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Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

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ENERGY MANAGEMENT

States' Use and DOE Oversight of Exxon and Stripper Well Overcharge Funds

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GAO
United States
General Accounting Office
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Resources, Community, and
Economic Development Division

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June 14, 1988

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

As you requested, this report discusses two issues relating to states' use of over $3 billion in oil overcharge funds received under the Exxon decision and the Stripper Well settlement—(1) whether states' planned uses of the funds are consistent with prescribed requirements and (2) whether the Department of Energy's (DOE) plans for monitoring states' use of the funds meet court and congressional mandates.

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 this letter. At that time, we will send copies to the Secretary of Energy and other interested parties.

The report was prepared under the direction of Keith O. Fultz, Senior Associate Director. Other major contributors are listed in appendix IV.

Sincerely yours,

J. Dexter Peach

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

Since 1986 states have received over $3 billion as a result of the Exxon and Stripper Well oil overcharge cases decided in the courts. As requested by the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, GAO determined whether states' planned uses of the funds and the Department of Energy's (DOE) plans for monitoring the funds are consistent with legislative and judicial requirements.

Background

The Exxon decision and the Stripper Well settlement resulted from actions DOE initiated to resolve alleged violations by crude oil producers of pricing regulations that were in effect between 1973 and 1981. As of April 1988, the 50 states, the District of Columbia, and 5 U.S. territories or possessions (referred to herein as states) had received about $2.1 billion in oil overcharge funds under the Exxon decision and almost $1 billion under the Stripper Well settlement.

The Exxon court decision allows states to use funds for projects allowable under any of five specified energy grant programs—four administered by DOE and one by the Department of Health and Human Services. The Stripper Well settlement allows states to use funds for projects allowable under the five grant programs and certain non-grant projects approved in previous oil overcharge cases, including ones approved by DOE's Office of Hearings and Appeals, which has been involved in approving states' use of oil overcharge funds since 1983.

After states formulate plans for spending Exxon and Stripper Well funds, they are required to submit them to DOE for review and approval. DOE is also required to monitor states' use of both Exxon and Stripper Well funds in a manner similar to its monitoring of oil overcharge funds distributed to states earlier under the "Warner Amendment" (section 155 of Public Law 97-377). DOE has established two sets of procedures for monitoring Exxon and Stripper Well funds—one for projects allowable under the energy grant programs and another for non-grant projects.

Results in Brief

For the most part, the planned uses of funds in the seven states that GAO reviewed appeared to both fall within allowable programs and be aimed at providing restitution to injured parties through energy conservation or energy assistance, as the oil overcharge cases intended. GAO noted that DOE had approved these states' plans to use $57.8 million (about 16 percent of the $353 million in funding for which the seven states had received DOE approval as of June 30, 1987,) to fund projects that are

similar to ones that have been disapproved by DOE's Office of Hearings and Appeals in other oil overcharge cases because they were not sufficiently restitutionary or energy related. However, because such projects fall within the programs on which states are allowed to spend Exxon and Stripper Well funds, DOE may have had little choice but to approve them.

In 1986 DOE established new procedures for monitoring energy grant programs that place primary reliance on the states for carrying out on-site monitoring activities. While the new procedures appear to technically satisfy legislative and judicial requirements, it is too soon to determine whether they will be sufficient to ensure that states use Exxon and Stripper Well funds as the courts intended. However, GAO believes that DOE's procedures for monitoring Stripper Well funds used for non-grant projects, which provide for no on-site monitoring by DOE, are inconsistent with legislatively prescribed requirements.

Principal Findings

Use of Oil Overcharge Funds

The seven states plan to use funds they received on projects that are allowable under the Exxon decision and Stripper Well settlement. Further, most of the planned projects GAO reviewed appear to be aimed at providing restitution and promoting energy conservation or providing energy assistance, as the courts intended. These projects include assisting low-income residents with heating bills, weatherizing low-income family homes, reducing interest on loans for weatherizing commercial buildings and homes, and increasing the efficiency of companies' fleet vehicles.

The seven states plan to use $57.8 million in Stripper Well and Exxon funds for projects that are similar to projects that DOE's Office of Hearings and Appeals has considered in other oil overcharge cases to be not sufficiently restitutionary or energy related. These include road and bridge repair projects, projects that directly benefit state and local governments, and research projects.

Monitoring of Grant Funds

In 1986 DOE established revised procedures for monitoring both appropriated and oil overcharge funds used for its energy grant programs.

The purpose of the revision was to enable DOE to carry out its responsibilities for monitoring states' use of Exxon and Stripper Well funds without the need for additional staffing and funding. DOE's new procedures place primary reliance on the states for carrying out on-site monitoring and reduce its own on-site monitoring role. In GAO's view, the new monitoring procedures are technically consistent with legislative and judicial requirements in that DOE's monitoring of Exxon and Stripper Well funds used for the grant programs will be similar to its planned monitoring of Warner Amendment funds. However, it is too early to tell whether DOE's approach of relying on states for on-site monitoring will be sufficient to ensure that funds are only used for allowable purposes.

Monitoring of Non-Grant Funds

DOE's procedures for monitoring Stripper Well funds used for non-grant projects call for less DOE involvement than for grant projects. The procedures do not provide for DOE on-site monitoring of funds nor do they set expectations for state on-site monitoring. Instead, DOE's monitoring of such funds is limited to reviewing state plans for spending the funds and state annual expenditure reports. GAO believes that this monitoring policy does not comply with the Petroleum Overcharge Distribution and Restitution Act's requirement that "any" funds disbursed to the states under Stripper Well be monitored in a manner substantially similar to Warner Amendment funds. As of June 30, 1987, the seven states had internally approved plans calling for about $67 million, or about 76 percent of their Stripper Well funds, to be spent on non-grant projects.

Use of Interest and Supplanting of State Funds

Both the Exxon decision and the Stripper Well settlement provide that interest earned on the funds be used for the same purposes as the principal and that funds be used to supplement and not supplant state funds. DOE relies on its field offices to develop monitoring procedures to ensure that these requirements are met. However, not all field offices GAO visited had developed such procedures and GAO found instances in which states were not meeting these requirements.

Five of the seven states GAO visited had credited all interest earned to the oil overcharge accounts as required. However, two states credited approximately $3 million in interest to other programs. Both states told GAO that they would recover this interest and place it in the oil overcharge accounts.

Two of the seven states also had used about $17.7 million of overcharge funds to supplant state funds. One state had replaced the supplanted

funds ($16.5 million) prior to GAO's review. GAO found that the other state had used $1.7 million in Stripper Well funds for a project, while reducing its own funding by $1.7 million, as compared to the two previous fiscal years. The cognizant state official told GAO he did not believe the state had violated the supplanting requirement because the state legislature had directed where the oil overcharge funds were to be spent and it was not clear what the state funding level for the project would have been if oil overcharge funds had not been available. The responsible DOE support office official told GAO that the office had not looked into the situation because it involved a non-grant project and the office was not responsible for monitoring such projects.

Recommendations

To strengthen DOE's monitoring of Exxon and Stripper Well funds, GAO is recommending that the Secretary of Energy direct the Assistant Secretary for Conservation and Renewable Energy to (1) formulate, for Stripper Well funds used for non-grant projects, monitoring procedures that comply with requirements of the Petroleum Overcharge Distribution and Restitution Act and (2) ensure that DOE field offices develop and implement monitoring procedures that adequately detect states' improper use of interest earned on Exxon and Stripper Well funds and states' use of oil overcharge funds to supplant state funds.

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Abbreviations

DOE	Department of Energy
EES	Energy Extension Service
GAO	General Accounting Office
HHS	Department of Health and Human Services
ICP	Institutional Conservation Program
LIHEAP	Low-Income Home Energy Assistance Program
OHA	Office of Hearings and Appeals
PODRA	Petroleum Overcharge Distribution and Restitution Act of 1986
SECP	State Energy Conservation Program
WAP	Weatherization Assistance Program

Introduction

In 1986 the two largest federal oil overcharge cases were concluded in the federal courts. The states had received over $3 billion from these cases as of April 1988 to be used as the courts directed, primarily to provide restitution to overcharged consumers by funding energy assistance and conservation programs.

The states are responsible for determining how the funds are to be used within parameters established by the courts. However, the Department of Energy (DOE) is responsible for reviewing state plans and monitoring states' use of the funds. As requested by the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, this report examines whether the states' planned uses of the funds meet court directives and if DOE's plans for monitoring the funds meet court and congressional mandates.

Background

In late 1973 and early 1974, the Organization of Petroleum Exporting Countries embargoed crude oil exports to the United States and then substantially increased the price of its crude oil exports. To minimize adverse repercussions from this action, the Congress passed the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 et seq.). The act was primarily intended to

- prevent price gouging by domestic crude oil producers and
- ensure fair allocation of crude oil supplies and petroleum products to all in the marketing chain.

Regulations applicable to the sale of covered petroleum products were originally issued in August 1973 and expired in January 1981. DOE enforced the act's controls on oil companies' allocation and pricing of crude oil and refined petroleum products.

DOE has authority and responsibility for (1) identifying violations of the petroleum pricing and allocation regulations, (2) recovering overcharges, and (3) obtaining restitution for injured parties. When DOE, through audits of oil company records, alleges violations of the allocation and/or pricing regulations, it may negotiate a settlement with the oil company; initiate administrative action separate from, or concurrent with, the settlement negotiations; or initiate legal action in a court of law to resolve the alleged violations. This report concerns funds distributed as a result of the Exxon and Stripper Well cases, which were resolved in the courts.

Exxon Decision

In the Exxon case, DOE charged in January 1978 that from 1975 to 1981 Exxon had overpriced crude oil produced from the Hawkins field in Texas. The court concluded in March 1983 that this resulted in overcharges to Exxon's customers and other purchasers of petroleum products. The U.S. District Court for the District of Columbia directed Exxon to pay about $2.1 billion in principal and interest, and on March 6, 1986, the funds were distributed to the states. The court directed that DOE allocate the funds to the states according to a specified formula based on historical usage patterns of refined petroleum products.

Under the Exxon decision, states are allowed to use funds they received on any of the five following energy assistance/energy conservation grant programs. DOE administers the first four and the Department of Health and Human Services (HHS) administers the last one.

- The State Energy Conservation Program (SECP) promotes the development and implementation of comprehensive state energy conservation plans.
- The Energy Extension Service (EES) is an energy outreach program for small businesses and individual energy users.
- The Institutional Conservation Program (ICP) helps schools and hospitals implement energy conservation procedures and acquire and install energy conservation measures.
- The Weatherization Assistance Program (WAP) helps low-income people, particularly the elderly and handicapped, make home improvements to reduce heat loss and conserve energy.
- The Low-Income Home Energy Assistance Program (LIHEAP) helps eligible households meet home energy costs and helps low-income persons weatherize their homes. It is administered through block grants to the states.

The court directed that the interest states earn on funds they received be used for these same programs. The decision also included provisions requiring that funds be used to supplement and not supplant funds otherwise available for the programs.

Exxon Monitoring

The court required that DOE monitor Exxon funds in a manner similar to its monitoring of funds distributed under section 155 of Public Law 97-377 (Dec. 21, 1982 - the Warner Amendment).[1] Further, in a letter to the

[1]States are allowed to use Warner Amendment funds for the same energy assistance/energy conservation grant programs for which they can use Exxon funds.

Secretary of Energy dated April 11, 1986, the U.S. district court judge stated that DOE must exercise oversight responsibility and actively monitor the disbursement of these funds as though they were appropriated funds. This was to ensure that the intent of the court order is carried out and that the victims of the overcharges receive, as nearly as possible, the restitution the court intended.

In March 1986, DOE distributed the funds to the states and, based on the court's decision, required states to submit to DOE for approval, plans for spending the Exxon funds. States are also required to report annually on the disposition of the funds received. However, neither the court nor DOE established time frames within which states are required to submit spending plans or spend the funds they received.

Stripper Well Settlement Agreement

The Stripper Well settlement of May 5, 1986 (MDL No. 378, U.S. District Court for the District of Kansas), resulted from charges that crude oil producers miscertified federally controlled crude oils from 1973 to 1981 to avoid price restrictions.[2] While the court case was pending, the crude oil producers that DOE charged with miscertifications were ordered by the court to deposit into the court's escrow fund the difference between the prices they charged for the crude oil in question and the prices they allegedly should have charged.

The court subsequently decided that the producers had improperly certified the oil in question and that this had resulted in overcharges to customers. The court then granted a number of parties (intervenors) time to address how best to establish a restitutionary mechanism to compensate those injured by the overcharges. The intervenors included state governments, refiners, resellers, retailers, airlines, agriculture cooperatives, public utilities, and other entities that claimed entitlement to the fund. The parties entered into a settlement agreement that, among other things, established a mechanism to provide restitution to injured consumers.

With regard to the states' and territories'[3] portion of the funds, the Stripper Well settlement provided that the funds be allocated among the

[2]In particular, the charges related to the issue of whether producers had classified oil produced from certain properties as stripper well oil, which was exempt from petroleum price controls. DOE concluded that the oil in question was subject to price controls.

[3]In addition to the 50 states and the District of Columbia, 5 U.S. territories or possessions received Stripper Well funds: Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianas. For purposes of this report, these 56 entities are collectively referred to as states.

states based on historical usage patterns of refined petroleum products—the same manner in which Exxon funds were allocated. Accordingly, in August 1986 about $727 million, including interest, was distributed to the states. Additional Stripper Well fund distributions totaling about $266 million subsequently were made to the states between November 1986 and April 1988.

Agreement Provisions

The agreement provided that the funds be used for existing or new energy-related programs that were designed to benefit, directly or indirectly, consumers of petroleum products within the state. The states were to select from specific designated programs those that provided the most effective restitution to their citizens. To provide states flexibility in selecting programs that would ensure consideration of local needs and circumstances, each state was allowed discretion in selecting specific projects. States' spending of funds is limited to the following programs:

1. The five DOE- and HHS-administered energy assistance/energy conservation grant programs on which states are allowed to spend Exxon funds.

2. Programs approved by DOE's Office of Hearings and Appeals (OHA) pursuant to 10 CFR Part 205, Subpart V. Since January 1983, OHA has been responsible for approving states' planned use of certain oil overcharge refunds. OHA's approved decisions were incorporated into the Stripper Well settlement agreement as examples of possible use of the Stripper Well funds. These approved decisions included using oil overcharge funds for computerized school bus routing, energy audits of government buildings, and residential energy assistance. (A more detailed list of approved uses is in app. I.)

3. Programs referenced in the 1981 consent order between DOE and Standard Oil Company of California (Chevron), which settled an oil overcharge proceeding. Included as possible uses were highway and bridge maintenance and repair and energy assistance programs. (A full list of uses is in app. II.)

4. Such other restitutionary programs as may be approved by the District Court.

Additionally, the agreement provided that

- states shall use the funds to supplement, and not to supplant, funds otherwise available for such programs and
- interest earned on the funds following their receipt by the state will be used in the same manner as the basic funds.

Stripper Well Monitoring

Under the agreement, each state, at least 30 days prior to spending the funds, must submit a report to the court and DOE identifying the programs for which the funds will be spent. The Stripper Well agreement does not specifically require that state plans be approved by DOE. Rather, DOE reviews the state plans and advises the states when it believes proposed projects do not meet the Stripper Well court requirements.[4] In addition, within 30 days after the close of each state's fiscal year, the state is required to submit a report to both DOE and the court concerning the amounts spent and how they were used. However, the court did not specify time frames within which states had to submit spending plans or spend the funds.

Subsequent to the Stripper Well agreement, the Congress enacted the Petroleum Overcharge Distribution and Restitution Act of 1986, which required DOE to monitor the states' use of Stripper Well funds in a manner substantially similar to those overcharge funds distributed under the Warner Amendment. A DOE ruling interprets the Warner Amendment as requiring that Warner funds be treated in the same manner as appropriated funds.

Objectives, Scope, and Methodology

The Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, requested that GAO evaluate certain issues related to the Exxon and Stripper Well distributions. Based on the Chairman's request and subsequent discussions with his office, we determined

- whether the states' planned use of the funds (including interest) is consistent with legislative and judicial requirements and
- whether DOE's plans for monitoring the use of the funds meet legislative and judicial requirements.

[4]For convenience, in this report we use the term "approved" to describe DOE action on both Exxon and Stripper Well plans. While DOE approves states' plans to spend Exxon funds, DOE program officials told us that technically they review Stripper Well plans to see if they are consistent with the Stripper Well settlement agreement rather than "approving" states' plans to spend Stripper Well funds.

We did not review in detail states' use of Exxon and Stripper Well funds for LIHEAP nor did we review HHS' efforts to monitor states' use of such funds. Work during the initial phase of our review disclosed few problems with states' use of funds for LIHEAP.

As agreed with the Subcommittee, we conducted our audit work at DOE headquarters in Washington, D.C.; in the states of Alabama, Colorado, Florida, Georgia, Louisiana, New York, and Ohio; and the DOE regional support offices (field offices) in Atlanta, Denver, and New York. The seven states were selected on the basis of both the amounts of overcharge funds they had received (see fig. 1.1) and the amounts of Exxon and Stripper Well funds that DOE had either approved or was reviewing in April 1987, when we began our review. We used these selection criteria because the states that had received the largest amounts of funds, in many cases, did not have the largest amounts of funds approved or under review. The states selected included 5 of the top 15 both in terms of total Exxon and Stripper Well funds received and Exxon funds that DOE had approved or was reviewing and 4 of the top 10 in terms of Stripper Well funds that had been approved or were under review.

To determine whether the states' planned use of funds is consistent with legislative and judicial requirements, we:

- Interviewed DOE Headquarters officials responsible for the four DOE energy assistance/energy conservation grant programs and officials responsible for OHA decisions.
- Examined applicable legislation; the provisions of the Exxon decision and Stripper Well settlement agreement; DOE policies, procedures, and regulations; DOE approvals and disapprovals of states' Stripper Well plans; OHA decisions; and correspondence concerning oil overcharge refunds to states.
- Reviewed state plans and applicable correspondence and interviewed officials at three DOE field offices responsible for reviewing and approving the plans.
- Interviewed state officials responsible for the Stripper Well and Exxon programs and examined (1) states' plans for use of the funds, contracts to carry out the plans, fiscal records showing how the funds were spent and interest accumulated, and (2) applicable policies, procedures, and correspondence relating to the funds.

For the most part we limited our review of state plans to those projects DOE had approved as of June 30, 1987. However, for two states (Louisiana and New York) we reviewed plans for projects that DOE did not

Figure 1.1: Exxon and Stripper Well Funding Provided to the Seven States GAO Visited (Dollars in Millions)

approve until July 1987 and October 1987, respectively. We made this exception because DOE had not approved any Stripper Well projects for these states as of June 30, 1987.

In reviewing states' planned use of funds, we generally focused on projects for which the available data submitted to DOE did not clearly indicate whether the projects should have been approved by DOE or for which we had questions about the project. Federal regulations place greater restrictions on funds spent for DOE's Weatherization Assistance and Institutional Conservation Programs, and our initial work in two

states (Georgia and Florida) disclosed few problems in projects involving funds for such programs compared to other programs. Therefore, in the other five states we visited, we focused our review on funds used for other types of projects. Because we selectively chose projects for review rather than choosing them randomly, our findings are not necessarily representative of all projects in the seven states nor of projects nationwide. However, our audit coverage was sufficient for us to determine whether the specific projects we reviewed conformed to the legislative and judicial requirements. In total we reviewed projects accounting for about $180 million of the $353 million[5] that DOE had approved in the seven states as of June 30, 1987 (see fig. 1.2).

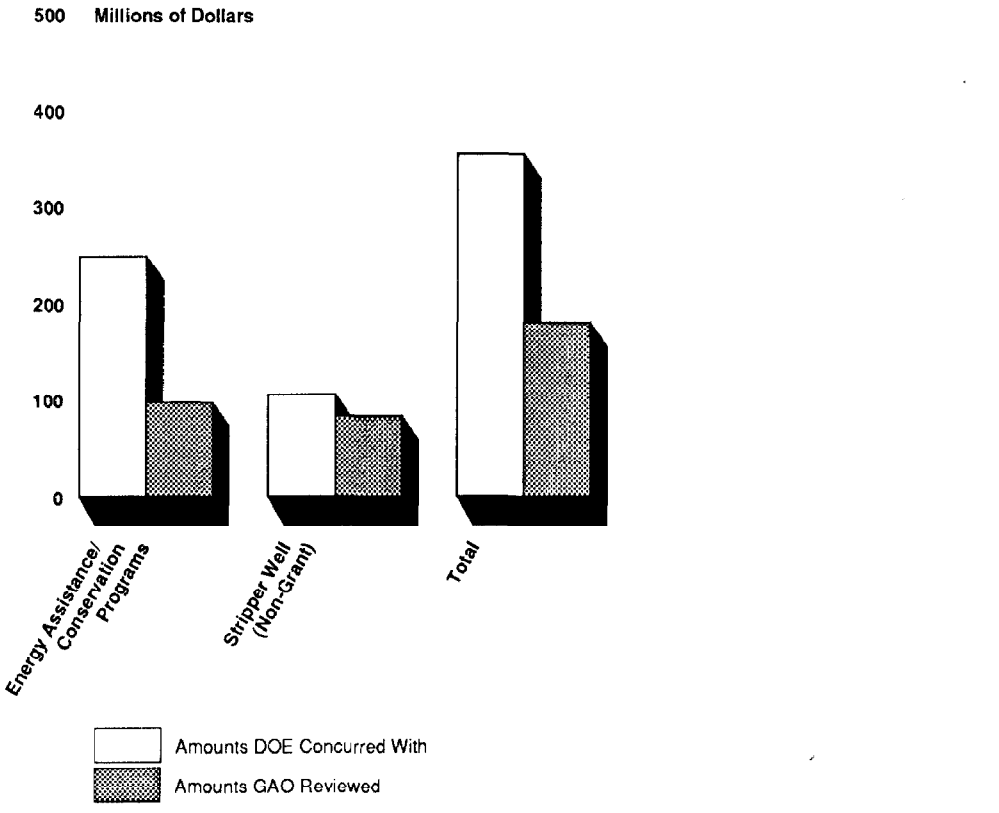
In reviewing whether states' use of funds met legislative and judicial requirements, we examined whether the funds were being used on allowable programs and whether the projects to be funded appeared to be restitutionary and energy related. As discussed in chapter 2, in examining whether the projects appear to be restitutionary and energy related, we used criteria that OHA has developed for evaluating states' plans to spend oil overcharge funds.[6] We recognize that, in some cases, the Exxon decision and Stripper Well settlement allow funds to be used on certain projects that OHA currently considers to be nonrestitutionary. However, we believe the OHA criteria provide a useful basis for assessing the projects since the criteria focus on projects' restitutionary value and energy savings potential.

As agreed with the Chairman's staff, we did not determine how effective the individual projects were nor how effectively they were managed, nor did we verify actual expenditures. As of June 30, 1987, the seven states we reviewed had spent only about 10 percent of Exxon and Stripper Well funds they had received.

[5]The seven states had received about $688 million in Stripper Well and Exxon funds and had plans to spend, as of June 30, 1987, about $584 million. DOE had approved $353 million of the planned usage as of June 30, 1987, of which we reviewed about $180 million. States had also received HHS approval to use $44.4 million for LIHEAP as of June 30, of which we reviewed about $15 million.

[6]While we evaluated whether projects appeared to meet OHA's criteria, we did not ask OHA to review our assessments.

Figure 1.2: Exxon and Stripper Well Funds DOE Approved and GAO Reviewed (As of June 30, 1987)



Amounts DOE concurred with includes $79 million for two states that DOE concurred with after June 30, 1987

In addition to our work in the 7 states, we mailed a questionnaire to all 56 states that received Exxon and Stripper Well funds to obtain information on how they had used such funds. We received responses from 52 states. As agreed with the Chairman's office, information obtained from the questionnaire is being issued in a separate GAO report.[7]

To determine whether DOE's plans for monitoring the states' use of Stripper Well and Exxon funds meet judicial and legislative requirements, we carried out the following activities:

[7]Energy Management: How States Are Using Exxon and Stripper Well Funds (GAO/RCED-88-145FS).

- We interviewed DOE Headquarters officials responsible for the monitoring process.
- We reviewed applicable legislation; the Exxon order and Stripper Well settlement agreement; and DOE policies, procedures, regulations, and correspondence.
- We interviewed officials at DOE field offices to determine what their plans were for monitoring the funds' usage, and we reviewed applicable regulations, instructions, and correspondence.
- We interviewed state officials responsible for monitoring the funds, and we examined state plans and procedures for monitoring them.

We discussed information in this report with cognizant DOE and state officials and have included their comments where appropriate. However, at the Chairman's request, we did not obtain official agency comments on a draft of this report. Our review was conducted from April to December 1987 in accordance with generally accepted government auditing standards.

States' Planned Use of Exxon and Stripper Well Funds

Both the Exxon decision and the Stripper Well settlement provided states with flexibility in deciding how to use the funds they received. In this regard, both specified a range of programs on which funds could be used. However, both also provided that funds should be used to provide restitution to parties injured as a result of the oil overcharges and indicated that the projects on which states spend funds should be energy related.

The projects we reviewed in seven states were generally consistent with the provisions of the Exxon court order and the Stripper Well settlement agreement. Also, the projects we reviewed fell within the range of programs on which states are allowed to use Exxon and Stripper Well funds. Further, most projects appeared to be aimed at providing restitution to injured parties and promoting energy conservation or providing energy assistance. However, our review disclosed that DOE had approved some Exxon and Stripper Well projects that fall under the allowable programs but appear to be questionable from a restitutionary or energy-related perspective. In this regard, we believe $57.8 million (16 percent) of the $353 million that DOE had approved in the seven states we visited falls into areas that DOE's Office of Hearings and Appeals (OHA) has previously ruled to be not sufficiently restitutionary or energy related. Such projects included those whose benefits are too remote and indirect or will occur too far in the future and ones that offer little energy savings potential or focus more on health and environmental benefits than on energy savings.

We recognize that neither the Exxon decision nor the Stripper Well settlement requires that states' uses of funds meet OHA's approval criteria and that DOE may have had little choice but to approve projects that fall within the allowable programs. However, such uses of funds could be taken into account by the Congress when considering whether to approve reductions that have been proposed in appropriations for energy assistance/energy conservation programs.

Criteria for State Spending of Exxon and Stripper Well Funds

Both the Exxon decision and the Stripper Well settlement provided states with latitude in using the funds they received. More specifically, as discussed in chapter 1, both specified various programs from which states could select in deciding how to spend the funds. Under both the Exxon decision and Stripper Well settlement, states are allowed to spend funds on any of the previously described five energy assistance/energy conservation grant programs. Under the Stripper Well settlement, the

states may also use funds they received for non-grant programs previously approved by DOE's Office of Hearings and Appeals and programs referenced in the 1981 consent order DOE entered into with Chevron.

In addition, both the Exxon decision and the Stripper Well settlement noted the restitutionary and energy-related nature of the programs on which states are to use the funds. In this regard, the Exxon decision noted that the purpose of petroleum price regulations had been to keep oil prices down and, thus, relieve consumers of "the burden of towering oil costs." The court stated that the five programs on which states may spend Exxon funds could be expected to reduce that same burden either by reducing overall consumption through conservation or by providing direct financial assistance to those most in need. Similarly, the Stripper Well settlement provided that states were to use funds on "one or more existing or new energy-related [emphasis added] programs which are designed to benefit, directly or indirectly, consumers of petroleum products in the state." However, neither the Exxon decision nor the Stripper Well settlement set forth specific criteria that DOE was to use in determining whether states' planned uses of funds were restitutionary or energy related, other than requiring that funds be used for the allowable programs.

States' Plans for Using Exxon and Stripper Well Funds

As a result of the Exxon decision and the Stripper Well settlement agreement, all 56 states had received a total of $2.95 billion in oil overcharge funds as of June 30, 1987—our cut-off date for reviewing state plans. The seven states we visited had received about $688 million, or about 23 percent of the total. As of the same date, the seven states had internally approved plans to spend approximately $584 million, or about 85 percent of the funds they had received. The amounts that the states planned to spend on each of the approved programs are shown in table 2.1.

Table 2.1: Planned Use of Exxon and Stripper Well Funds by the Seven States GAO Visited (As of June 30, 1987)

	Exxon	Stripper Well	Total
SECP	$134,488,797	$6,639,176	$141,127,973
EES	26,740,899	997,472	27,738,371
ICP	161,100,000	0	161,100,000
WAP	122,242,895	7,609,134	129,852,029
LIHEAP	51,150,213	5,670,000	56,820,213
Stripper Well non-grant programs	0	67,280,891	67,280,891
Total	**$495,722,804**	**$88,196,673**	**$583,919,477**

As of June 30, 1987, DOE had approved states' plans to spend $353 million of the funds.[1]

States' Plans Generally Comply With Court Objectives

Generally, federally approved plans for spending Exxon and Stripper Well funds prepared by the seven states we visited were in compliance with the objectives of the Exxon decision and Stripper Well settlement. All of the federally approved plans that we reviewed appeared to fall within the categories of programs on which states are allowed to spend Exxon and Stripper Well funds.

We also found that most of the projects proposed by the states we visited appeared to be consistent with the courts' objectives that programs be restitutionary and energy related in that they were aimed at promoting energy conservation or providing energy assistance to injured parties. For example, states had allocated about $130 million, or about 19 percent of the planned expenditures, to the WAP program, which is intended to reduce national energy consumption and to decrease the impact of higher fuel costs on low-income persons, particularly the elderly or handicapped. These goals are accomplished through funding home weatherization retrofits, such as installing insulation and storm windows, and making furnace efficiency modifications and other improvements to conserve energy.

States also had allocated about $57 million, or approximately 8 percent of their planned expenditures, to LIHEAP. Its purpose is to assist low-income households with the costs of home energy, such as payments for energy assistance and weatherization.

Other projects that appear to meet the court's objectives include SECP projects that reduced the interest on commercial loans for energy conservation measures and assisted businesses in implementing cogeneration projects (deriving two or more uses simultaneously from the same energy source, thereby preventing energy waste).

We also noted EES projects that provided technical assistance to agricultural operations for improving energy conservation and utilization. Other EES projects provided assistance to companies for increasing the energy efficiency of their vehicle fleets.

[1]As noted in chapter 1, HHS had approved states' use of $44.4 million in LIHEAP funds as of June 30.

Some Projects Would Not Meet OHA's Approval Criteria

As discussed above, states' plans for spending Exxon and Stripper Well funds generally appeared to satisfy the courts' objectives. However, we found some projects that fell within the program categories on which states are allowed to spend Exxon and Stripper Well funds but appeared to be of questionable value from a restitutionary or energy savings perspective. In this regard, we believe $57.8 million (16 percent) of the $353 million approved by DOE falls into areas that OHA has considered to be not sufficiently restitutionary or energy related[2] .

OHA's Role in Oil Overcharge Proceedings

For the past 5 years OHA has been involved in approving states' planned use of oil overcharge funds. DOE's regulations established procedures for distributing oil overcharge funds when those overcharged and the amounts of the overcharges were not readily identifiable. These procedures, promulgated pursuant to the Emergency Petroleum Allocation Act of 1973, stipulated that such cases be referred to OHA, which is responsible for ensuring that the refunds are used to provide restitution to parties injured by the oil companies' overcharges. In 1983 OHA established a program under which funds were made available to state governments on the condition that they be used in energy-related activities that would benefit the same general groups of persons who were injured by the overcharges. Under the program, each eligible state can submit a plan of expenditure to OHA. If OHA finds that the projects proposed in the state plan are restitutionary, the plan is approved and money is transferred to the state. As of March 1988, OHA had approved 357 payments to states involving $47.8 million, plus interest, and had rejected 63 spending plans.

While OHA is generally not involved in reviewing states' plans to spend Exxon funds, it is involved in cases in which states wish to appeal initial DOE rulings disapproving proposed uses of Stripper Well funds. Under the procedures that DOE has established for reviewing states' planned use of Stripper Well funds, state proposals are reviewed by a committee made up of representatives from DOE's Office of State and Local Assistance Programs, its Office of General Counsel, and the Economic Regulatory Administration. If the committee finds that any of the programs on which states plan to spend funds are inconsistent with the Stripper Well settlement agreement, the state may then file a petition for special redress with OHA. OHA will review the petition and issue a decision on whether the program should be approved.

[2]The $57.8 million represents 32 percent of the $180 million in funds that we reviewed.

OHA's Criteria for Approving Projects

In evaluating states' plans to spend oil overcharge funds, OHA has considered the restitutionary and energy savings benefits of projects states are proposing—objectives that are consistent with the Exxon decision and Stripper Well settlement. However, the criteria that OHA uses in evaluating projects differ, in some respects, from the regulations relating to programs on which states are allowed to use Exxon and Stripper Well funds. For example, DOE's regulations pertaining to the EES and SECP programs do not require that a project focus on energy savings,[3] whereas OHA lists this as a factor in determining whether a project is allowable. Additionally, DOE regulations, unlike OHA's decisions, do not require that projects that gather energy information also provide some energy savings. Further, DOE regulations allow energy projects that benefit state governments, municipalities, and schools, whereas OHA generally considers such projects as nonrestitutionary because they primarily benefit state governments and are not sufficiently targeted to injured consumers (i.e., consumers would benefit only if reduced energy consumption by state facilities led to reduced tax burdens).

The Stripper Well settlement also allows states to use funds for projects previously approved by OHA in other oil overcharge proceedings and for projects referenced in the 1981 Chevron consent order. These include projects that OHA had formerly considered to be restitutionary but on which it has since reversed its position. For example, prior to 1985, OHA had approved using such funds for projects that benefited state and local governments and projects that were more concerned with health and safety than saving energy. In 1985, OHA revised its position and declared that such projects would not be approved in the future because they did not provide sufficient restitutionary benefits to the injured parties. According to OHA's Deputy Director, OHA had reviewed and reversed some of its earlier decisions because OHA agreed with the points made in a GAO report on the management of oil overcharge funds.[4]

The former Deputy Solicitor for DOE, who participated in the Stripper Well negotiations, stated that at the time of the Stripper Well settlement DOE was aware that OHA had reversed its opinion in several areas. However, to give states the greatest latitude for spending the funds, the Stripper Well settlement included projects OHA once approved but no longer considers to be allowable. As a result, DOE must now concur with

[3]Although the SECP program as a whole does focus on energy savings, not all individual projects allowable under the program are required to do so.

[4]The Department of Energy Should Improve Its Management of Oil Overcharge Funds (GAO/RCED 85-46, Feb. 14, 1985).

such projects even though OHA subsequently found them to be not adequately restitutionary. Some of these projects are described in the following section.

Examples of Projects Not Meeting OHA's Criteria

The $57.8 million in Exxon and Stripper Well projects that we believe do not meet OHA's criteria for approving states' use of oil overcharge funds fell into one of the following three categories:

- Projects for which benefits to injured consumers are too indirect or too remote to be considered restitutionary.
- Projects for which benefits will occur too far in the future to be considered restitutionary.
- Projects that appear to offer little energy savings potential or whose primary focus is on health and environmental concerns rather than energy savings.

Examples of projects that we believe fall into these categories are discussed below.[5] A complete list of such projects is found in appendix III.

Benefits Too Indirect or Remote

OHA has disapproved a number of projects in oil overcharge cases because the benefits they provided were too indirect or remote to be considered restitutionary. These include projects relating to road and bridge maintenance and repair and projects in which the state is the primary beneficiary of energy savings resulting from the project. We found Exxon or Stripper Well projects in the seven states, totaling about $37 million, for which we believe benefits are too indirect or remote to be approved by OHA. Some of these projects are discussed below.

Three of the seven states proposed and received DOE concurrence for about $32.2 million in Stripper Well funds for highway and bridge maintenance. One state has already allocated $16.5 million of its Stripper Well funds for road and bridge maintenance projects and plans to allocate another $16.5 million at a later date. Although it had previously approved such programs, in June 1985 OHA noted that such programs were more properly funded from general revenues of the state. OHA believed that benefits to injured consumers should be more direct than through a possible reduction of taxes.

[5]While some projects appear to fall into more than one category, we have assigned each to the one category that appeared most relevant.

For this same reason, OHA has also disapproved other types of projects in which the state was the primary beneficiary. We found six Stripper Well projects, totaling almost $2 million, that fell into this category but that DOE approved under the court stipulations. Although OHA has approved energy programs for nonprofit institutions such as hospitals, it has rejected energy programs for government buildings and schools. In a May 7, 1985, decision, OHA determined that while the energy projects may lead to actions designed to reduce fuel consumption by state facilities and this in turn may reduce tax burdens, the benefits are not sufficiently targeted to the injured consumers who are the focus of the refund proceedings.

DOE has approved three states' SECP and EES projects that provided about $2.4 million in funds for (1) educating middle-grade teachers about energy, (2) teaching vocational students about maintaining energy equipment, (3) obtaining new equipment for teaching vocational classes in advanced energy conservation transportation technologies, and (4) teaching energy management services primarily to graduate and undergraduate students. Although these projects may be worthwhile, OHA has determined that such projects are not restitutionary in nature. In a decision dated April 10, 1986, concerning the purchase of energy education material for use in public schools, OHA determined that the proposed project was not restitutionary because the benefits to the injured consumers would be remote and indirect. OHA determined that students, similar to the ones in the grant projects questioned, would have been unlikely to have purchased petroleum products during the overcharge period.

Benefits Too Far in the Future

OHA has also disapproved projects in which benefits to injured parties are likely to occur too far in the future. OHA has rejected projects in which a state has not convincingly demonstrated that benefits will occur on a timely basis and will have an immediate effect on the use or cost of energy. During our review of the seven states, we found nine projects, totaling about $12.5 million, for which we believe benefits would occur too far in the future to be considered restitutionary by OHA.

One state was funding two projects, costing $5 million each, to establish institutes for superconductivity and solid waste combustion. In considering proposals to fund energy studies, research projects, alternative fuel research, and energy crisis planning programs, OHA has stated that it would consider factors such as timing and usefulness of the projects in analyzing whether they are sufficiently restitutionary. Our review of

the projects' proposals disclosed that, while aspects of the projects may provide some immediate benefits to injured consumers, many project activities concerned energy research whose possible benefits would be derived at some time in the future. As noted above, OHA has rejected projects where states have not demonstrated that benefits will occur on a timely basis.

We also found that DOE approved about $1.3 million in Exxon and Stripper Well oil overcharge funds for a state's proposed study of a transportation mall which provides for pedestrian and/or commuter traffic in the downtown area. The funds were primarily to develop a financing mechanism and prepare detailed construction drawings for four blocks of the transportation mall. Our review of the proposed project's energy savings disclosed that they were based on ridership in the year 2000 and were, as the state energy official stated, "over optimistic." Further, the project's funding was uncertain in that it was dependent on a collaborative effort involving state and local governments and private business, but the state's proposal provided no assurances of funding by these entities.

In a June 4, 1985, decision concerning a proposed transportation study, OHA determined that studies should not be approved unless they are likely to produce some immediate, tangible benefit. OHA expressed a concern that many years would pass before studies are acted on and it was possible that no future alternate transportation system would ever materialize due to unforeseen political, economic, social, and demographic factors.

Non-Energy-Related Projects

In determining whether projects should be approved, OHA has considered whether they are likely to encourage energy conservation or result in energy savings. OHA has rejected projects that appear to have little energy savings potential or that it believed tend to focus more on reducing injured customers' health and safety risks than their energy-related costs. During our review of the seven states, we found projects totaling about $8.4 million that we believe OHA would reject based on these criteria.

Included among the projects which appeared to have little energy savings potential were three energy information projects valued at $96,000, aimed at informing citizens about energy issues and providing related data. For example, one project provided monthly reports on state gasoline prices. The project description did not show any projected energy

savings. In its decision dated June 4, 1985, OHA determined that programs to develop energy bases that include information on energy supplies, demand, and prices within the state only aid state governments in developing energy statistics and do little to benefit injured consumers. OHA concluded that it would not approve a proposed informational project unless the state proposed establishing an energy data base with some immediate restitutionary goal in mind. The three projects we reviewed did not contain restitutionary goals.

Projects that were aimed more at health and environmental concerns than energy savings included a mobile air pollution detection project and two projects relating to radon protection. The air pollution detection project was about a $257,000 program to develop a mobile air pollution system to identify polluting cars as they drive by a check point. The manager of the state's Administrative Service Office of Energy Conservation stated that the project's primary purpose is pollution control, but he also said the project benefited the state's citizens because the state will continue to receive Environmental Protection Agency funds that the Agency had threatened to suspend because the state had not met air quality standards. In our view the project focused more on environmental and health concerns than energy savings.

Two states we visited are funding radon leakage projects collectively valued at $1.1 million. (Radon is a radioactive gas that becomes a health hazard when it becomes trapped in lungs and may result in lung cancer.) The larger project, funded for over $1 million, provided for radon education workshops for private sector individuals and radon assessment specialists. The purpose of the project, as described in the state's plan, was to address the relationship between radon and the implementation of energy conservation measures and provide information and training on radon detection, diagnosis, and mitigation. The second project funded for $75,000 was initiated by the Environmental Protection Agency to determine the volume of radon in residences. The state SECP manager stated that if radon infiltration was not a problem, they could assure concerned citizens it was safe to weatherize.

We believe these radon projects are comparable to a project OHA considered in a decision dated April 17, 1987, concerning the use of Stripper Well funds to detect and repair underground storage petroleum tank leaks that posed major financial and environmental problems. OHA rejected the use of Stripper Well funds for this project because, among other things, estimates of energy savings were based on extrapolations

of speculative, generalized data and the project focused more on health and environmental issues than on reducing energy use.

Our review of the two radon project proposals disclosed that one state's projection of estimated energy savings was not supported with facts or methodology while the other state did not estimate the energy savings that might be achieved. One state radiation physicist stated, in response to the question of how the latter program saved energy, that it probably wastes energy. He said that the solution for getting rid of radon is usually ventilation, which decreases a house's energy efficiency and defeats weatherization efforts. In our opinion, both states' projects were more related to health and environmental issues than to saving energy.

Appropriation Cuts Proposed Because of Exxon and Stripper Well Funds

States' receipt of about $3 billion in Exxon and Stripper Well funds that may be used for energy assistance/energy conservation grant programs has led the administration to question the continuing need for federal appropriations for such programs. Between fiscal years 1982 and 1988, appropriated funding for the five DOE and HHS programs for which states can use Exxon and Stripper Well funds totaled almost $15.1 billion. Slightly over $1.8 billion of this amount went to the four DOE energy assistance/energy conservation grant programs while almost $13.3 billion went to HHS' LIHEAP.

The President's fiscal year 1989 budget calls for reductions in federal appropriations for both the DOE grant programs and for LIHEAP. The budget proposes a fiscal year 1989 funding level of $1.2 billion for LIHEAP, $345 million less than the fiscal year 1988 funding level. The budget cites as the reason for the proposed reduction the states' receipt of hundreds of millions of dollars in oil overcharge funds that can be used for the programs. The budget requests no funding for the four DOE grant programs.

As of June 30, 1987, the seven states we visited had received approximately $688 million in Exxon and Stripper Well funds and had earned about $50 million in interest on the funds. The seven states had received federal approval for spending almost 54 percent of the available funds (including interest) and had obligated or spent about 9 percent of the available funds. Thus, as of June 30, 1987, approximately 91 percent ($674 million) of the available funds had not yet been obligated or spent.

In comparison, the 52 states responding to our nationwide questionnaire (including the 7 we visited) reported receiving close to $3 billion in

Exxon and Stripper Well funds (93 percent of the total amount of Exxon and Stripper Well funds DOE had distributed to states as of June 30, 1987) and having earned an additional $204 million in interest on the funds as of June 30. The 52 states reported having received federal approval for spending 39 percent of the funds they had received and had obligated or spent 23 percent of the funds. As of June 30, 1987, the 52 states had almost $2.2 billion still available for spending.

Conclusions

Projects proposed by the seven states we visited fell within the programs on which states are allowed to spend Exxon and Stripper Well funds. Further, consistent with the purpose of the Exxon decision and Stripper Well settlement, it appears that a majority of the Exxon and Stripper Well oil overcharge funds for which those states have received DOE approval will be used on projects that are aimed directly at promoting energy conservation or providing energy assistance to injured consumers.

However, the seven states we visited have received DOE approval to spend $57.8 million (16 percent of the Exxon and Stripper Well funds approved by DOE) on projects that we do not believe would meet OHA's criteria for approving states' use of oil overcharge funds in that they appear to be questionable from a restitutionary or energy savings perspective. This includes $32.2 million on road and bridge maintenance and repair and $8.4 million on projects that appear to offer little energy savings potential or primarily focus on health and environmental concerns.

Because such projects fall within the program categories on which states are allowed to spend Exxon and Stripper Well funds, we recognize that DOE may have had little choice but to approve them. However, such planned uses of funds could be taken into account by the Congress when considering proposed reductions in appropriations for energy assistance/energy conservation programs.

DOE Needs to Improve Its Monitoring Procedures

Although neither the Exxon court order nor the Stripper Well settlement set out specific monitoring requirements, the Exxon court and congressional legislation subsequently stipulated that these funds should be monitored in a manner similar to funds distributed under the Warner Amendment. DOE has established separate procedures for monitoring the funds depending on whether they are used for the four energy assistance/energy conservation grant programs it administers or for non-grant projects.

DOE has established a structured system of written procedures and guidelines for monitoring funds used for the four grant programs. However, to carry out the added responsibility for monitoring Exxon and Stripper Well funds, without the need for additional staff, DOE revised its traditional procedures for monitoring all funds used for the grant programs. Even though the new procedures call for DOE to monitor Exxon and Stripper Well funds used for the four grant programs in essentially the same way as it currently monitors Warner Amendment funds and appropriated funds used for these programs, these new procedures substantially differ from the monitoring procedures originally used to monitor Warner Amendment funds. The procedures shift much of the monitoring burden to the states and reduce on-site monitoring requirements. While these revised procedures may technically satisfy the legal requirements for monitoring Exxon and Stripper Well funds, it is too early to tell whether they are sufficient to ensure that funds are used as the courts intended.

DOE monitoring of Stripper Well funds used for non-grant projects is more limited than the grant program monitoring. The system of procedures and guidelines DOE uses to monitor grant programs is not applied to non-grant projects. Instead, DOE monitoring of non-grant funds is limited to a review of state expenditure proposals and annual expenditure reports. The Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA) requires that these funds be monitored in substantially the same manner as Warner Amendment funds. Accordingly, we do not believe DOE's monitoring is consistent with PODRA's requirements.

Further, we found instances in which states were not complying with requirements for (1) using interest earned on the Exxon and Stripper Well funds for the same purposes as the principal funds and (2) using Exxon and Stripper Well funds to supplement and not supplant state funds. These instances indicate that DOE needs to ensure that its field offices have developed monitoring procedures to detect improper use of interest and supplanting of state funds.

Criteria for Monitoring Exxon and Stripper Well Funds

DOE is required to monitor both Exxon and Stripper Well funds in a manner similar to its monitoring of Warner Amendment funds. The Exxon decision stipulated that the Warner Amendment should apply in its entirety to DOE's handling of the escrow account for oil overcharge funds, but the specific monitoring requirements were not listed. Subsequent to the decision, DOE informed the Exxon trial judge that it did not plan to monitor the Exxon funds in the same manner as appropriated funds. DOE stated that, under its interpretation of the court decision, DOE has an advisory role and the states would be directly responsible for carrying out the requirements of the decision.

The trial judge, in a letter to DOE dated April 11, 1986, pointed out that his intention in issuing the Exxon order was to ensure that the money recovered would be used by the states to assist those injured by Exxon's actions. He added that he assumed that DOE would follow its usual procedures in making certain that the money was used properly. Further, he stated that he never intended DOE to have a mere advisory role to the states and the court, but in his opinion, DOE "must exercise oversight responsibility and actively monitor the disbursement of these funds as though they were appropriated funds." The judge believed that a mere advisory role by DOE would have an obvious potential for abuse or misuse of funds by the states. In June 1986, the judge also issued a clarifying order which, in effect, required that DOE monitor Exxon funds in the same manner as appropriated funds.

The court order approving the Stripper Well settlement assigned oversight responsibility to both DOE and the court. The settlement requires states to submit proposed expenditure plans to both DOE and the court 30 days prior to such expenditures and to prepare annual expenditure reports. However, specific monitoring requirements were not spelled out.

In 1986, the Congress passed PODRA, which required that DOE monitor the states' disbursement of any funds received under the Stripper Well settlement in a manner "substantially similar to that required" under the Warner Amendment. A published DOE ruling interprets the Warner Amendment as requiring that Warner Amendment funds be monitored in the same manner as appropriated funds.

Effectiveness of DOE Monitoring of Grant Programs Is Not Yet Known

DOE plans to monitor Exxon and Stripper Well funds used for projects under the four energy assistance/energy conservation grant programs it administers in generally the same manner as it will monitor Warner Amendment funds and funds appropriated for these programs. However, since the Warner Amendment was enacted, DOE has substantially changed the way in which it monitors all funds used for the grant programs. Between 1986 and 1988, DOE reduced its on-site monitoring activities and shifted much of the monitoring responsibilities to the states. Further, many of the monitoring activities states are to carry out are recommended rather than required. DOE technically is satisfying the requirement set out by the Congress and the courts in that monitoring of Exxon and Stripper Well funds will be carried out in a manner similar to monitoring of Warner Amendment funds. However, it is too soon to tell whether DOE's reduced involvement in monitoring the funds will be sufficient to ensure that funds are properly used, especially given the substantial increase in funds available for such programs as a result of the Exxon decision and Stripper Well settlement.

Monitoring of funds used for the four grant programs is necessary for DOE to meet requirements associated with the stewardship of federal funds. Monitoring of the grant programs ensures that recipients of funds establish and maintain systems that meet federal standards for financial procurement and management activities. Monitoring is also a management tool to ensure that funds are properly used and accounted for and that program regulations and directives are being followed by the grant recipients. Monitoring aids in identifying and resolving problems quickly and provides grantees information on how to improve the efficiency and effectiveness of their program operations.

DOE grant monitoring consists, in part, of a structured system of written procedures and guidelines for evaluation and reporting through on-site monitoring at the state and subgrantee levels. At the time the Warner Amendment funds were disbursed to the states, DOE's monitoring guidance (issued in 1983) included minimum acceptable monitoring standards. A key part of these minimum standards was DOE's on-site monitoring visits to a representative sample of grantees and subgrantees. This representative sample provided for at least one annual on-site monitoring visit per program at the state level for each of the four energy programs. In addition, DOE was to make on-site monitoring visits to subgrantees and institutional grantees for the WAP and ICP programs.

In a May 1986 letter, DOE informed the states of its intentions to implement the court's guidance concerning the monitoring and oversight of the Exxon funds. In this letter DOE outlined new monitoring procedures, which included a restructuring of DOE's monitoring by increasing states' monitoring responsibility and decreasing DOE's on-site monitoring. DOE officials said this change was made in an attempt to carry out DOE's monitoring responsibilities without the need for additional funding and staffing. These new procedures also apply to appropriated funds, Warner Amendment funds, and Stripper Well funds used for the grant programs.

The new monitoring procedures primarily affect two of the four DOE grant programs—WAP and ICP.[1] For WAP the change was implemented in fiscal year 1987 when the lead responsibility for subgrantee monitoring was shifted to the states. DOE field offices now monitor states, spot-check subgrantees, and investigate trouble spots. However, DOE field offices are no longer required to monitor a representative number of subgrantees as was previously required. Under the procedures in effect when the Warner Amendment was enacted, DOE field offices were required to review a representative sample of all subgrantees receiving more than $750,000 and a limited sample of subgrantees receiving less than $750,000.

Under the new procedures, initiated in fiscal year 1987, responsibility for on-site monitoring of subgrantees has been delegated to the states. However, under DOE guidelines, the states are not required to make a designated number of on-site monitoring visits but are "expected" to monitor each subgrantee at least annually. However, the actual number of on-site visits the states conduct may vary depending upon the staff and funding available for monitoring.

The new procedures for ICP monitoring, initiated in fiscal year 1988, substantially reduce the requirement for DOE field office on-site visits to institutional grantees (grantees). For example, in 1985 DOE would have been required to make on-site visits to 108 ICP grantees under the new procedures compared to 408 under the former procedures. Further, under the new procedures DOE field offices are required to make site visits only to grantees receiving appropriated funds. States make site visits

[1]Monitoring for EES and SECP was not significantly changed. For these programs DOE will, as under previous procedures, assist states in the development of state energy conservation plans, review state quarterly financial and progress reports, and make annual on-site visits to the state offices to ensure the effectiveness of these programs. However, DOE will continue to make spot-check visits below the state level only when there is evidence of waste, fraud, or abuse.

to subgrantees receiving petroleum overcharge funds and appropriated funds. Therefore, under the new procedures the states essentially assume the primary role for monitoring grantees receiving Exxon and Stripper Well funds, although DOE field offices will do other monitoring as staff resources and travel funds are available.

The DOE staff director for State and Local Assistance Programs told us that, even though DOE sets expectations for site visits by the states, DOE cannot require the states to make a designated number of visits because it cannot control the funding and staffing available at the state level to perform monitoring. Thus, DOE cannot be assured that grantees and subgrantees will be monitored as the new procedures specify. For example, we found that DOE had approved monitoring plans prepared by two states we visited even though the states' plans did not specify that they would carry out the expected number of ICP monitoring visits. One state plan did not specify how many visits the state would make to ICP grantees. The other plan called for the state to visit 2 percent of the ICP grantees rather than the 5 percent called for in DOE's new procedures.

Legally, we believe it is fully within the discretionary authority of DOE to establish or revise procedures deemed necessary for administering the grant programs incorporated in the Exxon and Stripper Well decisions. The Exxon court order and PODRA do not preclude the appropriate exercise of agency discretion in administering the programs, provided that the revised provisions remain consistent with the requirements established by the courts and the Congress. Accordingly, the new monitoring procedures appear to technically satisfy the requirement that Stripper Well and Exxon funds be monitored in a manner similar to the Warner Amendment funds.

Because we did not evaluate the effectiveness of the new monitoring system due to the relatively small amount of funds that states had spent at the time of our review, we do not know what, if any, effect the change in monitoring policy will have on states' compliance with provisions of the Exxon decision and Stripper Well settlement. However, in light of DOE's reduced monitoring role and its increased reliance on state monitoring, DOE needs to closely monitor the states' efforts to ensure that any problems are identified and resolved. In this regard, the new monitoring procedures call for DOE field offices to spot-check grantees and subgrantees to validate the effectiveness of state monitoring. The new monitoring guidelines for WAP call for the field offices to randomly spot-check a sample of subgrantees, although they do not specify the number of subgrantees to receive spot checks. The ICP guidelines call for

field offices to annually spot-check with state energy office personnel a minimum of two ICP grantees that have received oil overcharge funds. Field offices can make arrangements with the states to make additional spot checks in cases where more than two spot checks are advisable due to the volume of ICP oil overcharge grants or where trouble spots are indicated.

Monitoring Requirements for Non-Grant Projects Not Being Met

In contrast to DOE's monitoring of grant programs, DOE's monitoring of funds not allocated to the four grant programs (non-grant funds) is limited to a review of state expenditure proposals and annual expenditure reports. It provides for no on-site monitoring by DOE staff and sets no expectations for state on-site monitoring.

DOE considered a more intensive approach for monitoring Stripper Well funds used for non-grant projects but chose less intensive monitoring procedures because it believed that such procedures (1) comply with the terms of the settlement agreement to monitor year-end expenditure reports, (2) require no additional DOE effort, (3) comply with the "substantially similar" requirements of PODRA, and (4) are less objectionable to the states in that additional monitoring was not negotiated or approved by the court. Further, DOE believed that these less intensive monitoring procedures followed past practices used for other oil overcharge settlements by requiring the submission of expenditure reports.

In a draft discussion paper, a former Deputy Solicitor of the Economic Regulatory Administration, DOE, contends that PODRA provides that DOE policies be in accordance with terms of the Stripper Well agreement and that its current monitoring system meets these provisions. He stated that detailed monitoring of programs other than the energy assistance programs appears to clash with the Stripper Well agreement by undertaking a level of review not discussed or intended by the agreement.

While DOE's monitoring of non-grant funds appears to comply with the terms of the Stripper Well settlement agreement, we do not believe it is consistent with PODRA's requirement that monitoring procedures be substantially similar to those used to monitor funds under the Warner Amendment. We recognize that states' use of Warner Amendment funds was restricted to grant programs whereas states may use Stripper Well funds for other types of projects. Nevertheless, PODRA clearly provides that DOE must, in a manner substantially similar to that required by the Warner Amendment, "monitor the disposition by the States of any funds

disbursed to the States by the court pursuant to the [Stripper Well] opinion and order." As discussed earlier, Warner Amendment funds were monitored using representative samples of site visits and other field monitoring by DOE field staff. Even though these procedures have been revised, they still provide more comprehensive oversight than DOE's procedures for monitoring non-grant projects.

Further, the Stripper Well distribution to states is much larger ($993 million as of April, 1988) than previous oil overcharge distributions for which DOE has relied on review of state expenditure reports to ensure compliance. In our view, DOE's exclusive reliance on the review of expenditure reports is not consistent with PODRA's intent that Stripper Well non-grant funds be monitored in a manner that is consistent with the Warner Amendment funds. For the seven states we visited, the states' internally approved plans called for about $67 million, or 76 percent, of Stripper Well funds to be spent on non-grant projects. We believe the Congress intended a more intensive oversight of such funds.

Interest Improperly Credited

Both Exxon and Stripper Well procedures provide that interest accruing to the oil overcharge funds shall be used for the same purposes as the principal overcharge funds. However, we found that two of the seven states we visited had not properly accounted for the interest earned on some of the funds they received. In both cases, the states had transferred funds from their oil overcharge accounts to other accounts before the funds were spent. However, interest earned on the funds after they were transferred was not credited to the oil overcharge account. Instead, it was available for uses other than those allowable under the Exxon decision and Stripper Well settlement. These interest charges amounted to more than $3 million. In two previous reports we found that states also had not properly accounted for interest they earned on Warner Amendment oil overcharge funds.[2]

State energy office accountants in the two states cited different reasons for not properly accounting for the interest. The accountant in one state said he was not aware of the requirement that interest earned must be used for the same programs as the principal. The accountant in the other state said that he was aware of the requirement but believed that the interest was being credited to the oil overcharge account until we

[2]The Department of Energy Should Improve Its Management of Oil Overcharge Funds (GAO/RCED-85-46; February 14, 1985) and Energy Conservation: States' Use of Interest Earned on Oil Overcharge Funds (GAO/RCED-88-51; February 4, 1988).

informed him of the problem. Officials in both states have taken steps to recover the interest and deposit it in the oil overcharge account.

Officials in DOE's Office of State and Local Assistance Programs told us that states have been advised of the requirement that interest must be used in the same manner as the Exxon and Stripper Well funds they received and that DOE field offices are also aware of the requirement. However, they said that DOE relies on its field offices to develop their own procedures for monitoring states' use of interest and that field offices have not been specifically directed to review state records to determine if all interest earned has been properly accounted for. DOE's Atlanta Support Office, which was responsible for overseeing one of the states that had not properly accounted for interest, told us it had received no detailed guidance from DOE headquarters on monitoring states' use of interest and does not monitor whether all interest states have earned has been credited to their oil overcharge accounts. We did not visit the DOE field office with oversight responsibility for the other state.

Supplanting of State Funds

Although the courts directed that Exxon and Stripper Well funds should be used to supplement and not to supplant funds otherwise available for such programs, two of the seven states we visited had supplanted state funds with their oil overcharge funds. These states used Stripper Well funds to fund projects that would have ordinarily been funded with state moneys.

DOE has advised the states of the restriction on using oil overcharge funds to supplant state funds. However, as is the case with interest earned on oil overcharge funds, DOE relies on its field offices to develop procedures for monitoring supplanting. According to DOE Office of State and Local Assistance Program officials, if a field office discovers that a state has used oil overcharge funds to supplant state funds, DOE will notify the court of the violation. It will then be up to the court to take whatever action it considers appropriate.

We found that one state, which had been funding about $3.4 million for the past 2 years for a "Winter Utility Allowance Project," reduced the state funding in fiscal year 1987 to about $1.7 million while adding about $1.7 million in Stripper Well funds to the project. The State Controller for the Department of Social Services told us that he did not agree that Stripper Well funds had been used to supplant state funds. He said that the state legislature directed where the Stripper Well funds

would be spent and he had no way of knowing what the funding level would have been if Stripper Well funds had not been available. The responsible DOE Denver field office official told us that DOE had not looked into the matter because the Stripper Well funds in question had been used for a non-grant project and the field office was not responsible for monitoring such funds.

Another state we visited had also used oil overcharge funds to supplant state funds, but it restored the supplanted funds prior to our review after a congressman questioned DOE about the situation. The state supplanted funds in its fiscal year 1986/1987 budget by adding $16.5 million to its highway maintenance program from the Stripper Well account, while at the same time reducing its state-funded budget for this program. The state records show that the supplanting occurred when, in the midst of streamlining the budget, the state funds for the highway program were eliminated and then reprogrammed with Stripper Well funds. We did not visit the DOE field office with oversight responsibility for this state.

Conclusions

In our view, DOE's revised procedures for monitoring Exxon and Stripper Well funds used for energy assistance/energy conservation grant programs technically satisfy the monitoring requirements established by the Exxon court and PODRA in that DOE proposes to monitor such funds in the same way it plans to monitor Warner Amendment funds. However, it is too soon to tell whether DOE's reduced monitoring role under the new procedures will be sufficient to ensure funds are spent as the courts intended.

We did not attempt to determine the effectiveness of DOE's new monitoring procedures due to the relatively small amount of funds that states had spent at the time of our review. However, given that DOE's new policy places greater reliance on the states to ensure proper expenditure of the funds, DOE needs to closely monitor the states' efforts to make sure they are effective and that any problems are identified and resolved. In this regard, DOE's new monitoring guidelines call for its field offices to carry out spot checks in order to validate the effectiveness of state monitoring. However, without DOE oversight of the field offices, it is unclear whether a sufficient number of spot checks will be performed to ensure the effectiveness of state monitoring.

Further, we do not believe that DOE's monitoring of Stripper Well funds used for non-grant projects satisfies PODRA's requirement that any Stripper Well funds be monitored in a manner substantially similar to Warner Amendment funds. DOE's proposed monitoring of funds used for non-grant projects is far less intensive than its proposed monitoring of the grant programs. For example, DOE plans no on-site monitoring of such funds nor does it set expectations for state on-site monitoring. Such monitoring was performed for Warner Amendment funds and is still being carried out under DOE's new procedures for monitoring grant programs. We believe the Congress intended a more intensive oversight for the projects undertaken with these funds.

Additionally, we believe that DOE's reliance on its field offices to develop monitoring procedures aimed at enforcing restrictions relating to the use of interest and supplanting of funds is insufficient to prevent violations of these restrictions from occurring. We found two states that had not properly accounted for interest and two states that had used oil overcharge funds to supplant state funds.

Recommendations to the Secretary of Energy

We recommend that the Secretary direct the Assistant Secretary for Conservation and Renewable Energy to:

- Formulate, for Stripper Well funds used for non-grant projects, monitoring procedures that comply with the PODRA requirement that all Stripper Well funds distributed to states be monitored in a manner substantially similar to the distribution of funds under the Warner Amendment.
- Ensure that DOE field offices develop and implement monitoring procedures that adequately detect states' improper use of interest earned on Exxon and Stripper Well funds and states' use of Exxon and Stripper Well funds to supplant state funds.

Examples of OHA-Approved Programs Allowable Under Stripper Well

I. Transportation

A. General Driving Public

1. Fuel efficient traffic signal programs
2. Highway traffic management programs
3. Motor fuel and recycling programs
4. Highway and bridge maintenance and repair
5. Public transportation projects

B. Consumers

1. Car care clinics
2. Energy education for drivers training
3. Ridesharing programs
4. Marketing of state-supported passenger rail and mass transit
5. Bicycle promotion program

C. Commercial, Industrial, Government

1. Vehicle fleet-maintenance programs
2. Transportation systems management assistance
3. Remanufacturing/refitting transit buses
4. Computerized school bus routing
5. Alternative transportation fuel programs
6. Transit system refitting loan program

II. Residential

A. Heating

1. Weatherization
2. Retrofitting
3. Tune-ups
4. Energy audits
5. Energy assistance
6. Demonstration projects
7. Data collection and dissemination
8. Energy management services
9. Conservation promotion programs
10. Solar energy demonstration programs
11. Solar energy lending programs

B. Electricity

1. Weatherization
2. Energy audits
3. Energy assistance
4. Demonstration projects

(continued)

III. Commercial

A. Industrial/Agricultural

1. Energy loans
2. Energy assistance
3. Conservation
4. Bio-Mass conservation

B. Small Business/Government/Education

1. Energy accounting incentives
2. Loans and technical assistance
3. Energy audits
4. Energy efficiency
5. Cogeneration

Authorized Use of Funds Under DOE Consent Order With Standard Oil of California (Chevron)

Highway and bridge maintenance and repair
Ridesharing (i.e., vanpool and carpool) programs
Public transportation projects
Residential or commercial building energy audits
Grant or loan programs for weatherization or other energy conservation equipment installation
Energy assistance programs
Airport maintenance or improvement
Reduction in airport user fees
Energy conservation or energy research offices and administration

Schedule of Projects in the Seven States Visited Which Do Not Meet OHA Criteria

Reasons the project does not meet OHA criteria	Program area	Project name	Funding amount questioned/source	Brief description of project
Project benefits too indirect or remote to injured consumers	EES	Local Government Solar Project	$75,000 Exxon	Implements solar measures in public buildings for demonstration purposes and provides training in solar energy design
		Schools Program	$76,000 Exxon	Provides energy conservation workshops to middle grade school teachers
		Energy Technician Training Program	$500,000 Stripper Well	Trains students on/about energy-efficient refrigeration and air conditioning equipment
		Energy-Efficient Lighting on State Highways	$700,000 Exxon	Demonstration of savings available by retrofitting highway lighting systems
	SECP	School Transportation Systems Program	$98,000 Stripper Well	Assists school systems in developing management systems for school bus fuel-efficient driver training and vehicle maintenance
		Joint Center for Energy Management	$1,350,000 Stripper Well	Establishes a center to provide energy efficiency training, in part, to undergraduate/graduate students
		Local Government Routing and Fleet Management	$200,000 Stripper Well	Assists government/school systems in developing management systems for fuel-efficient driver training and vehicle preventative maintenance
		Local Government Energy Management	$92,000 Stripper Well	Develops and implements an energy management system for a local city
	Chevron	Energy Conservation Curriculum Component	$475,000 Stripper Well	Provides an energy conservation component in transportation areas at a vocational school
		Road and Bridge Repair	$4,000,000 Stripper Well	Repairs roads, potholes, etc.
		Road Widening Project	$3,650,000 Stripper Well	Widens roads throughout the state
		Roads and Bridges	$16,500,000 Stripper Well	Funds various state Department of Transportation projects
		Energy Retrofit Grants for Local Government Buildings	$200,000 Stripper Well	Provides 50-percent matching grants to fund energy conservation measures in local government buildings
		Energy Retrofit Grants to Public Schools/Hospitals	$1,000,000 Stripper Well	Provides 75-percent matching grants to fund energy conservation measures for poorer public schools/hospitals
		Front Street Road Project	$8,000,000 Stripper Well	Upgrades an existing two-lane road
		Nonprofit Building Retrofit	$50,000 Stripper Well	Provides grants and/or subsidized loans for demonstrations of energy conservation measures in government buildings
Project benefits too far in future for proper restitution to injured consumers	EES	Fish Market Feasibility Study	$10,000 Exxon	Feasibility study of marketing fish by-products produced by Conversion of Fish Waste Project

(continued)

Reasons the project does not meet OHA criteria	Program area	Project name	Funding amount questioned/source	Brief description of project
Project benefits too far in future for proper restitution to injured consumers	EES	Conversion of Fish Waste Project	$35,000 Exxon	Study to determine feasibility of converting fish waste into oil/feed
		Conversion of Paper to Ethanol Project	$26,125 Exxon	Study to determine feasibility of converting paper into ethanol
	SECP	Least Cost Utility Planning	$1,000,000 Exxon	Studies to provide utility companies with alternatives to building new energy-generating facilities
		Insurance Pool Study	$60,000 Exxon	Determines alternate, economical source of insurance for state transit authority
		Metropolitan Partnership Cross-Mall Transit Way	$567,650 Stripper Well $682,350 Exxon	Transportation studies including the pre-construction design work of a cross-mall transit way
		Feasibility Studies for Waste to Energy	$100,000 Stripper Well	Funds grants for local government feasibility studies of resource recovery facilities
	Chevron	Solid Waste Combustion Institute	$5,000,000 Stripper Well	Establishes an institute to conduct, support, and monitor waste combustion research and development programs
	OHA	Research Institute	$5,000,000 Stripper Well	Establishes an institute to pursue applied research, technology transfer, and demonstration projects in the preparation of high temperature superconductors, etc.
Projects which offer little energy savings/ primarily environment related	EES	Natural Gas Pipeline Project	$25,000 Exxon	Installation of natural gas pipelines in an industrial park
	SECP	State Waterway Reports	$6,000 Exxon	Three reports on the current status of energy-related issues at the state waterway
		Gasoline Survey Project	$38,000 Exxon	Survey/publication of results on current status of the state's gasoline prices
		Computer Energy Data Base Project	$52,000 Exxon	Provides a cumulative source of quantitative energy-related information
		Used Oil Leakage Project	$60,000 Exxon	State Attorney General to provide technical assistance on used oil regulations and to investigate used oil leaks
		Hazardous Waste Exchange Project	$75,000 Exxon	Provides a network between hazardous waste providers and buyers
		Rural Water Leak Detection Project I	$105,000 Exxon	Primarily funds water-leak detection surveys in state communities
		Rural Water Leak Detection Project II	$70,000 Exxon	Primarily funds water-leak detection surveys for rural water suppliers
		Waste to Heat Facility	$6,250,000 Exxon	Creates an economical, pollution controlled facility that will convert refuse into energy
		Residential Radon Survey	$75,000 Exxon	Performs a survey to detect a correlation between energy conservation measures and radon infiltration in homes

(continued)

Reasons the project does not meet OHA criteria	Program area	Project name	Funding amount questioned/source	Brief description of project
Projects which offer little energy savings/ primarily environment related	SECP	Radon Education Workshops	$525,000 Exxon $500,000 Stripper Well	Provides radon education workshops to private sector individuals and radon assessment specialists
		Rural Water Leak Detection	$100,000 Stripper Well	Conducts water-leak detection surveys in state communities
		Used Oil Recycling Project	$116,500 Stripper Well	Provides public with information on hazards of improper oil disposal, promotes recycling, and assists in establishing a used oil recycling program
		Metro Air Quality Council	$50,000 Stripper Well	Reduces air pollution and energy consumption in the city
		Fuel Efficiency Automobile Testing System	$257,660 Stripper Well	Develops equipment which tests cars for pollution
	Chevron	Equipment Program for Municipal Water Supply Systems	$50,000 Stripper Well	Provides 50-percent grants to repair or replace water meters to determine if water leaks exist
Total funding for 41 projects			**$57,802,285**	

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