

May 6, 2008

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Supplemental Order

Name of Petitioner: Sawhill Community Land Trust

Date of Filing: March 31, 2008

Case Numbers: RC272-00442

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). On August 20, 2007, the DOE announced that a final additional \$0.000083748502302897 per gallon refund would be paid to all applicants who had been found eligible for the \$0.000695389 per gallon supplemental refund announced on January 13, 2006. 72 Fed. Reg. 46461 (August 20, 2007). 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 refunds for Case No. RF272-61658, under which a refund previously had been paid to Ponderosa Products, Inc. In 2006 and 2007, the DOE disbursed supplemental refunds in Case Nos. RB272-10066 and RB272-10138 to, among others, attorney Lawrence I. Abrams on behalf of Sawhill Community Land Trust, based upon representations by Mr. Abrams that Ponderosa Products, Inc. "was dissolved. All of its assets, including the right to receive refunds, was acquired by Sawhill Community Land Trust." Attachment to Verification Submission from Lawrence I. Abrams (December 27, 2004).

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).

However, in a November 27, 2007, telephone conversation with our office, Robert J. Muehlenweg, an attorney at Rammelkamp, Muehlenweg & Cordova in Albuquerque, New Mexico, who represented Ponderosa Products, Inc., took issue with the account of events in Mr. Abrams' submission to our office. We therefore contacted Mr. Abrams and requested from him:

a copy of the agreement whereby Sawhill Community Land Trust acquired the right to the refund previously paid to Ponderosa Products, Inc. If we do not receive documentation from you sufficient to convince our office that the right to refund was acquired by Sawhill Community Land Trust, we will issue a decision rescinding the refunds and ordering the remittance of these funds to the U.S. Treasury.

Electronic Mail from Steven J. Goering, Staff Attorney, Office of Hearings and Appeals, to Lawrence I. Abrams (November 27, 2007).¹

Because Mr. Abrams has not provided the documentation requested by our office demonstrating that Sawhill Community Land Trust is, in fact, the successor-in-interest to

¹ Mr. Muehlenweg contended that GE Capital is the successor-in-interest to Ponderosa Products, Inc., and therefore is entitled to the refund in this case. We requested that Mr. Muehlenweg provide our office a written submission supporting his claim. *Id.* We have, to date, received no such submission from Mr. Muehlenweg.

Ponderosa Products, Inc., we will rescind our prior orders granting supplemental refunds to Sawhill Community Land Trust.²

It Is Therefore Ordered That:

(1) The Decision and Order issued in Case No. RB272-10066, and the Decision and Order issued in Case No. RB272-10138, be and hereby are rescinded to the extent set forth in Paragraph (2) below.

(2) Lawrence I. Abrams shall remit the sum of \$14,492 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. RC272-00442, and shall be sent to:

U.S. 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.

(3) 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.

² On May 4, 2008, Mr. Abrams informed us that "all of the firms and/or claimants having an interest in the referenced case including Ponderosa Products, Inc., GE Capital and Sawmill Community Land Trust have reached an agreement for these firms to share the crude oil supplemental refund approved and paid by DOE in 2006 and 2007." Electronic Mail from Lawrence Abrams to Steven Goering, OHA (May 4, 2008). However, as noted above, neither GE Capital nor Sawmill Community Land Trust have submitted any documentation in response to our request to demonstrate either firm's entitlement to the refund in this case. Moreover, the only document submitted to our office concerning the current status of Ponderosa Products, Inc., is Mr. Abrams' statement that the company "was dissolved." Attachment to Verification Submission from Lawrence I. Abrams (December 27, 2004). Accordingly, as we are unable to determine the rightful recipient of this refund based on the documentation submitted, we must rescind the refund.

(4) 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

(5) 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 modified at any time upon a determination that the basis underlying a refund application is incorrect.

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

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: May 6, 2008