

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 *et seq.*; see also Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981).

We have considered the OGC's petitions that we implement Subpart V proceedings with respect to the DMLP, Howell, Placid, Eton and Rodgers funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

III. Proposed Refund Procedures

A. Crude Oil Refund Policy

We propose to distribute the monies received from DMLP, Howell, Placid, Eton and Rodgers in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 Fed. Reg. 27899 (August 4, 1986), which was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all Subpart V proceedings involving alleged crude oil violations. See *Order Implementing the MSRP*, 51 Fed. Reg. 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 Fed. Reg. 11737 (April 10, 1987). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. See *City of Columbus Georgia*, 16 DOE ¶ 85,550 (1987).

The amount of money subject to this Proposed Decision is \$34,551,984, plus additional accrued interest. In accordance with the MSRP, we propose initially to reserve 20 percent of those funds (\$6,910,397 plus additional accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges.

We propose to evaluate claims in the DMLP, Howell, Placid, Eton and Rodgers crude oil refund proceedings in exactly the same manner as in other crude oil proceedings. As we stated in the April 10 Notice, claimants will generally be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations. We will also presume that the alleged crude oil overcharges were absorbed, rather than passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973, 15 U.S.C. 751-760. In order to receive a refund, such claimants need not submit any evidence of injury beyond documentation of their purchase volumes.

We propose to base the refunds on a volumetric amount which has been calculated in accordance with the description in the April 10 Notice. That volumetric refund amount is currently \$0.0016 per gallon. See 57 Fed. Reg. 15562 (March 24, 1995).

Applicants who have executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement have waived their rights to apply for a crude oil refund under Subpart V and should not file a crude oil refund application. See *Mid-America Dairyman Inc. v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.); 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987). The deadline for filing an Application for Refund is June 30, 1995. A crude oil refund applicant is only required to submit one application for its share of all available crude oil overcharge funds. See, e.g., *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,176 (1988). Accordingly, any party that has previously submitted a refund Application in the crude oil refund proceeding need not file another Application.

C. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or \$27,641,587 plus additional accrued interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered that: The refund amounts remitted to the Department of Energy by Dorchester Master Limited Partnership, Howell Corporation, Placid Oil Company, Eton Trading Corporation and Rodgers Hydrocarbon Corporation pursuant to their respective Consent Orders or Bankruptcy Court Orders will be distributed in accordance with the foregoing Decision.

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Notice of Implementation of Special Refund Procedures

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures