



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548



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RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

April 11, 1984

B-213147

RELEASED

The Honorable Jim Sasser
United States Senate

Dear Senator Sasser:

Subject: Information on the Department of Energy's
Budgets for Enforcing Its Petroleum Allocation
and Pricing Regulations and Its Process for
Distributing Oil Company Overcharge Refunds
(GAO/RCED-84-52)

This letter responds to your February 9, 1983, request for us to review the Economic Regulatory Administration's (ERA's) budget for enforcing the Department of Energy's (DOE's) petroleum allocation and pricing regulations established pursuant to the Emergency Petroleum Allocation Act of 1973. As agreed with your office, we are also including information on the Office of Hearings and Appeals' (OHA's) fiscal years 1981-84 budgets and DOE's process for resolving the cases involving funds collected from oil companies in settling alleged violations of DOE's petroleum allocation and pricing regulations.

In summary, we found that:

- ERA has consistently set overly optimistic objectives for its compliance program that resulted in proposed budgets being understated.
- OHA's fiscal year 1984 workload is greater than anticipated in its budget submission because of ERA's unanticipated referral of 453 oil companies' overcharge refund cases in October 1983 to OHA.
- DOE has made slow progress in resolving the cases involving funds collected from oil companies because of higher priority work, the complexity of these oil companies' overcharge refund cases, and ERA's late referral of 453 of these cases.

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OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to

- determine the reasonableness of ERA's proposed fiscal year 1984 budget and staffing,
- provide information on OHA's fiscal years 1981-84 budgets, and
- provide information on DOE's process for resolving cases involving funds collected from the oil companies for alleged oil pricing violations.

Our work was conducted at DOE's headquarters in Washington, D.C., which has primary responsibility for preparing DOE's budget and maintaining funds collected from oil companies as a result of settlement agreements. We examined ERA's and OHA's budgets and related material and applicable policies, procedures, regulations, and documents. We interviewed DOE headquarters officials in the Office of the Controller, ERA, and OHA. To the extent possible, we used work we had recently completed at the request of the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce.

To address our first objective, we evaluated the reasonableness of ERA's fiscal year 1984 budget as originally proposed to the Congress. In making this evaluation, we obtained and analyzed staffing and caseload statistics for fiscal years 1981-84. We looked at the historical composition of ERA's staff and the types of cases in which they were involved. We analyzed ERA's fiscal year 1983 compliance caseload and case completions and compared these with ERA's estimates for the start of fiscal year 1984. We did this to determine whether ERA had realistically estimated its fiscal year 1984 workload. We did not do an in-depth analysis to determine ERA's fiscal year 1984 compliance resource requirements.

To address our second objective, we obtained information on OHA's fiscal years 1981-84 budgets, including staffing and caseload summaries. We looked at the historical composition of OHA's staff and the types of cases in which they were involved. We discussed these statistics with OHA officials and compared OHA's projected fiscal year 1984 caseload with what it had been for fiscal years 1981-83. However, we did not do an in-depth analysis to determine OHA's fiscal year 1984 resource requirements.

To address our third objective, we analyzed statistics on DOE's process of resolving the cases involving refunds collected from the oil companies. We obtained these statistics from status reports on ERA's referral of refund cases to OHA for disposition and schedules showing how much calendar time elapsed from the date OHA received the cases to the date OHA issued final decisions. We also discussed both ERA's and OHA's involvement in this refund process with DOE officials.

At your office's request, we did not obtain agency comments on this report.

Except as noted above, we performed our study in accordance with generally accepted government auditing standards. We conducted our study from March 1983 through October 1983.

BACKGROUND

ERA's compliance program was established to enforce the Emergency Petroleum Allocation Act of 1973, under which regulations for controlling the allocation and selling price of crude oil and refined petroleum products were established. The ERA Administrator was delegated the authority and responsibility to establish and enforce these regulations. ERA gradually phased out the petroleum pricing and allocation regulations, with complete deregulation occurring on January 28, 1981. Nevertheless, ERA is still responsible for enforcing the regulations for violations that occurred when the petroleum products were subject to allocation and price controls. As such, ERA is specifically responsible for (1) identifying violations of petroleum pricing and allocation regulations through its audits of oil companies, (2) recovering any overcharges disclosed by the audits, and (3) obtaining restitution for injured parties. ERA considers an oil company to be in violation of the regulations if it obtained a price higher than the regulations permitted or imposed terms or conditions not customarily imposed.

Since 1973, ERA has, through its audits, alleged violations of its petroleum pricing regulations totaling billions of dollars. To resolve these alleged violations, ERA may negotiate a settlement with the oil company. If a settlement is achieved, a consent order must be written to specify the actions ERA and the company agree will settle the alleged violations. When a settlement is not achieved, ERA initiates its administrative process which calls for issuing a proposed remedial order to the company that specifies the alleged violations and recommends the action necessary to resolve the alleged violations. If the company does not agree with the proposed remedial order, ERA refers the matter to OHA, which adjudicates the case. If OHA concludes that a violation exists, it issues a final remedial order to the company, which can appeal the order to the Federal Energy Regulatory Commission (42 U.S.C. 7193) and to the district courts of the United States (42 U.S.C. 7192(b)). The company can appeal further to the Temporary Emergency Court of Appeals. At any time in this process, ERA may also initiate legal action in a court of law to resolve the alleged violations.

When the parties injured by the oil company's alleged violations are not readily identifiable during the settlement, ERA can require the oil company to deposit a specified amount of dollars in DOE's interest bearing escrow account with the U.S. Treasury. If ERA's efforts still fail to readily identify the parties injured by the oil company's alleged violations, ERA is required by

DOE's regulations to refer the cases to OHA, which is then responsible for attempting to identify and distribute refunds to the injured parties.¹ OHA's procedures require it to publicly announce in the Federal Register the method it will use to make refunds. OHA also allows potentially harmed parties an opportunity to comment on its proposed method of disbursing funds and file a claim for a refund.

OVERLY OPTIMISTIC OBJECTIVES FOR
THE COMPLIANCE PROGRAM RESULTED
IN UNDERSTATED BUDGET REQUESTS

Although ERA's fiscal year 1984 appropriations included \$14.8 million for its compliance program (which we believed was a reasonable amount), ERA had originally proposed a fiscal year 1984 budget of only \$7.1 million. This marked the third straight year ERA's originally proposed compliance budget was underestimated when compared with the resources needed to adequately meet its projected workload.

As shown in the following table, ERA's compliance program staffing and funding have declined from 1,343 employees at the beginning of fiscal year 1981 and \$42.5 million obligated in that year to 295 employees as of October 1, 1983, and a \$14.8-million fiscal year 1984 appropriation. There has also been a commensurate decrease in the workload from 1,680 cases² at the start of fiscal year 1981 to 352 cases as of October 1, 1983.

¹Our previous work in this area resulted in the decision by the Comptroller General of the United States (62 Comp. Gen. 379 (1983)), which concluded that ERA had not been consistently following its regulations. Rather than referring cases to OHA, ERA had been distributing, or allowing the oil companies to distribute, overcharge refunds without prior efforts to identify those overcharged and the amounts of the overcharges.

²These cases involve major oil refiners, crude oil producers and resellers, and petroleum product resellers. Some companies, particularly major refiners, can be involved in more than one case.

ERA Compliance Program

<u>Fiscal year</u>	<u>Staff</u> ^a	<u>Open cases</u> ^a	<u>Funding</u> (millions)
1981	1,343	1,680	\$42.5 ^b
1982	812	1,044	32.1 ^b
1983	386	561	18.9 ^b
1984	295	352	14.8 ^c

^aAs of the first day of the fiscal year.

^bAmount obligated.

^cAmount appropriated.

In March 1983,³ we questioned the reasonableness of ERA's fiscal year 1984 compliance budget, as submitted to the Congress in January 1983. We pointed out that the proposed fiscal year 1984 budget was based on overly optimistic workload projections. ERA had requested \$7.1 million and 120 full-time equivalent (FTE) positions (work equated to 1 staff year which is performed by one or more employees during a fiscal year) for fiscal year 1984. The \$7.1 million was a \$12.7-million (64 percent) decrease from the fiscal year 1983 appropriation and was based on the projected completion of all audit and investigation work during fiscal year 1983 and settlements with all but 2 or 3 of the 35 major refiners. As discussed in the following paragraph, this was an overly optimistic estimate.

At the beginning of fiscal year 1983, ERA had 499 civil cases and 62 special investigations. Also, ERA was in the process of settling with 12 of the major refiners. During the first quarter of fiscal year 1983, ERA completed 104 civil cases and 2 special investigations. To meet the projections in the fiscal year 1984 budget, ERA would have had to significantly increase its case completions over the last three quarters of fiscal year 1983. Specifically, ERA would have had to complete 395 civil cases, 60 special investigations, and reach final settlement with 9 major refiners during the last three quarters of fiscal year 1983. Therefore, in March 1983 we questioned whether ERA would be able to accomplish these goals during the remainder of fiscal year 1983, and consequently, whether the \$7.1 million requested for fiscal year 1984 was adequate to effectively complete the compliance program. Actually, ERA completed 112 civil cases, 13 special investigations, and did not negotiate any settlements with major refiners during the last three quarters of fiscal year 1983.

³GAO Staff Views on the President's Fiscal Year 1984 Budget Proposals (GAO/OPP-83-1, Mar. 4, 1983).

On April 5, 1983, ERA revised its workload projections for fiscal year 1984. The revised projections included 90 active audit cases as of October 1, 1983, compared with the earlier projection in the proposed fiscal year 1984 budget justification that all such audits would be completed by that date. Nonetheless, ERA maintained that the requested \$7.1 million and 120 FTEs would be sufficient to handle this revised compliance workload because the requested amounts would allow ERA to have 30 to 40 auditors on board at the beginning of fiscal year 1984 who would then be gradually phased out. However, ERA had not conducted any studies or made any analysis to support its revised projections.

On May 23, 1983, the ERA Administrator testified before the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, that the proposed fiscal year 1984 budget was being reevaluated on the basis of an analysis of the resources needed to meet the revised fiscal year 1984 workload projections. On June 20, 1983, the Administrator submitted ERA's revised analysis of its fiscal year 1984 resource requirements, which included 235 FTEs and \$15.1 million for ERA's compliance program. The subsequent appropriation included \$14.8 million for ERA's compliance program, which was based on 231 FTEs.

In addition to its overly optimistic workload projections, ERA's proposed fiscal year 1984 budget was based on the assumption that the congressionally imposed minimum of 450 ERA employees would be repealed. Section 303 of Public Law 97-257 (September 10, 1982) required ERA to maintain no less than 450 full-time permanent federal employees. In developing its fiscal year 1984 budget, ERA assumed this minimum would be lifted, enabling it to reduce its compliance workforce to the 120 FTE level. However, under Public Law 98-63 (July 30, 1983), the Congress changed ERA's minimum employee level to 380 full-time permanent employees for the remainder of fiscal year 1983 and to 305 FTEs for fiscal year 1984.

The proposed fiscal years 1982 and 1983 budgets for ERA's compliance program were also underestimated when compared with the resources needed to adequately meet the projected workload. The Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, was concerned about the adequacy of these proposed budgets and requested us to analyze them. In a March 31, 1981, report,⁴ we said that the Office of Management and Budget's proposed reduction in ERA's fiscal year 1982 compliance budget from \$46 million to \$12 million would seriously impair ERA's ability to enforce the compliance program. We questioned whether this cut was based on a workload analysis that adequately considered

⁴Department of Energy Needs to Resolve Billions in Alleged Oil Pricing Violations, EMD-81-45, Mar. 31, 1981.

the orderly resolution of the outstanding violations and litigation. In a June 1, 1982, report,⁵ we questioned whether ERA's proposed fiscal year 1983 budget of \$13.5 million would provide adequate resources to effectively conclude the compliance program.

For both fiscal years 1982 and 1983, the Congress, after considering the testimony and other data gathered on these budgets, including our reports, appropriated amounts significantly greater than those requested in ERA's proposed budgets. DOE's appropriations included \$33.6 million for the 1982 compliance program and \$19.8 million for the 1983 compliance program.

OHA'S FISCAL YEAR 1984 WORKLOAD IS
GREATER THAN ANTICIPATED

OHA is responsible for all of DOE's adjudicatory proceedings, except for those administered by the Federal Energy Regulatory Commission or the Board of Contract Appeals.⁶ Specifically, as it relates to ERA, OHA is responsible for (1) providing an adjudicatory forum in ERA enforcement matters to consider contested issues of fact or law and (2) attempting to determine parties harmed by oil companies' overcharges. If ERA is unable to identify the parties injured by oil companies' overcharges, DOE's regulations specify the procedures to be followed to identify and make refunds to these parties.

OHA's fiscal year 1984 workload is greater than it anticipated. In October 1983, after the Congress had reviewed OHA's fiscal year 1984 budget and included funding for OHA in one of DOE's appropriations (Public Law 98-146, November 4, 1983), ERA referred 453 additional cases to OHA. OHA had not anticipated this referral, which increased its projected fiscal year 1984 case receipts from 1,020 to 1,473.

The following table contains OHA's funding, staffing, and workload for fiscal years 1981 through 1984.

⁵Department of Energy Has Made Slow Progress Resolving Alleged Crude Oil Reseller Pricing Violations, GAO/EMD-82-46, June 1, 1982.

⁶The Federal Energy Regulatory Commission is charged with regulating certain interstate aspects of the natural gas, hydroelectric, oil pipeline, and electric industries. Also, the decisions resulting from OHA's adjudicatory proceedings are subject to review by the Federal Energy Regulatory Commission. The Board of Contract Appeals is within DOE and resolves contract disputes between DOE and its contractors in a quasi-judicial manner.

OHA Funding, Staffing, and Workload

<u>Fiscal year</u>	<u>Staff</u> (FTEs)	<u>Funding</u> (in millions)	<u>Completed cases^a</u>	<u>Open cases^a</u> (at end of year)
1981	174	\$8.2	2,972	785
1982	88 ^b	4.8	888	528
1983	84	5.2	609	506
1984 ^c	95	5.25	956	1,181

^aThese columns do not include refund applications submitted by persons claiming they were harmed by companies' alleged pricing violations. According to an OHA Deputy Director, these applications require minimal work. Therefore, we have excluded them for the purpose of comparing OHA's workload.

^bReflects a reduction of 61 positions as a result of regional office closings.

^cProjections for fiscal year 1984, as of February 7, 1984.

As shown in the table, the number of open cases at year-end decreased from fiscal years 1981 through 1983, but it is projected to increase at the end of fiscal year 1984. The number of open cases decreased from 785 at the end of fiscal year 1981 to 528 and 506 at the end of fiscal years 1982 and 1983, respectively. According to an OHA Deputy Director, the significant number of completed cases in fiscal year 1981 was the result of deregulation in January 1981, when many of the cases involving interpretations and/or exceptions to DOE's regulations became moot and were closed. As of February 7, 1984, OHA projected that it would have 1,181 open cases at the end of fiscal year 1984, a significant increase over the 506 open cases at the end of fiscal year 1983. An OHA Deputy Director told us that this increase was due to ERA not referring as many cases as it projected for fiscal year 1983 and subsequently referring 453 cases in the first month of fiscal year 1984. He also said that although these 453 cases will definitely impact OHA's workload and could lengthen OHA's average case processing time, OHA would probably not need additional staff during fiscal year 1984 to handle them.

SLOW PROGRESS IN RESOLVING
OIL OVERCHARGE REFUND CASES

DOE has made slow progress in resolving oil overcharge refund cases because initially OHA gave priority to resolving gasoline allocation cases and required time to learn how to best handle the refund cases. Also, more recently, ERA did not refer 453 of the refund cases to OHA until October 1983.

As of October 1, 1983, DOE's escrow account balance with the U.S. Treasury totaled \$392 million. This balance resulted from \$473 million in oil company payments and \$141 million in accrued interest, less the congressionally mandated distribution of \$200 million in February 1983,⁷ and DOE's disbursement of about \$22 million. Of the \$392 million, about \$274 million represented cases that OHA was processing and about \$118 million represented the 460 cases that ERA had not yet referred to OHA. Subsequently, on October 12, 1983, ERA referred 453 of these cases, representing about \$113 million, to OHA, leaving 7 of the cases (about \$5 million) with ERA. ERA's Solicitor told us that the 7 cases do not require OHA's assistance in identifying the harmed parties because the settlement terms of these cases either identify the purchasers to whom refunds should be made or specify other means of disbursing the funds.

As discussed on page 3, DOE's regulations require ERA to refer those refund cases in which harmed parties cannot be readily identified to OHA. As shown in the following table, ERA began referring these cases to OHA in 1979, but OHA did not begin to issue any final decisions on these cases until 1981.

Oil Overcharge Refund Cases Referred to OHA
As of October 12, 1983

<u>Calendar year</u>	<u>Cases referred to OHA</u>	<u>Final decisions issued by OHA</u>
1979	5	-
1980	21	-
1981	71	7
1982	4	84
1983	<u>455</u>	<u>4</u>
Total	<u>556</u>	<u>95</u>

OHA initially made slow progress in issuing final decisions. Of the 97 cases it had received through 1981, OHA had only issued 7 final decisions. An OHA Deputy Director cited two reasons why OHA initially made slow progress on these refund cases. First, prior to deregulation in January 1981, OHA gave priority to the thousands of gasoline allocation cases it was reviewing. These allocation cases involved gasoline service station operators' petitioning OHA for relief from what the operators considered to be unrealistically low gasoline allocation levels. In some cases, the operators contended that the levels were so low that they

⁷Section 155 of Public Law 97-377 (Dec. 21, 1982) required a one-time distribution to the states of up to \$200 million from the escrow account to be used for energy conservation measures and in assisting low-income persons pay their fuel bills.

could not remain in business unless they received a higher allocation. OHA's review of these allocation cases delayed its getting started on the refund cases.

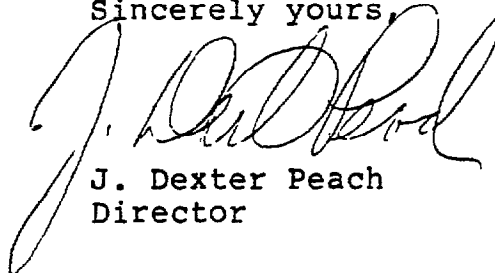
Second, OHA had not previously handled cases similar to the oil refund cases being referred by ERA. This was a new experience for OHA's staff, who had to take the time to learn how to best handle these cases. As the staff gained experience, OHA began to reduce the number of unresolved refund cases.

A more recent reason for DOE's slow progress in resolving the oil overcharge refund cases is that ERA did not refer 453 of these refund cases to OHA until October 12, 1983. The ERA Solicitor told us that prior to that date, ERA had attempted to identify the harmed parties in some of these cases. Because of these attempts, ERA's referral of these refund cases to OHA was delayed and OHA could not begin processing these cases.

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As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,



J. Dexter Peach
Director