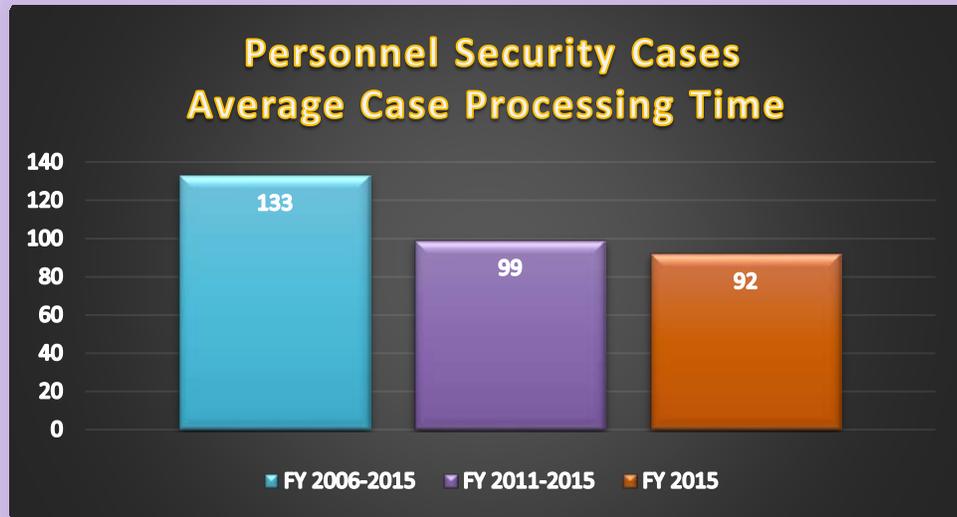


Consistent with our historical trend, we continued to process personnel security cases in a more timely manner. Average case processing time, measured from the receipt of the

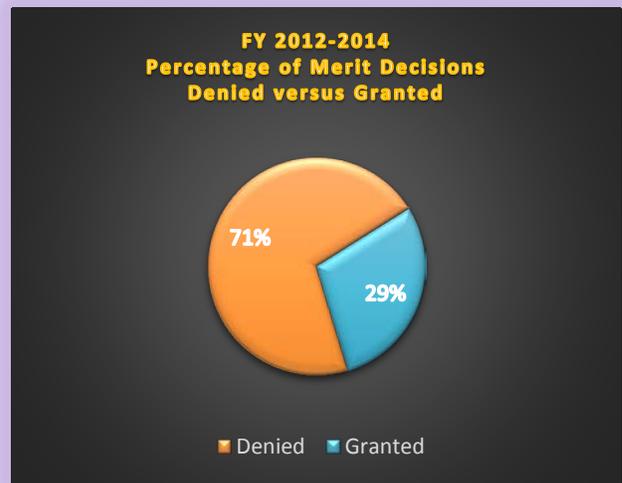
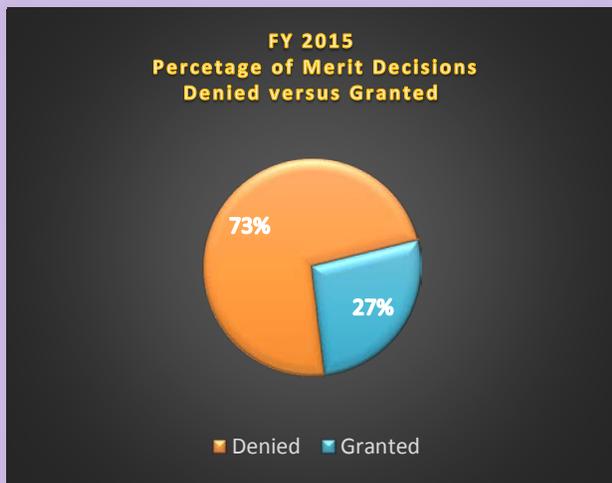


transcript to the issuance of the decision, was 18 days. This average has been trending downward since 2008, when it was 73 days. See the chart above for data regarding the processing time since FY 2008.

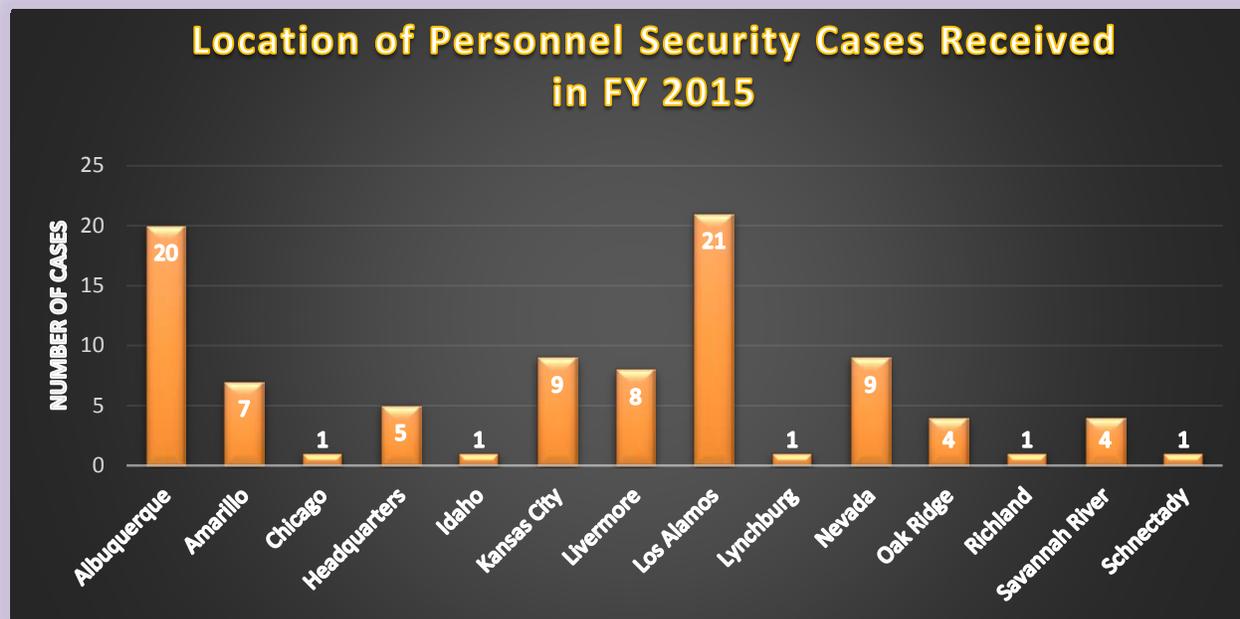
Average total case processing time was nearly 7 percent below our average over the last five years, and nearly 31 percent below our average for FY 2006-2015. At the end of the fiscal year, as has been the case since FY 2009, we had no cases in our inventory older than 180 days.



Data for FY 2015 reveal that in 57 (73% percent) of the total cases decided by OHA, the Administrative Judge determined that the individual should not receive or retain a security clearance. This metric (73%) is slightly higher than the ratio of denial/revocations to grant/restorations that OHA has seen in its adjudication of personnel security cases in the past three years.



The majority of our personnel security cases are referred to us from the National Nuclear Security Administration (NNSA) Service Center in Albuquerque, New Mexico. NNSA covers the locations of Albuquerque, Amarillo, Kansas City, Livermore, Los Alamos, and Nevada.



#### PERSONNEL SECURITY CASE DECISION SUMMARY

**Case No. PSH-14-0109 - Personnel Security Hearing**

On May 11, 2015, an Administrative Judge issued a decision in which he concluded that an individual's security clearance should not be restored. OPM investigators discovered during a periodic reinvestigation of the individual that he had stolen money from a Sports Venue where he worked part-time (outside of the DOE complex). The individual acknowledged during an interview with the Local Security Office (LSO) that he had stolen cash on at least four occasions from the Sports Venue in retaliation for management changes in the workplace environment, in an amount aggregating \$540. The LSO suspended the individual's access authorization citing Criterion L. Subsequently, the individual was charged with two misdemeanors and one felony. Pursuant to a plea agreement, he pled guilty to the felony, the misdemeanors were dismissed, he was ordered to pay \$1035 in restitution to the Sports Venue and he was placed on probation for three years. In mitigation of the security concerns, the individual primarily argued that his criminal behavior was the result of a testosterone implant that he received immediately preceding his thefts. The Administrative Judge found such argument was speculative and insufficient to remove doubt. Further, the Administrative Judge noted that several inconsistencies in the individual's account of the thefts further evidenced the individual's unreliability and untrustworthiness.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2015/05/j22/PSH-14-0109.pdf>.*

In the area of personnel security, OHA also serves its DOE customers by regularly taking part in the training of those involved in the Administrative Review process. For example, the OHA Administrative Judges participate in training for Personnel Security Specialists via video conferencing.

## B. WHISTLEBLOWER

OHA investigates complaints, conducts hearings, and considers appeals under DOE's Contractor Employee Protection Program. The program provides an avenue of relief for DOE contractor employees who suffer reprisal as the result of making protected disclosures or engaging in other types of protected activity. The governing regulations are set forth at 10 C.F.R. Part 708. OHA's website <http://energy.gov/oha> contains two "Frequently Asked Questions" pages to assist DOE field personnel and contractor employees in understanding the process for considering contractor employee reprisal complaints.

The main issues in these cases are whether an employee engaged in protected activity or disclosure and, if so, whether the contractor would have taken an adverse action against the employee in the absence of the employee's involvement in that activity. If a complaint is dismissed for lack of jurisdiction by the Head of Field Element or EC Director, an individual can appeal the dismissal to the OHA Director. OHA will issue a decision within 30 days on that appeal. During the investigation, an OHA Investigator conducts interviews, examines documentary evidence, and issues a report. Following the issuance of the report, an OHA Administrative Judge is assigned to the case. The Administrative Judge rules on pre-hearing motions, conducts a hearing, and issues an initial agency decision, which may be appealed to the OHA Director. The OHA Director also hears appeals from dismissals of complaints. His decisions in both types of appeals serve to increase understanding of the program's purpose and implementation. A finding of reprisal for certain types of disclosures may result in civil penalties pursuant to the DOE enforcement programs under the Price-Anderson Act and the DOE Worker Safety and Health Rule (10 C.F.R. Part 851).

OHA received 28 whistleblower cases in FY 2015, with a higher than usual percentage of hearings, the most lengthy of the Part 708 processes. As with our other areas of jurisdiction, we continued to focus on timeliness in the processing of these cases. We are pleased with the results of those efforts in the past year. Average case-processing time in FY 2015 was 90 days, over 23 percent below our average over the last ten years. In addition, no case in our end-of-year inventory was older than 180 days.

The DOE Contractor Employee Protection Program is part of a larger DOE program - the DOE Employee Concerns Program (ECP). From its inception and through all of 2015, the Employee Concerns Program was managed within the DOE's Office of Economic Impact and Diversity. As an adjunct to its involvement in the Employee Concerns Program, OHA is active in related Departmental initiatives.

During FY 2015, OHA supported an ongoing dialogue among Departmental organizations concerning the processes for employees to raise concerns, and OHA continued a close interface with the Employee Concerns Program. These activities are well aligned with the Department's efforts to achieve greater collaboration among DOE offices.

## WHISTLEBLOWER CASE DECISION SUMMARIES

During FY 2015, the Office of Hearings and Appeals issued a range of decisions in whistleblower proceedings, including three jurisdictional appeals – two from the Oak Ridge Operations Office and one from the National Nuclear Security Administration.

- In the first case, the complainant was a former fellow at the DOE's Oak Ridge Institute for Science Education, who was working on a Department of Defense (DOD) project at a DOD facility. The site office dismissed his complaint and OHA affirmed the dismissal, holding that Part 708 was expressly limited to employees of DOE contractors that perform work “directly related to work at DOE-owned or –leased facilities” and, therefore, did not apply to an individual working on a DOD project at a DOD facility.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2014/11/f19/WBU-14-0011.pdf>.*

- In the second case, the complainant was a former postdoctoral research associate at the Oak Ridge Associated Universities, who signed a “Resignation in Lieu of Termination” agreement, waiving any claims with respect to his employment. The site office dismissed the complaint, and OHA affirmed on two alternative grounds: 1) that individual had waived the right to file a complaint and 2) that his alleged disclosures were made post-employment and, therefore could not have contributed to the end of his employment.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2014/12/f19/WBU-14-0013.pdf>.*

- In the third case, the complainant was a former employee of Sandia National Laboratory. The NNSA dismissed the complaint on the ground that she was pursuing the same matter in another forum. The OHA reversed the dismissal, finding that the pursuit of an EEO claim in another forum did not preclude the complainant from filing a Part 708 complaint based on information that was different from her EEO claim in the other forum. OHA remanded the case to allow the complainant to cure deficiencies with respect to such a complaint.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2015/07/f24/WBU-15-007.pdf>.*

## C. ALTERNATIVE DISPUTE RESOLUTION

OHA's Office of Conflict Prevention and Resolution (OCPR) serves as a resource to all DOE components and contractors to explore efficient and cost-effective means of preventing and resolving disputes, without the formalities and costs of litigation. DOE created OCPR in response to the Administrative Dispute Resolution Act of 1996 (ADRA). While ADRA focuses on existing disputes, OCPR also encourages the identification and prevention of potential conflicts throughout the DOE complex.

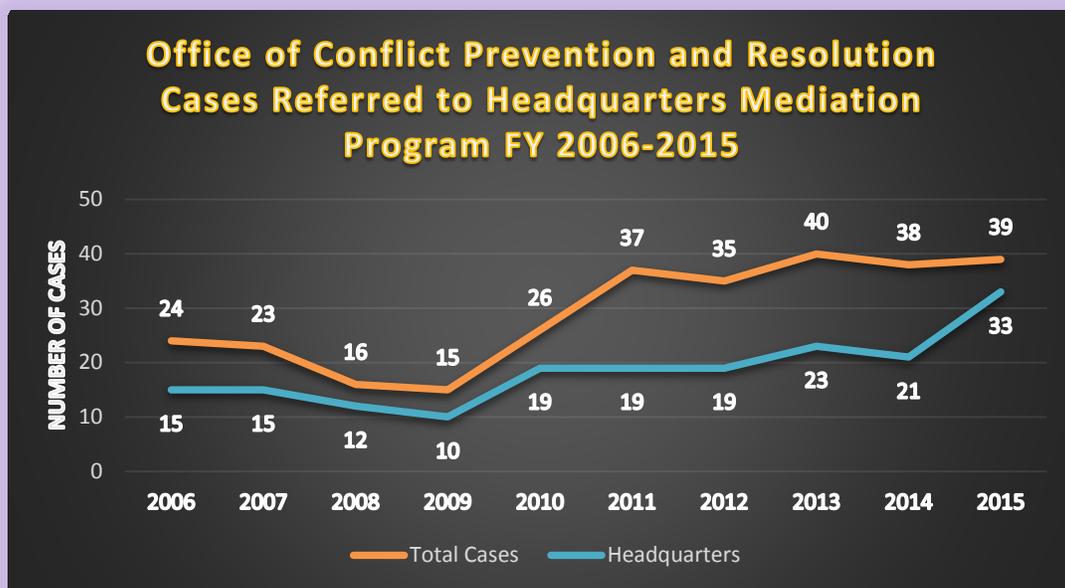
ADR includes a variety of dispute resolution processes (including, but not limited to, conciliation, facilitation, mediation, arbitration, use of ombuds, or any combination thereof) that assist people in avoiding more polarizing (and, potentially, more costly) forums such as litigation. As part of its responsibilities, OCPR manages the DOE Headquarters Mediation Program.

OCPR had a strong start in FY 2015, when Secretary Moniz recorded a video, expressing his support for ADR and for the DOE’s annual October celebration of Conflict Resolution Day. Then, in December 2014, Secretary Moniz issued an official policy statement, supporting the use of ADR. The video and policy statement are posted on the OHA web site at the following addresses:

<http://www.energy.gov/oha/listings/interagency-adr-workplace-section-education-programs> (video)

<http://www.energy.gov/oha/services/applications-exceptions/alternative-dispute-resolution> (policy statement)

With that strong start, OCPR had a busy year. The Headquarters Mediation Program fielded 39 cases, including 33 that concerned the possible mediation of headquarters disputes. During FY 2015, OCPR conducted 22 mediations. The majority of the mediations involved equal employment opportunity issues and were mediated by OHA Administrative Judges and OCPR staff. Of the 22 cases mediated, OHA had a settlement rate of 59%.



In addition to conducting mediation, OCPR provided training in communication and the headquarters mediation process. OCPR training and outreach activities included:

- ✘ “Supervisory Essentials” Classes - about ADR and the HQ Mediation Program to new supervisors – November 2014, July 2015, and September 2015.
- ✘ ADR and Mediation Training for Employee Concerns Program Managers – November 2014.

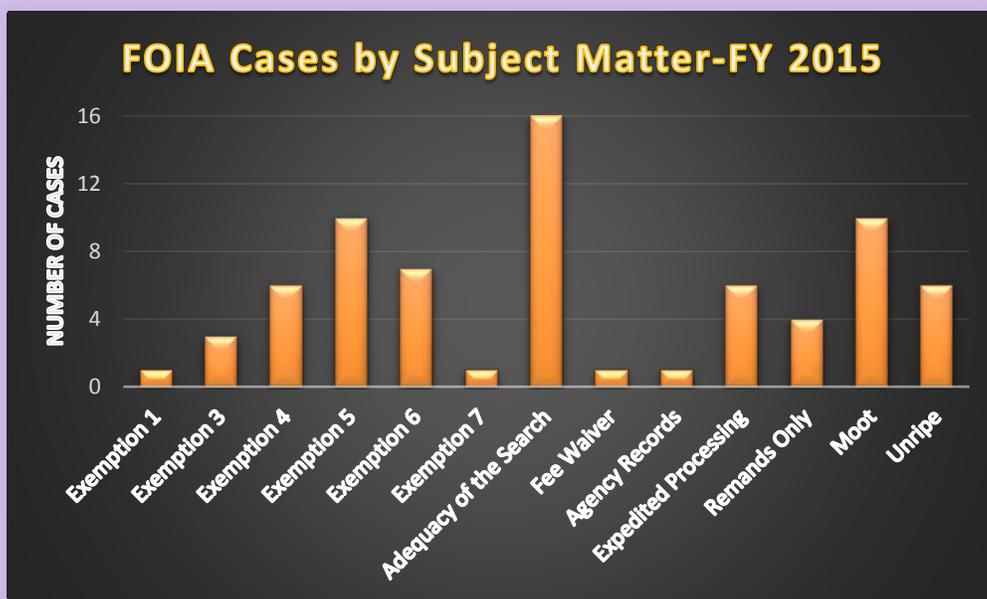
✦ ADR Lunchtime Series - OCPR hosted five Interagency ADR Working Group presentations at DOE Headquarters, featuring various ADR topics. This program is designed for ADR practitioners and conflict resolution managers, but is typically also of interest to others in the workplace. Each ADR program is recorded, converted to a YouTube video and posted on the OCPR website at <http://www.energy.gov/oha/listings/interagency-adr-workplace-section-education-programs> and at Department of Justice's [www.adr.gov](http://www.adr.gov) website. Due to the success of the program, it is one of the best known free educational ADR programs in the federal government administered to nationwide audiences throughout the federal government and to ADR practitioners in the private sector.

As FY 2015 drew to a close, OHA was working on the enhancement of the ADR services offered to the DOE complex.

#### D. FREEDOM OF INFORMATION AND PRIVACY ACTS

OHA considers appeals of agency determinations under the Freedom of Information Act (FOIA) and Privacy Act (PA). The governing regulations are set forth at 10 C.F.R. Parts 1004 and 1008, respectively. During FY 2015, Privacy Act cases were processed separately from FOIA cases for the first time.

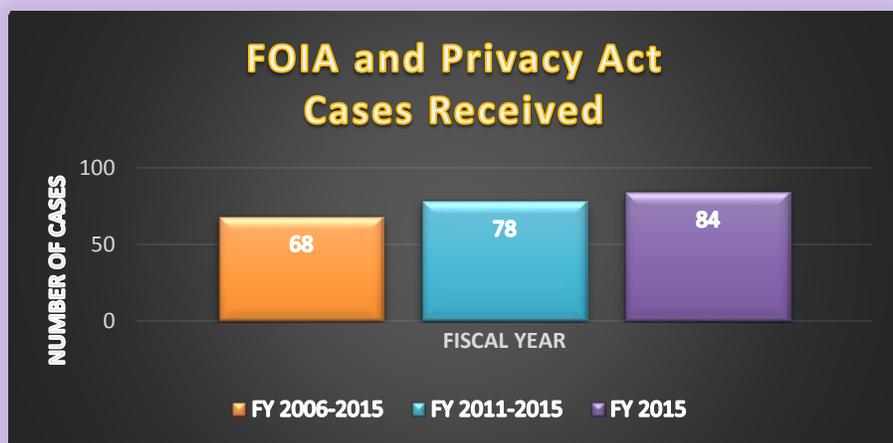
These appeals arise from determinations across the DOE complex and involve diverse subject matter areas. OHA facilitates communication between the requester and the agency, which in some cases permits the resolution of the issues without adjudication. OHA works closely with the DOE's FOIA and Privacy Act offices, and participates in complex-wide



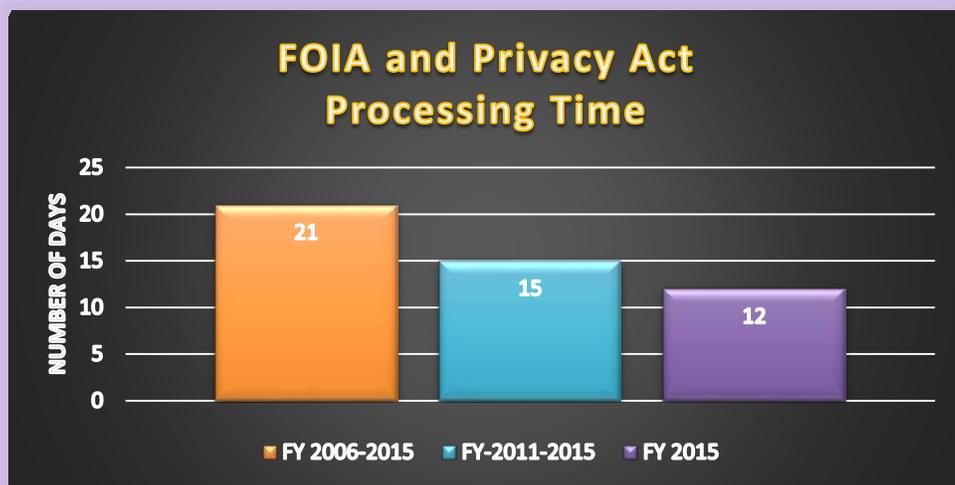
training. As a result of that collaboration, the DOE FOIA and Privacy Act offices include our email inbox address, [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), in their determination letters to facilitate electronic filings and reduce the number of days needed to process an Appeal.

OHA receives appeals from varied entities, most commonly individuals. In FY 2015, the appeals involved records on a broad range of topics, including (1) records about the requester, (2) the identities of DOE and contractor employees, and (3) federal wage laws (payroll information). In years past, a majority of the cases sought data that would demonstrate whether DOE contractors are complying with federal wage and hour laws.

As shown in the chart below, during FY 2015 we received 84 FOIA and Privacy Act Appeals, 8 percent higher than our most recent five-year average over the last five fiscal years and 29 percent higher than our most recent ten-year average.



Despite the relatively high number of cases received, our case-processing time for FY 2015 continued its downward trend. The average case processing time for FY 2015 was 12 days, slightly lower than the FY 2014 average of 16 days and 43 percent lower than the previous



ten-year average. OHA received praise from the Office of Government Information Services, which stated that “appeal responses from the [DOE’S OHA] are detailed and reflect that the office has gone through a thorough process of fact gathering and analysis before issuing the response.”

#### FREEDOM OF INFORMATION AND PRIVACY ACTS CASE DECISION SUMMARY

##### Case No. FIA-14-0056– In the Matter of DLA Piper

On October 24, 2014, OHA issued a decision remanding an Appeal of a FOIA determination issued by the DOE Office of Information Resources (OIR). The Appellant, DLA Piper, appealed OIR’s decision to withhold portions of a document pursuant to Exemption 4. The document that was released to the Appellant was a contract pursuant to which the DOE would develop, produce and sell Americium-241 and the buyer would contribute to the development costs and purchase Americium-241. The DOE states that the contract resulted from negotiations with commercial entities who were potential purchasers, none of which was a federal entity. The information withheld from the document fell into the following three categories: (1) information that originated with the DOE; (2) terms negotiated between the DOE and the group of potential purchasers where one or more of the potential purchasers were the source of the withheld information; and (3) terms negotiated between the DOE and the ultimate purchaser where the ultimate purchaser was the source of the withheld information. The information that originated with the DOE was withheld under Exemption 4, and OHA determined that such information cannot be withheld under Exemption 4 since the DOE does not constitute a “person” under Exemption 4. In regard to the other withheld information, OHA found that OIR’s analysis did not satisfy the requirement under Exemption 4 that withheld information is likely to cause substantial competitive harm to the submitter. Accordingly the OHA remanded the appeal to OIR to issue a new determination.

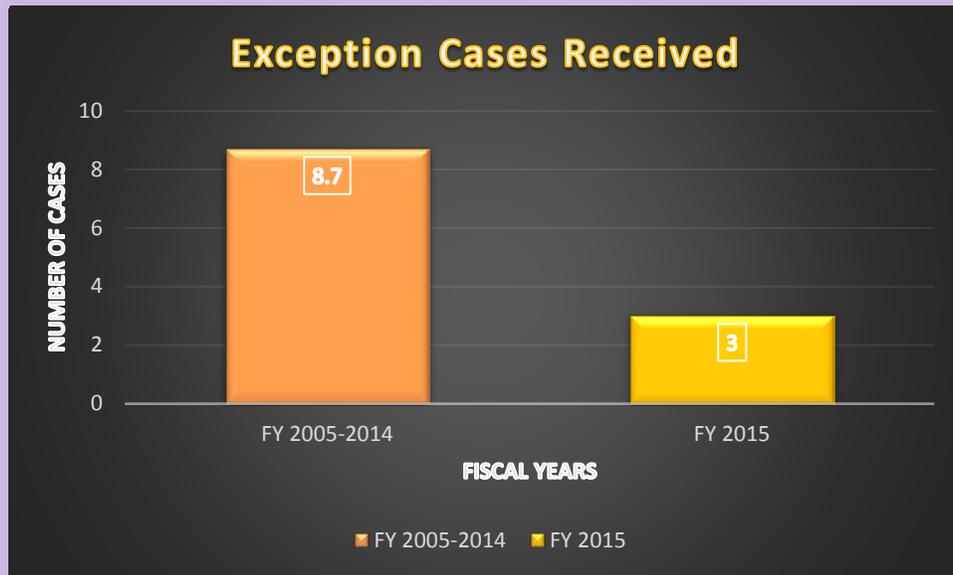
*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2014/10/f18/FIA-14-0056.pdf>.*

#### E. EXCEPTIONS AND SPECIAL REDRESS

OHA considers petitions for special redress, as well as requests for exceptions from certain DOE regulations and orders. The exception process is a regulatory relief valve. An exception is granted where the application of a rule or order would constitute a gross inequity, serious hardship, or unfair distribution of regulatory burdens. OHA may grant an exception, for example, if applying a rule to a specific firm would be inconsistent with the overall purpose of a program or would impose a burden on the firm that would be grossly disproportionate to the burden imposed on other firms by the rule. In all cases, OHA consults with the affected DOE office.

The nature of relief requested varies depending on the DOE regulations at issue, and the number of requests received tends to increase as the deadline for compliance with a regulation approaches. For example, a number of consumer groups, utilities, and manufacturers of smart grid communication devices sought relief, claiming that their communication devices do not work on “heat pump” water heaters that are required for large water heaters (over 55 gallons) under standards effective April 16, 2015. At the same time they sought legislative relief, which they received and which alleviated the need for relief from OHA.

We received a somewhat lower number of exception requests in FY 2015 (3 cases) than the average number of cases received annually during the last ten fiscal years. Due to the complexity of one of the cases received during FY 2015, our average case-processing time of 136 days was higher than the FY 2005-2014 processing time of 110 days.



## EXCEPTIONS AND SPECIAL REDRESS CASE DECISION SUMMARY

### Case No. EXC-14-0003 - In the Matter of Vaughn Thermal Corp.

On April 9, 2015, OHA issued a decision denying an Application for Exception filed by Vaughn Thermal Corporation (Vaughn), in which the firm sought relief from DOE's revised water heater energy efficiency standards, effective April 16, 2015. Vaughn, headquartered in Salisbury, Massachusetts, is a manufacturer of residential heaters and electronic water heater controls devices used by utilities in electric thermal storage (ETS) programs, also referred to as Demand Response (DR) programs. Under the new standards, large capacity water heaters would effectively be required to utilize heat pump technology (rather than internal electric resistance coils) to achieve the established energy efficiency level. In its Application, Vaughn sought an exception allowing the firm to continue to manufacture large capacity (80 gallons or greater) electric resistance water heaters specifically for use in ETS/DR programs, claiming that heat pump water heaters were incompatible for use with these systems. OHA determined, however, that Vaughn's Application should be denied since recent studies conducted by Pacific Northwest National Laboratory confirmed that heat pump water heaters are in fact compatible for use in ETS/DR systems.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2015/04/121/EXC-14-0003.pdf>.*

## F. OTHER AREAS OF OHA JURISDICTION

### 1. Subpart V Refund Proceeding

OHA concluded the Subpart V Restitution Program, consistent with the requirements of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). Upon OHA's issuance of its final decision, the Secretary of Energy determined that the Program was complete and submitted a report to Congress. Consistent with PODRA requirements, OHA then directed that the remaining \$4 million in overcharge funds be transferred to the general fund of the U.S. Treasury.

#### SUBPART V REFUND PROCEEDING CASE SUMMARY

##### Case No. RFA-14-0002 – In the Matter of Highway Oil, Inc.

On December 10, 2014, OHA released funds held in escrow for Highway Oil, Inc. (Highway) in the Subpart V refund proceeding. Highway submitted five applications for refunds in five different Subpart V proceedings and was granted refunds in each proceeding. During the time that these refunds were granted to Highway, Highway was the subject of a DOE enforcement action involving over \$1 million in alleged gasoline overcharges. The alleged violation amount exceeded the refund amount that Highway was eligible to receive. Given this, OHA placed the refund amount in an interest bearing escrow account. OHA recently ascertained that no further action is contemplated to be taken against Highway for its alleged overcharges. Consequently, OHA ordered the disbursement of all of the escrowed Highway refund monies (approximately \$91,000) to Highway.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2015/01/19/RFA-14-0002.pdf>*

### 2. Hydroelectric Production Incentives Program

OHA handled one case filed under the DOE Hydroelectric Production Incentives Program, authorized by Section 242 of the Energy Policy Act of 2005. The Section 242 Program directs the Department of Energy to make incentive payments to the owner or operator of a qualified hydroelectric facility based on the number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. Any qualified owner or operator of a hydroelectric facility who added hydropower to non-powered dams or conduits between 2005 and 2015, but where the original dam/conduit was built prior to 2005, is eligible to apply for the Section 242 Incentive Program. OHA's one case dealt with an appeal of a notice issued by the DOE's Office of Energy Efficiency and Renewable Energy, denying an application for a hydroelectric incentive payment because the hydroelectric facility began operating in December 2003, outside the ten-year eligibility window established by the statute.

## HYDROELECTRIC PRODUCTION INCENTIVES PROGRAM CASE SUMMARY

### Case Number HEA-15-0001 – In the Matter of Kane County Water Conservancy District

On June 1, 2015, OHA issued a decision denying an appeal filed by Kane County (Utah) Water Conservancy District (KCWCD) of a notice issued to KCWCD by the DOE Office of Energy Efficiency and Renewable Energy (EERE). In the notice, EERE denied KCWCD's application for an incentive payment under the Hydroelectric Production Incentives Program authorized by Section 242 of the Energy Policy Act of 2005 (Section 242 Program). In its appeal, KCWCD contested EERE's determination that KCWCD is ineligible to receive a Section 242 Program payment since KCWCD's hydroelectric facility began to operate outside of the ten-year eligibility window established by the statute. EAct 2005, § 242(c), 42 USC § 15881(c). In considering the appeal, however, OHA determined that since KCWCD's hydroelectric facility began operation in December 2003, prior to the Section 242 eligibility window, EERE properly denied KCWCD's application. Accordingly, the appeal filed by KCWCD was denied.

*The full text of this decision can be found at <http://energy.gov/sites/prod/files/2015/06/j22/HEA-15-0001.pdf>.*

## COLLABORATIONS AND IMPROVEMENTS

### A. WORKING WITH OTHER DOE OFFICES AND FEDERAL AGENCIES

Over the years, OHA has collaborated and partnered with other DOE offices and federal agencies, and FY 2015 was no exception.

- OHA participated in the Department's Workplace Improvement Forum, an initiative to improve the workplace environment for all DOE headquarters employees. The OHA Director served on the Executive Committee, and an OHA attorney served on one of the subject area committees. Consistent with those efforts, OHA remains involved in the development of workplace improvement ideas.
- In the FOIA area, OHA organized and, with the assistance of the Office of the General Counsel (GC), hosted a series of four one-hour discussion sessions in FY 2015 on various topics of current interest. The sessions were conducted by conference call, allowing between 30 and 40 FOIA practitioners and attorneys from throughout the DOE complex to participate in each session. After OHA and GC attorneys delivered a brief presentation on the session's topic, the participants aired their questions, perspectives, and suggestions. We will continue this well-received program in FY2016.
- OHA continued to collaborate with other DOE offices concerning the Department's processes for addressing employee concerns.
- OHA continued to host the ADR luncheon series, which is sponsored by the Interagency Alternative Dispute Resolution Working Group and attended by ADR practitioners across the federal government and in the private sector.

- OHA conducted several management reviews for DOE organizations requesting fact-finding services.

We continue to learn from our colleagues, and hope that they gain a better understanding of OHA and what they can do to take advantage of the expertise, resources, and services we offer in support of DOE's mission. In this spirit, OHA continued its series of occasional Brown Bag Lunches. Our distinguished guests in the past year included Michael Terry, Circuit Mediator for the United States District Court for the District of Columbia; Michelle Rodriguez de Varela, Whistleblower Program Manager, National Nuclear Security Administration; Shahram Ghasemian, ADR Program Manager, Office of Enforcement, Nuclear Regulatory Commission; Kedric Payne, Deputy General Counsel for Environment & Compliance, DOE; and Michael Bogdanow, Senior Legal Liaison, Merit Systems Protection Board. We look forward to continuing this series in the coming year.

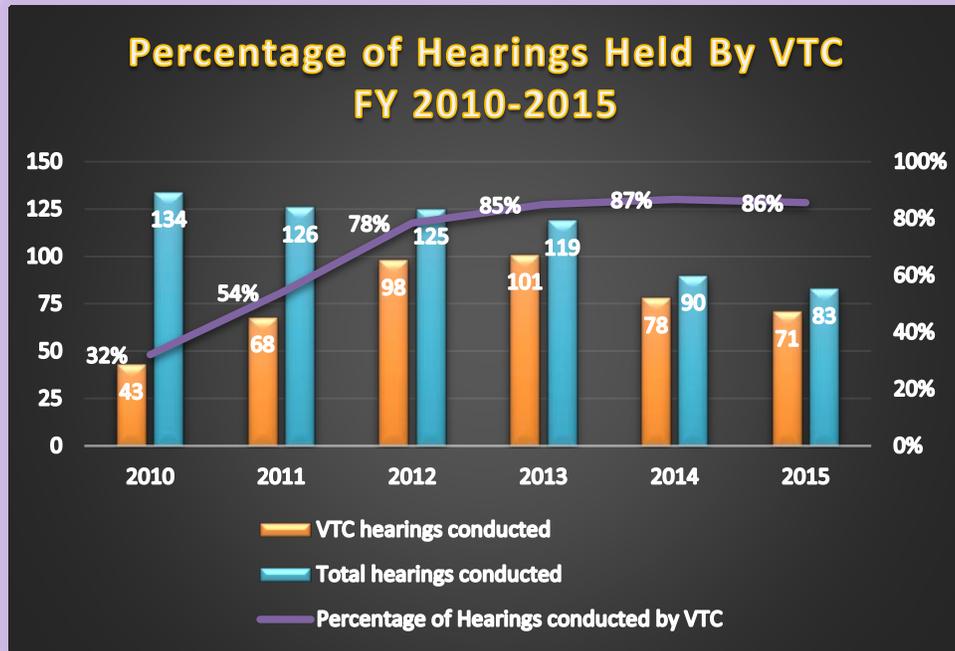
In addition, the Office has arranged opportunities for training that have been shared with other offices in DOE. OHA hosted a three-day investigator training, Westlaw training, and Lexis/Nexis training. Further, OHA arranged for a viewing of the video, *Betrayed*, a presentation provided by DOE's Office of Counterintelligence which highlighted issues relevant to personnel security cases. Further, staff has engaged in training outside the office, including EEOC investigator and counselor training among others.

## B. INFORMATION TECHNOLOGY

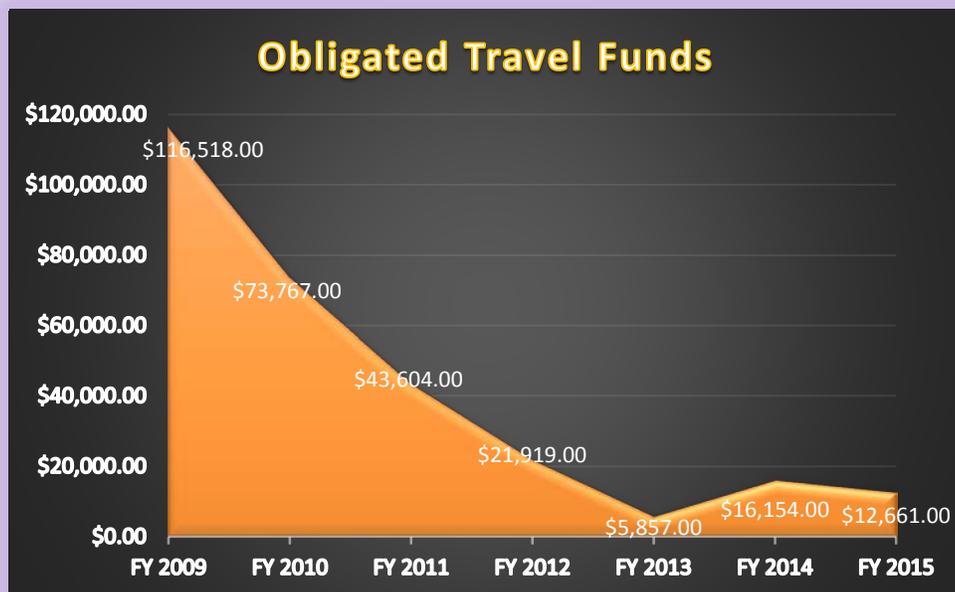
OHA makes broad use of technology to accomplish its mission. OHA maintains a website where it publishes its decisions and other information. Internally, OHA uses an electronic case management system to maintain case files, track the status of pending cases, produce productivity and case status reports, and assist staff attorneys in the timely resolution of assigned cases. To also support the Information Technology effort, OHA has arranged for a wireless network to encompass the OHA office space. This wireless network has improved the use of our conference room and VTC hearing rooms, allowing Administrative Judges to use their laptop computers to conduct hearings rather than printing out exhibits.

In FY 2015, OHA also initiated a drive to utilize technology to reduce paper as outlined in Executive Order, Planning for Federal Sustainability in the Next Decade, issued March 19, 2015, Sec. 3(i)(v). DOE offices now include our email address, [OHAfilings@hq.doe.gov](mailto:OHAfilings@hq.doe.gov), in their letters giving requestors appeal rights. Further, OHA now electronically uploads submission to its case files and all outgoing interoffice communications are sent by electronic means. Where possible, OHA has been sending its letters by electronic means.

By the end of FY 2015, OHA had conducted 71 personnel security hearings via video teleconference, 86% of all hearings conducted in the fiscal year. OHA maintained its high percentage despite the fact that one site was offline for a period due to technical issues.



VTC hearings have saved OHA a significant amount of travel funds over the past six years. In 2009, OHA spent over \$116,000 in travel funds. In 2015, OHA's travel costs were less than \$13,000, a decrease of 89 percent.



## C. SERVING OUR COMMUNITY

In FY 2015, for the sixteenth year in a row, OHA supported the “Everybody Wins!” lunchtime reading program at Amidon-Bowen Elementary School: over the course of the fiscal year, four OHA employees participated in the program. Apart from DOE-sponsored activities, OHA staff members donate their time and skills to their communities in a variety of ways.

## GENERAL INFORMATION

- ✦ Extensive information is available on our website at <http://energy.gov/oha>. The website includes information about OHA’s jurisdiction, including applicable regulations, Frequently Asked Questions, and OHA decisions.
- ✦ For copies of submissions in OHA proceedings, you may contact our Docket and Publications Branch at [OHA.Filings@hq.doe.gov](mailto:OHA.Filings@hq.doe.gov). You may also fax your inquiries to (202) 287-1415.
- ✦ For general information or to give us feedback on any aspect of our operations, please email us at [OHA.Filings@hq.doe.gov](mailto:OHA.Filings@hq.doe.gov).

