

Stripper Well Exemption Litigation, 578 F. Supp. 586 (D. Kan. 1983). Groups at each level of distribution claimed they were injured by the overcharges, including refiners, resellers, retailers, larger consumers, and state governments representing their citizens. The court referred the issue of who was injured by crude oil overcharges and in what amount to OHA, which conducted hearings and issued a report. *OHA Report on Stripper Well Oil Overcharges*, 6 CCH Fed. Energy Guidelines ¶ 90,507.

In 1986, the Stripper Well litigation was settled by an agreement that provided for the distribution of existing crude oil overcharge funds, as well as those received in the future. *Stripper Well Settlement Agreement*, 6 CCH Fed. Energy Guidelines ¶ 90,649. The court approved the settlement agreement, *In Re Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986), and DOE issued a Modified Statement of Restitutionary Policy to authorize the distribution of these refunds. *Statement of Modified Restitutionary Policy in Crude Oil Cases*, 51 FR 27899 (1986). Congress, in subsequent legislation concerning refunds, expressly recognized the agreement and excluded from the legislation funds subject to the agreement. *Petroleum Overcharge Distribution and Restitution Act of 1986* ("PODRA"), 15 U.S.C. 4502(a)(2).

The agreement divided the crude oil overcharge funds among escrows established for various types of claimants as well as the States and Federal Government. By choosing to receive a refund from one of the escrows, a claimant became a party to the agreement, and waived the right to request any future crude oil overcharge refunds. The agreement included escrows for various types of end-user claimants. Over 2,000 firms received refunds from those escrows and waived the right to future crude oil overcharge refunds.

The agreement provided that OHA could initially reserve up to 20 percent of the crude oil overcharge funds for refunds to claimants who demonstrated injury under DOE procedural regulations in 10 CFR part 205, subpart V. *Agreement § IV.B.6*, 6 Fed. Energy Guidelines at 90,664–65. The agreement provided that the remaining amount (at least 80 percent of the total funds) would be divided equally between the States and DOE for indirect restitution. The agreement further provided that if OHA did not refund all of the amount in the initial reserve, the balance of the reserve would be divided equally between the States and DOE for indirect restitution. Finally, the agreement

provided that the States must use the funds to make indirect restitution through programs designed to benefit injured consumers of refined petroleum products, including programs: (1) Approved by OHA, (2) listed in a 1981 DOE consent order, or (3) set forth in specified energy conservation statutes.

During the period 1987 through 1995, non-waiving injured parties were allowed to file crude oil overcharge refund applications with OHA. *Notice Explaining Procedures for Processing Refund Applications in Crude Oil Refund Proceedings Under 10 CFR part 205, subpart V*, 52 FR 11737; 7 DOE (CCH) ¶ 90,512 (April 10, 1987) ("the 1987 Notice"). Even as OHA processed these applications, DOE continued to collect crude oil overcharge funds and refer them to OHA for distribution. Each time OHA received crude oil overcharge funds for distribution, we issued an order providing for an initial reserve of 20 percent of the funds for refund claimants, which was held in a claimants' account. *See, e.g., OXY USA, Inc.*, 25 DOE ¶ 85,087 (1996). OHA ordered that the remaining 80 percent of the funds be deposited in equal shares in a States' account and a DOE account, and OHA periodically directed the transfer of funds to the States for indirect restitution. *See, e.g., State Escrow Distribution*, 6 Fed. Energy Guidelines ¶ 85,001 (2000). Over the last 16 years, OHA has refunded more than \$600 million in direct restitution to 86,000 successful claimants through the Subpart V process. The total volume of petroleum products which formed the basis for these refunds approaches 400 billion gallons, approximately 20 percent of the total 2,020,997,335,000 gallons of refined petroleum products consumed in the United States during the controls period (August 22, 1973 through January 21, 1981).

The successful claimants were almost exclusively end-users and are quite diverse. They include utilities and cooperatives; federal, state and local governmental entities that purchased petroleum products for their operations; transportation companies (air, water, rail, and truck); manufacturers; and farmers. The following entities comprise approximately 50 percent of the total approved volume: utilities and cooperatives (29 percent); the Defense Logistics Agency (a federal government agency) (11 percent); state and local governments (6 percent); and foreign companies (about 4 percent).

During the first "round" of crude oil refunds, OHA paid successful claimants at a volumetric refund amount of \$.0002 per gallon of petroleum products purchased. OHA subsequently raised

the volumetric twice. In 1989, OHA increased the cumulative volumetric to \$.0008 per gallon, and issued supplemental refund checks to successful claimants who had been paid the lower \$.0002 rate. *See Crude Oil Supplemental Refund Distribution*, 18 DOE ¶ 85,878 (1989). In 1995, OHA raised the cumulative volumetric to \$.0016 per gallon, and notified successful claimants that had been paid at the lower rate that they could file for a supplemental refund.

During the 1989 round of supplemental refunds, a significant number of checks issued to successful claimants were returned uncashed to OHA. OHA found that many successful claimants had undergone changes in address, and failed to inform OHA of their address changes, as required by the terms of the orders granting their original refunds. When checks were returned, OHA was able to get new mailing addresses for many of these successful claimants and issue new checks to them, but this task consumed considerable time and resources to accomplish.

In 1995, OHA did not approve the immediate mailing of supplemental refund checks as it had in 1989, based on the difficulties we experienced during the 1989 round. *Issuance of Supplemental Refund Checks in Special Refund Proceeding Involving Crude Oil Overcharge Refunds*, 60 FR 15562 (1995). Instead, OHA notified successful claimants (by mailing notice to the address listed in the database) that they could file for the supplemental refund. In addition, OHA elected not to give direct notice to the 21,000 successful claimants whose refunds were \$50 or less. OHA concluded that the cost and administrative burden of mailing was not justified given the small amount of the refunds and likely changes in status and address. Nevertheless, all successful claimants were able to request and receive supplemental refunds. OHA's processing of the requests also confirmed that many successful applicants had undergone changes in status that affected their right to receive a supplemental refund. Examples of changes in status that might affect the right to a refund included the acquisition, sale, or liquidation of business entities, the merger or creation of school districts, and the divorce or death of individuals.

In 1999, OHA set a January 2000 deadline for successful claimants to request the supplemental refund payment authorized in 1995. *Announcement of Final Deadline to Request Supplemental Payment*, 64 FR 19998 (1999). The deadline did not