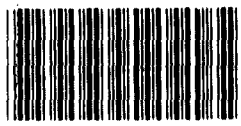
~~25015~~
121426



United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
Expected at 10 a.m., EST
Monday, May 23, 1983

Statement of
James Duffus III, Senior Group Director
Resources, Community, and Economic Development Division
Before the
House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
on
Department of Energy's Enforcement of
Crude Oil Pricing Regulations

Mr. Chairman and Members of the Subcommittee:

We are here today to discuss our continuing reviews of the Department of Energy's (DOE's) efforts to enforce the crude oil pricing regulations established under the Emergency Petroleum Allocation Act of 1973 and other matters. This work, Mr. Chairman, which is being done at your request, relates to:

--Distribution of overcharge refunds.

--Adequacy of the Economic Regulatory Administration's (ERA's) proposed fiscal year 1984 compliance budget.

--Restrictions imposed by global consent orders on DOE's ability to conduct civil audits of major refiners' crude oil pricing practices.

--Problems identified in ERA's negotiating settlements with major refiners.

--Reprimand of an employee in ERA's Tulsa, Oklahoma, office.

--Proposed relocation of ERA's Dallas, Texas, office.

025654
121426

DISTRIBUTION OF OVERCHARGE REFUNDS

As a result of settlement agreements with refiners and other oil industry companies, DOE has collected and deposited funds in a U.S. Treasury escrow account which, as of April 8, 1983, had a balance of $367 million. Mr. Chairman, you have been continually concerned that DOE has not followed its established procedures for distributing these escrow funds to parties harmed by the oil companies' overcharges. As a result of your concern, we have issued two opinions[1] on the appropriateness of these distributions. More recently you requested that we update these opinions. We issued a decision on May 19, 1983,[2] in which we state that DOE has been using consent orders improperly in a number of cases by making or allowing the oil companies to make distributions of overcharge refunds without prior efforts to identify those overcharged and the amounts of overcharges. As a result, payments have been made by oil companies and by DOE to institutions that were not actually injured by the overcharges and that lack a clear connection to the overcharges. Further, and more importantly, overcharged consumers have been denied an opportunity to present claims for payment. In addition, the decision comments on distribution of funds to the U.S. Treasury, the States, and the Strategic Petroleum Reserve.

---

[1]October 10, 1980, Opinion, 60 Comp. Gen. 15 (1980) and April 1, 1981, Opinion, B-200170.

[2]"Department of Energy's Use of Consent Orders to Distribute Petroleum Overcharge Settlement Funds," Decision of the Comptroller General, B-209699, May 19, 1983.

ADEQUACY OF ERA's PROPOSED FISCAL YEAR 1984 COMPLIANCE BUDGET

In our June 1982 report on ERA's crude oil reseller program,[3] we questioned whether ERA's proposed fiscal year 1983 budget would be adequate to effectively carry out its compliance program. Subsequently, in September 1982 the Congress increased ERA's overall budget and specified that ERA was to have a minimum of 450 full-time permanent Federal employees. As of May 14, 1983, ERA had assigned 314 of its permanent employees to the compliance program.

The administration's proposed fiscal year 1984 budget for ERA compliance activities requested $7.1 million and 120 full-time permanent employees. In March 1983 we questioned whether this request would enable ERA to effectively carry out the compliance program.[4] The fiscal year 1984 request is a $13.9 million (66 percent) decrease from the fiscal year 1983 appropriation of $21 million. ERA's principal reasons for the decrease (as presented in its FY 1984 budget request) was that by the beginning of fiscal year 1984 (1) the remaining audit and investigation work, which totaled 561 cases at the beginning of fiscal year 1983, was expected to be completed and (2) all but 2 or 3 of the 34 major refiner cases with alleged violations would be settled.

---

[3]"Department of Energy Has Made Slow Progress Resolving Alleged Crude Oil Reseller Pricing Violations" (GAO/EMD-82-46, June 1, 1982).

[4]GAO Staff Views on the President's Fiscal Year 1984 Budget Proposals (GAO/OPP-83-1, Mar. 4, 1983).

In our followup work, we found that since ERA's 1984 budget was finalized, its compliance workload projections have changed. As of May 4, 1983, ERA estimated that at the beginning of fiscal year 1984 there would be (1) 90 cases in the final stages of audit and investigation and (2) possibly five of the major refiner cases not yet settled. ERA officials told us that despite these projected caseload increases over its original estimates, the $7.1 million and 120 employees requested in the budget will be sufficient. However, they have not finalized any analysis in support of their view that the originally proposed fiscal year 1984 personnel and funding levels are still adequate to support the increased workload. We see two possible problems with ERA's budget. First, ERA's proposed staffing and funding levels may not be sufficient to address the latest workload ERA projects for fiscal year 1984. Second, ERA has no contingency plans in case its workload increases. In this regard, ERA's workload would probably increase if it were to implement our recommendation to audit major refiners' crude oil sales and purchases which will be discussed later.

As of April 15, 1983, ERA had 400 open enforcement cases, a reduction of 161 from the 561 at the start of fiscal year 1983, and was in the process of settling with 11 of the major refiners. To meet its current projections of 90 cases and about 5 major refiner settlements open at the start of fiscal year 1984, ERA would have to complete 310 cases and settle with 6 of the 11 major refiners in

the last half of fiscal year 1983. The 310 is almost double the 161 case completions in the first half of the year. Also, no major refiner settlements have been completed to date in fiscal year 1983. Therefore, considering ERA's accomplishments during the first half of fiscal year 1983 and the magnitude of the workload which would have to be completed during the remainder of fiscal year 1983, we question whether ERA's proposed fiscal year 1984 budget request is sufficient to meet its estimated workload.

Another question related to the adequacy of ERA's fiscal year 1984 budget is the congressionally imposed minimum of 450 ERA employees. In developing its fiscal year 1984 budget, ERA assumed repeal of this minimum, which to date has not been repealed. Without repeal, ERA's fiscal year 1984 budget request is grossly understated because it provides for 120 employees, or only 38 percent of the 314 employees assigned to compliance activities at May 14, 1983.

RESTRICTIONS IMPOSED BY GLOBAL CONSENT ORDERS

ERA has attempted to settle major refiners' alleged violations of the petroleum pricing and allocation regulations by means of global consent orders. Pursuant to these orders, the refiner agrees to take certain actions, such as making direct payments to the Government, in return for which ERA releases the refiner from further civil actions in all areas of alleged violations. The only exceptions are (1) if an area is specifically precluded from the terms of the order or (2) ERA can show that the refiner knowingly

concealed information. ERA officials acknowledged that, in the absence of these exceptions, global consent orders would prohibit ERA from conducting future civil audits of major refiners' crude oil sale and purchase activities.

In our June 1, 1982, report cited earlier, we recommended that ERA audit major refiners' crude oil sales and purchase transactions with crude oil resellers where not precluded by global consent orders. We pointed out in that report that DOE's former Office of Enforcement's crude oil pipeline study[5] showed that, among other activities, some major refiners were selling significant volumes of crude oil certified for lower prices to crude oil resellers and purchasing back crude oil certified in many instances for higher prices. In response to our recommendation, DOE said that ERA's Office of Special Counsel was reviewing, as part of its special investigations of crude oil resellers, a series of transactions between crude resellers and major refiners to determine whether these transactions were undertaken to evade the regulatory obligations of the participants.

While we recognize the value of special investigations, they involve potential criminal violations and may not be sufficient to resolve our concerns about the major refiners' purchases and sales of crude oil. Although special investigations are the proper vehicle for uncovering and pursuing potential criminal violations,

---

[5]DOE's Office of Enforcement's Audit Report on Pipeline Transfers of Crude Oil by Refiners and Resellers, July 10, 1980.

such investigations would not be expected to result in the repayment of overcharges to customers. Unless ERA conducts civil audits of major refiners' purchase and sale activities, any overcharges resulting from such activities may not be disclosed and refunds may not be made where appropriate.

We believe that ERA should perform civil audits of all 30 major refiners whose crude oil sales and purchases have not been subjected to these civil audits and where not precluded by a global consent order. In this regard, for the 11 global consent orders currently being negotiated, ERA should assure that the terms of the orders do not preclude ERA audits of the major refiners' purchase and sales activities with crude oil resellers. As previously mentioned, this audit effort would probably increase ERA's fiscal year 1984 workload.

PROBLEMS WITH ERA's NEGOTIATING SETTLEMENTS WITH MAJOR REFINERS

Our work on ERA's settlement process raises questions concerning (1) whether ERA has assurance that all relevant audit and compliance documents are considered when negotiating settlements with major refiners, (2) limitations in the computer program used by ERA in the negotiation and settlement process, and (3) the reasonableness of ERA's handling of an issue during the negotiation process while the issue is being appealed in the courts.

Consideration of audit and compliance documentation

We requested all audit and compliance information that ERA had on four major refiners with which it was negotiating settlements. We cannot attest to the completeness of the documentation ERA supplied because our review of the data identified some missing documentation and unanswered questions about the disposition of audit findings. Although ERA subsequently provided the missing documents, it was not able to provide assurance that all pertinent documentation is considered during the negotiation process.

At our request, ERA provided audit and compliance documents on the four refiners and assured us that this included all pertinent documentation. When we scheduled this information in an attempt to trace the disposition of audit findings, we found references to compliance documents which had not been provided to us. Also, the documentation did not provide a complete history of the disposition of all audit findings.

Even though the identified missing documents were later provided, we were still not sure that we had received all pertinent documents. Also, with all the documents furnished to us, we still were not able to account for the disposition of all audit findings.

Based on our work, we do not know whether ERA has adequate assurance that all relevant audit and compliance documents are considered when negotiating settlements with the major refiners.

Use of computer program

We are currently reviewing ERA's use of a computer program in the negotiation and settlement process. This work is being done for us by a contractor--Micro Accounting Systems, Inc. I would like to point out, Mr. Chairman, that the contractor's work in this area has been limited, involving about a month's effort. Based on this limited work, however, we found that the computer program ERA utilizes in this process is limited because it cannot accommodate several factors[6] which impact on whether a refiner overcharged customers or overrecovered costs. Consequently, ERA has to compute these factors manually. ERA's Special Counsel recognizes the program's limitations, but believes that there was not enough time or resources to construct a program that could accommodate these factors. In this regard, we noted that a cost study was not made. In addition, we noted that ERA did not perform a study to determine the specific needs and objectives to be met by the program.

Handling of an issue under court appeal

One of the issues ERA considers in negotiations with major refiners is the equal application rule. The intent of the rule was to prevent a customer from being treated inequitably. Under the rule, if a refiner did not allocate its incremental cost increases equally to all customers, it had to incur a self-imposed penalty.

---

[6]These factors include the retail equalization and gasoline tilt rules; price maintenance, bank optimization, and bank usage; cost reallocation and negative banks; and treatment of exempt product banks.

That is, the highest increment of cost passed to any customer was deemed to be passed to all customers. This would reduce the refiner's costs available to be recovered and thus reduce its maximum allowable selling price. In 1982 a Federal district court[7] voided the rule because DOE failed to follow proper rulemaking procedures in its promulgation. DOE has appealed the court decision. Because it is possible that the appeals court could reverse the district court's opinion, ERA should set this issue aside in its negotiations and postpone settling the issue until the appeal is decided. However, ERA has not chosen to set this issue aside. Therefore, even if DOE wins the appeal, any global consent order could preclude ERA from negotiating further with the refiner on this issue. We believe that ERA's inclusion of this matter in the negotiations provides an advantage to the major refiner which is negotiating with the knowledge that the court has ruled against DOE.

REPRIMAND OF AN EMPLOYEE
IN ERA'S TULSA, OKLAHOMA OFFICE

On September 24, 1982, Gary Allen, an auditor in ERA's Tulsa, Oklahoma, office, was reprimanded for refusing to comply with the Office of Special Counsel's (OSC's) policy governing communications by its staff with members of the Congress, staff members of

---

[7]Mobil Oil Corp. v. United States Department of Energy, 547 F. Supp. 1246 (N.D. N.Y. 1982).

congressional committees, and GAO. The reprimand consisted of a letter signed by the Director of the Tulsa office citing Mr. Allen for refusing to comply with OSC's policy. A copy of the letter was placed in his personnel file.

In a April 5, 1982, memorandum the ERA Special Counsel established a policy requiring that all OSC employees report in writing their congressional contacts involving discussion and/or transmittal of ERA program information. Although not specifically addressed in the April memorandum, this policy was intended to only cover contacts related to ERA program information and not personal contacts.

The events which led to the reprimand began on August 12, 1982, when Mr. Allen, responding to questions from his immediate superiors, acknowledged that he had congressional contacts which were not reported to OSC management. His superiors, however, did not ask him, nor did he tell them, the nature of his contacts; that is, whether they were related to program information or were personal.

It appears, however, that OSC management assumed that the contacts involved discussions of program information, because on August 13, 1982, the Director of ERA's Tulsa office requested Mr. Allen to document each of his congressional contacts. Mr. Allen refused, and on September 24, 1982, received a reprimand for refusing to comply with OSC policy.

Our discussions with Mr. Allen and the congressional staff with whom he had contacts disclosed that the contacts prior to the

reprimand were personal and thus not subject to the Special Counsel's reporting requirements. Because of this, we believe that Mr. Allen's reprimand was not justified.

We believe that Mr. Allen's superiors, when first learning of the contacts, should have more thoroughly discussed the matter with him to determine the exact nature of the contacts. We must point out, however, that Mr. Allen never advised his superiors that his contacts were personal and unrelated to ERA program information. After discussing the information we obtained on the personal nature of the contacts with us, the Director of the Tulsa office told us that he rescinded the reprimand on April 4, 1983. He also told us that this action was taken based on the information we obtained.

PROPOSED RELOCATION OF ERA's DALLAS, TEXAS OFFICE

At your request, we made inquiries into various matters involving the proposed relocation of DOE employees in the leased building at 1341 Mockingbird Lane, Dallas, Texas, to the leased building at 2626 Mockingbird Lane. We made inquiries to determine the reasons for the proposed move; costs and savings involved; fire, health, and safety conditions at 2626; and legal issues relating to the General Services Administration's (GSA's) actions.

As you probably know, circumstances have changed since GSA's initial efforts in 1982 to consolidate DOE personnel in the leased space at 2626 Mockingbird Lane. As a result of delays in getting the vacant space at 2626 ready and acceptable to DOE, DOE personnel

have not been consolidated at 2626 to date. Recently, GSA and DOE reached agreement that the consolidation, as initially planned, would not take place. We have been advised that certain DOE files will be relocated from 1341 to 2626, but that no DOE personnel will be relocated.

You also requested that we determine whether GSA complied with 40 U.S.C. 490(e) in issuing its initial relocation orders and whether GSA complied with legal requirements in charging DOE rent for space at 2626 Mockingbird Lane that DOE vacated in June 1982. We believe that the administrative determinations made by GSA fall within the intent of the law.

- - - -

Mr. Chairman, this concludes my prepared statement. We will be pleased to answer any questions you may have.