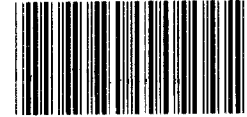


UNITED STATES GENERAL ACCOUNTING OFFICE
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STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
HOUSE COMMITTEE ON ENERGY AND COMMERCE



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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to be here today to discuss our continuing review of the Department of Energy's (DOE) effort to enforce the crude oil pricing regulations established under the authority of the Emergency Petroleum Allocation Act of 1973. Although crude oil and refined products were deregulated by the President on January 28, 1981, the Department of Energy is still responsible for ensuring that during the period the regulations were in effect the oil industry complied with those regulations.

As you know, over the past several years, GAO has done a considerable amount of work involving DOE's compliance and enforcement activities. When we appeared before this subcommittee on April 2, 1981, we discussed the impact of proposed budget cuts on DOE's compliance activities and the need for DOE to develop a plan for the orderly resolution of the

*[DOE Effort to Enforce Crude Oil Pricing Regulations
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outstanding violations and litigation. Today we would like to update our information in these areas.

EVALUATION OF THE OFFICE OF
ENFORCEMENT'S DECONTROL WORKPLAN

In its plan to resolve oil pricing violations, the Office of Enforcement has adopted a "dollar driven strategy" which calls for it to pursue the largest identified violations first and to complete its audit work on all cases which remained open as of February 28, 1981. Although this is a reasonable strategy to follow, the resources being allocated to carry out the plan are considerably less than intended by the House Appropriations Committee and provided for by the Congress. This factor, in addition to records access and staff morale problems, will make it difficult if not impossible to complete the work as planned.

In our March 1981 report entitled, "Department of Energy Needs to Resolve Billions in Alleged Oil Pricing Violations," we pointed out that DOE had prepared a transition plan to phase out its enforcement staff over a 5-year period after fiscal year 1981. The plan called for an enforcement staff of 886 and a minimum level budget of \$46 million in fiscal year 1982. However, OMB proposed to reduce the staff to 235 and the budget to less than \$12 million. While we agreed that some reductions were justified, we said that they should be based on a workload analysis that adequately considered the orderly resolution of outstanding violations and litigation.

We recommended in the March report that DOE, with OMB's

assistance, develop such a plan. DOE did not act on our recommendation and the plan now being implemented was not prepared on the basis of a workload analysis.

Workplan, strategy, staffing
and funding

The Office of Enforcement's decontrol workplan to complete its open civil audits lists four priority objectives for fiscal year 1981.

1. Bring the 84 cases where the audit work has been completed as of February 28, 1981, and which involve violations of \$5 million or more, to the proposed remedial order issued or consent order issued stage before September 30, 1981.
2. Complete audit work for all of the 378 cases open as of February 28, 1981, before September 30, 1981.
3. Complete the processing of the jobber and retailer cases subject to the settlement plan negotiated with the National Oil Jobbers Council. The completion date for this objective will be governed by the specific timeframes in the plan dated March 23, 1981.
4. Pursue other cases as resources permit.

In addition to the four objectives enumerated above, cases are further prioritized by program. The crude oil reseller program has the highest priority.

The workplan also set forth the Office's overall objective for fiscal year 1982, which is to remove as many of the remaining violations [including those identified during the

audits described in (2) above], from the Office's inventory by issuing proposed remedial orders and consent orders. The same dollar driven strategy is to be followed with the largest dollar violation cases to be worked first.

Fiscal year 1981 effort
is behind schedule

Based on the current status of the workplan, it is certain that all audit completion and proposed remedial order issuance goals set for fiscal year 1981 will not be met. This is particularly true for the top priority crude reseller program which encompasses the largest dollar violations. In that program alone, it was estimated in May 1981 that from 85 to 110 audits will be incomplete as of September 30, 1981, with total potential violations exceeding \$3 billion. Violations identified as of May 31, 1981, total about \$3.4 billion.

The major obstacles identified by DOE to the successful completion of the remaining planned work are the large number of companies refusing DOE access to their records, and the failure to issue proposed remedial orders in an expeditious manner. The loss of experienced personnel and staff morale were highlighted by the Acting Director of the Crude Reseller Program as additional problems impeding progress.

In a memorandum to the Director, Office of Enforcement, and in a discussion with us, the Acting Director, Crude Oil Reseller Program, said that industry is causing uncontrollable delays by refusing to allow DOE to review records

without a court order. In July 1981, 53 subpoenas were outstanding in the reseller program and many more were expected to be issued. This alone will delay audit completion beyond fiscal year 1981, because subpoenas can prolong a case from 6 to 18 months. The Director, Office of Enforcement, has proposed a way to expedite this procedure whereby the District Chief Enforcement Counsel would be given the authority to refer subpoena cases directly to the U.S. Attorney for enforcement in the U.S. District Court, thus bypassing the Justice Department. The Director believes this would eliminate months from the current process.

The proposed remedial order issuance problem is severe. According to the Director, Office of Enforcement, only one proposed remedial order had been issued to a crude reseller as of June 25, 1981. He estimated that only 6 additional orders would be issued by September 30, 1981, and an additional 15 by the end of calendar year 1982. DOE estimates that as many as 250 orders may be needed to resolve alleged violations. To help resolve this problem, the Office of Enforcement Director has proposed the establishment of an integrated task force team of experienced auditors and attorneys with authority to draft, review and issue crude reseller proposed remedial orders.

The loss of experienced staff and low staff morale result from the uncertainty regarding projected reductions in force, and the staff's general feeling of frustration that they are not being adequately supported and that their

work may have been in vain. The Office of Enforcement's staff has dropped from 743 as of September 1980 to 590 in May 1981. Because the program was to be phased out and because of the early drastic cuts proposed by the Administration, some loss of staff would have been inevitable, regardless of the final congressional action on the budget. We believe, however, that if DOE had clearly informed its enforcement staff that, based on congressional funding actions, no staffing reductions would be necessary through fiscal year 1982, the loss of experienced staff would have been less and overall staff morale would have been better.

The loss of experienced auditors is especially troublesome. Audit capability is essential through the proposed remedial order issuance stage. Even if replacements are found, the time it takes to train them results in a drop in efficiency. The Acting Director, Crude Reseller Program, has reported that he is continuing to lose staff at an ever-increasing rate; and that by mid-summer, the program may well have lost half of the staff that were present at the beginning of the year. We see no clear solution to this problem, but it may be possible to ease it somewhat by making a firm commitment to provide the funding and staffing needed to bring all cases to a fair and orderly resolution and to clearly communicate this commitment to industry and to the DOE compliance and enforcement staff.

Fiscal year 1982 plans

It is obvious from the foregoing discussion that much

enforcement work will remain for fiscal year 1982. In requesting manpower estimates for that year, the Acting Administrator, Economic Regulatory Administration (ERA), in a memorandum dated June 17, 1981, told his two enforcement offices (Office of Enforcement and Office of Special Counsel) to assume that available full time equivalent staff would be about 400 (200 for each office).

In response, the Director, Office of Enforcement, presented two options. Option 1 assumes full time equivalent staff of 314 and a budget of \$15.7 million. It calls for the closing of 30 field offices during fiscal year 1982 and another 10 offices at the end of that year. The Director told us that as the offices are closed, some reductions in force would be necessary. In addition, this option assumes a voluntary 30 percent attrition rate.

Option 2 is even more austere and complies with the Acting Administrator's staffing guidance. It is based on a full time equivalent staff of 203 and a budget of \$10.2 million. It requires the closing of 32 field offices at the end of fiscal year 1981. This option also assumes a voluntary 30 percent attrition rate. The Director recommended that Option 1 be selected. The recommendation has not as yet been acted upon.

Neither of these options appear to be consistent with congressional intent regarding the resources to be applied. In June 1981, Congress deferred \$33.2 million from fiscal year 1981 appropriations for economic regulation and designated it solely for the DOE compliance program for fiscal year 1982. This is in addition to the \$11.9 million

requested by the President for that year for a total of \$45.1 million. The House Committee on Appropriations estimated that the \$45.1 million would provide the ERA compliance program (Office of Enforcement and Office of Special Counsel) with a staff of 800. This estimate is consistent with DOE's 5-year transition plan referred to earlier which called for minimum level funding of \$46 million and a staff of 886 in fiscal year 1982.

The House Appropriations Committee also made it clear that DOE was not to undertake a reduction in force in the compliance and enforcement program for fiscal year 1982. Under both staffing options, however, some reductions in force are contemplated in connection with the closing of field offices. The danger in planning for multiple closings of field offices is that if cases are not completed as scheduled, the offices would still have to be closed due to lack of funding. In such event, cases may have to be dropped.

Mr. Chairman, that concludes my prepared statement. We would be pleased to answer any questions at this time.