

for the disbursement of \$75,638.48, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to an April 10, 1985 Modified Remedial Order issued to Mockabee Gas & Fuel Oil Co. (Mockabee), Case No. VEF-0001. The OHA has determined that the funds obtained from Mockabee, plus accrued interest, will be distributed to customers who purchased No. 2 heating oil and kerosene from Mockabee during the period of November 1, 1973 through December 31, 1975.

**ADDRESS:** Applications must be filed in duplicate, addressed to "Mockabee Gas & Fuel Oil Co. Special Refund Proceeding" and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Applications should display a prominent reference to the case number "VEF-0001."

**FOR FURTHER INFORMATION CONTACT:** Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

**SUPPLEMENTARY INFORMATION:** In accordance with 10 C.F.R. § 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants \$75,638.48, plus accrued interest, obtained by the DOE pursuant to an April 10, 1985 Modified Remedial Order (MRO) issued to Mockabee Gas & Fuel Oil Co. (Mockabee). In the MRO, the DOE found that, during the period from November 1, 1973 through December 31, 1975, Mockabee sold No. 2 heating oil and kerosene in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from the firms in two stages. In the first stage, we will accept claims from the identifiable purchasers of No. 2 heating oil and kerosene who may have been injured by the overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of covered product they purchased from Mockabee.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the

Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07.

Applications for Refund must be postmarked by September 29, 1995. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labeled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 100 Independence Avenue, SW., Washington, DC 20585.

Date: June 12, 1995.

**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*  
June 12, 1995.

### **Decision and Order of the Department of Energy; Implementation of Special Refund Procedures**

*Name of Firm:* Mockabee Gas & Fuel Oil Co.

*Date of Filing:* October 18, 1994

*Case Number:* VEF-0001

On October 18, 1994, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute \$75,638.48, plus accrued interest, which Mockabee Gas & Fuel Oil Co. (Mockabee) remitted to the DOE pursuant to a Modified Remedial Order (MRO) issued by the OHA on April 10, 1985. In accordance with the provisions of the procedural regulations found at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of the regulatory violations set forth in the MRO. This Decision and Order sets forth the OHA's plan to distribute these funds.

### **I. Background**

During the period relevant to this proceeding, Mockabee was a retailer of No. 2 heating oil, kerosene, diesel fuel, and motor gasoline in Upper Marlboro, Maryland. On December 18, 1974, the Federal Energy Administration (FEA) issued a Notice of Probable Violation to Mockabee. On January 28, 1975, the FEA issued a Remedial Order (RO) to Mockabee, finding that Mockabee had overcharged purchasers of No. 2 heating oil and kerosene. A further investigation disclosed additional overcharges other

than those cited in the RO, and on December 22, 1976, the FEA rescinded the RO and issued a Revised Remedial Order requiring Mockabee to roll back prices to compensate consumers who were overcharged by Mockabee.

Mockabee failed to comply with the Revised Remedial Order. On April 10, 1985, the ERA<sup>1</sup> issued a Modified Remedial Order which rescinded the price rollbacks it had ordered Mockabee to make. Instead, the MRO required Mockabee to pay to the DOE \$29,583.08 in assessed overcharges, and an additional \$46,071.46 in interest due. On September 30, 1985, Mockabee appealed the MRO to the OHA, which denied the Appeal on December 19, 1985. *Mockabee Gas & Fuel Oil Co.*, 13 DOE ¶ 83,059 (1985). Mockabee has since remitted \$75,638.48 in compliance with the MRO, which is now available for distribution through Subpart V.

### **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 for the 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 (PODRA), 15 U.S.C. 4501 *et seq.*; *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We considered ERA's Petition that we implement a Subpart V proceeding with respect to the funds remitted by Mockabee and determined that such a proceeding was appropriate. On January 11, 1995, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the money remitted by Mockabee (the Mockabee fund). That PD&O was published in the **Federal Register** and a 30-day period was provided for submission of comments regarding our proposed refund plan. See 60 FR 3863 (January 19, 1995). More than 30 days have elapsed, and the OHA has received no comments concerning the proposed refund procedures. Consequently, the procedures will be adopted as proposed.

<sup>1</sup> Under the DOE Organization Act, 42 U.S.C. 7151, *et seq.*, and Executive Order 12009, 42 Fed. Reg. 46367 (September 25, 1977), all functions vested by law in the FEA were transferred to and vested in the DOE. Within the DOE, the ERA was delegated the authority to investigate violations of applicable regulations and to seek compliance of those regulations.