FOIA Number: 2017-1095-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Council of Economic Advisers

Series/Staff Member: Subject Files

Subseries:

OA/ID Number: 21625

FolderID:

Folder Title:
Old Oil vs. New Oil: 1970s Price Control Policy - GCC [Global Climate Change]

Stack:	Row:	Section:	Shelf:	Position:
S	21	5	6	2

Chuck Shuckey 703-534-4169
Energy Information Administration

Bill Hochheiser
DOE (referred by Ray Prince)
202-586-5614

~~Oil~~ Old oil vs. New Oil

MARK.RODEKOHR @ eia.doe.gov
09/17/97 04:34:00 PM

Record Type: Record

To: Elizabeth T. Burns

cc:
Subject: Re: Info Request

Sorry this took so long but after all it was about 25 years ago. Basically old and new oil referred to oil that was produced before (old) and after (new) a certain date. This system was imposed so that producers would not unduly benefit from the rapid rise in oil prices that went along with first Arab Oil Embargo. However producers of new oil would have the proper marginal incentives to find and produce. In addition there may have been some additional regulations to try and keep prices to consumers low. The system was a administrative nightmare (in the U.S. there are about 300,000 oil wells) and as usual, creative ways were found to get around it. I think that you can find more precise definitions for these terms in the Emergency Petroleum Allocation Act of 1973 and the Economic Stabilization Act of 1970 both of these are in Committee on Energy and Commerce U.S. House of Representatives Committee Print 97-F. If you have any other questions I can be reached at 202 586 1130.

> -----Original Message-----
> From: Elizabeth_T._Burns@oa.eop.gov
> [SMTP:Elizabeth_T._Burns@oa.eop.gov]
> Sent: Friday, September 12, 1997 10:54 AM
> To: mrodekoh@eia.doe.gov
> Subject: Info Request
>
> Message Creation Date was at 12-SEP-1997 10:54:00
>
> Mr. Rodekoh,
> I am an intern with CEA and I am researching a certain oil regulation
> from
> 1973. I found some information on your web page and was wondering if
> you could
> help me with any additional sources or point me in the right direction
> for my
> search.
> On august 17th of 1973 your page shows President Nixon's Cost of
> Living Council
> imposing a two-tier price ceiling on crude petroleum sales- to
> distinguish
> between "old" oil and "new" oil. What I need is a further discussion
> on the
> classifications of old and new oil: why the distinctions were made and
> any
> arguments against this system. Could you help me?

MARK.RODEKOHR @ eia.doe.gov
09/17/97 04:36:00 PM

Record Type: Record

To: Elizabeth T. Burns

cc:
Subject: Re: Info Request

Another thought I may be able to find some discussion of this effect in one of our old forecast publications. If you would like I can look and fax you a few pages just let me know.

> -----Original Message-----
> From: Elizabeth_T._Burns@oa.eop.gov
> [SMTP:Elizabeth_T._Burns@oa.eop.gov]
> Sent: Friday, September 12, 1997 10:54 AM
> To: mrodekoh@eia.doe.gov
> Subject: Info Request
>
> Message Creation Date was at 12-SEP-1997 10:54:00
>
> Mr. Rodekoh,
> I am an intern with CEA and I am researching a certain oil regulation
> from
> 1973. I found some information on your web page and was wondering if
> you could
> help me with any additional sources or point me in the right direction
> for my
> search.
> On august 17th of 1973 your page shows President Nixon's Cost of
> Living Council
> imposing a two-tier price ceiling on crude petroleum sales- to
> distinguish
> between "old" oil and "new" oil. What I need is a further discussion
> on the
> classifications of old and new oil: why the distinctions were made and
> any
> arguments against this system. Could you help me?
> Thank You,
> Elizabeth Burns

Go to Antithesis Root Page

A Free Market Energy Policy

Doug Bandow

Ever since the 1973 Arab oil embargo Americans have thought of the Persian Gulf as the West's lifeline. And that's why the U.S. rushed into the Gulf back in August -- to preserve "jobs," in the words of America's Secretary of State.

In fact, the importance of Middle-Eastern oil has been greatly exaggerated. But this widely accepted mythology is fueling calls for a national "energy policy" to reduce our dependence on petroleum imports. Indeed, the Bush administration has been widely criticized for not embracing energy taxes, conservation controls, and the other sort of draconian government regulations that characterized the Carter administration's approach to energy.

Contrary to the claims of the doomsayers, the U.S. does have an effective energy policy: reliance on the market. And we should continue that approach, so that any price increases from a future disruption bring forth new supplies, promote new technologies, processes, and substitutes, and encourage conservation.

Indeed, this is the lesson of the "energy crisis" a decade ago that the planners and meddlers want us to forget. Despite the hectoring of Congress and predictions of disaster by the "consumerist" lobby, oil decontrol brought forth more energy at lower prices. OPEC's domination of international oil markets was broken.

Unfortunately, however, memories are short. Once gas prices began rising last July, consumers, many of whom had made tens of thousands of dollars from selling their appreciated homes, began complaining. Democratic and Republican legislators charged "plundering" and "profiteering." (Their charges weren't original. In 1977 Jimmy Carter attacked the oil companies for "potential war profiteering.") Even George Bush joined in, browbeating the oil companies to hold the line on prices.

Along with the usual demagoguery against the usual suspects, the oil companies, were calls for federal action. Analysts started dusting off their policy panaceas of a decade ago, calling for energy taxes, subsidies for alternative fuels, strict enforcement of the 55-mph speed limit, and tighter CAFE auto mileage standards. *Washington Post* columnist Judy Mann even advocated nationalizing the oil companies. The war pushed energy planning from the front burner, but now attention is again turning to the issue. And, unfortunately, enthusiasm for government "plans" seems eternal.

What happened the last time the government attempted to micromanage the oil markets? The result was, to say the least, less than desirable.

Oil Price Controls

Richard Nixon first imposed limits on oil prices as part of his wage and price control programs. Government regulation left companies with neither the money nor the incentive to explore for new domestic supplies -- an off-shore platform can cost tens of millions of dollars, for instance. Nor did firms want to invest in new technologies that could enhance the recovery of oil from old wells, refine "heavy" oil, and so on. (A 1978 Office of Technology Assessment study concluded that high-cost recover http://ejainfo.eia.doe.gov/emeu/cabs/chron.html#a1973 techniques could yield up to *30 billion* extra barrels of oil -- if American companies were allowed to realize the revenue.) Oil price controls also stifled the development of lower-grade oil resources, such as coal (liquified coal could provide up to a trillion barrels of oil), oil shale (the possible source of 1.8 trillion barrels), and tar sands (even larger potential reserves).

Further, to combat the obvious unfairness of some companies being more reliant on more expensive foreign oil, the government created an "entitlements" program which required companies with more domestic reserves to send checks to firms that imported more oil. In practice this operated as an *import subsidy*. Two M.I.T. economists figured that by 1977 the program had caused oil imports to be three and one-half times greater than they would have been without controls.

The final impact of price controls was to encourage consumption and discourage conservation through added home insulation, more fuel-efficient cars and appliances, and so on. With the lifting of controls, however, Americans looked for ways to reduce their energy consumption; as a result, energy use per ton of output has dropped by nearly a third since 1973.

Windfall Profits Tax

The demagogues in Congress, horrified at the thought of oil companies making even an average return on capital, imposed a roughly 70 percent excise tax on oil (misleadingly called the "windfall profits tax"). The tax has since been repealed, but during its prime it discouraged production of between 415,000 and 800,000 barrels a day.

Gasoline Price Controls and Allocation Rules

Most Americans are not aware that during the 1970's the government decided how much gasoline was to be shipped where. Since allocations were based on previous use, fast-growing urban areas were short-changed, resulting in gas lines, while rural states were flush with gas. The rules were further distorted by the political clout of such groups as auto fleet operators, boaters, and farmers, whose members received larger allocations than average motorists. In a free market local shortages would have pushed up prices, causing firms to divert shipments to those areas. But federal bureaucrats learned nothing, and the problems persisted throughout the decade.

Energy Fascism

President Carter's Moral Equivalent of War included a range of other measures, including an energy Gestapo to enforce temperature controls in "public" buildings. There were oil overcharge prosecutions that continued into the 1980's. And on and on.

It is not enough to simply avoid repeating the mistakes of the past, however. For as long as we are willing to allow arcane environmental regulations to block expansion of our energy supplies, U.S. soldiers may find themselves at risk in the Middle East.

Most of America's remaining reserves are on federal property -- both the third of the U.S. that the federal government owns and off-shore areas claimed by the state or federal governments. All told, the national government owns mineral rights to 52 percent of U.S. land and controls 95 percent of oil resources, 85 percent of high grade tar sands, 76 percent of oil shale, 40 percent of natural gas, and 35 percent of coal.

Indeed, the federal outer continental shelf (OCS), which already provides roughly 14 percent of our crude oil and 29 percent of our natural gas, is thought to contain as much as 32 billion barrels of oil and

CIS NO: 75-S401-22
TITLE: Crude Oil Cost and Supply Policy: Effect on Independents.
SOURCE: Committee on Governmental Affairs. Senate
DOC TYPE: Hearing | COLLATION: v+267 p.
DATE: Nov. 18, 1974
CONGRESS-SESSION: 93-2 | SUDOC: Y4.G74/6:Oi5
ITEM NO: 1037
LC CARD NO: 75-601240 | MC ENTRY NO: 76-5834

Hearing before the Subcom on Budgeting, Management, and Expenditures to consider the effect on independent oil refiners and marketers of the Federal Energy Administration's (FEA) two-tier pricing system controlling the price of old crude oil but removing controls on new oil as an incentive to increased production.

Also considers effects of delays in implementing FEA proposed equalization program, providing for equitable distribution of crude oil to all sectors of the petroleum industry, and proposed entitlements program providing for issuance to refiners of entitlements to old crude oil, and also granting some cost equalization to importers of specified petroleum products.

Includes opening statements by subcom members (p. 1-8) with staff chronology summary "Highlights: Nixon/Ford Administration Management of Crude Oil Allocation and Prices, Apr. 1973-Nov. 1974" (p. 4-5); a submitted statement relating to problems of Pasco, Inc., an independent refinery seeking an exemption from proposed FEA entitlement program (p. 60-86); and correspondence relating to Johnson Oil Co. and Southwest Refining Co. problems with Mobil Oil Corp. method of implementing FEA allocation regulations (p. 129-138).

Supplementary material (p. 187-267) contains submitted statements, correspondence, and articles, including:

a. Canadian National Energy Board, "Report on Exportation of Oil" excerpts, Oct. 1974 (p. 188-195).
b. FEA, further notice and explanation of proposed rulemaking on allocation of old oil, Nov. 7, 1974 (p. 198-235).

CONTENT NOTATION: Oil pricing policy impact on independent refiners
DESCRIPTORS (and special content notations): SUBCOM ON BUDGETING, MANAGEMENT, AND EXPENDITURES. SENATE; PETROLEUM AND PETROLEUM INDUSTRY; PRICE REGULATION; COMPETITION; FOREIGN.TRADE (Canadian oil export tax impact on US independent dealers); ADMINISTRATIVE LAW AND PROCEDURE (FEA delays in implementing crude oil allocation and pricing programs); CANADA (Oil export tax impact on US independent dealers); FEDERAL ENERGY ADMINISTRATION; PASCO, INC.; JOHNSON OIL CO.; SOUTHWEST REFINING CO.; MOBIL OIL CORP.
LEGISLATIVE HISTORY OF: P.L.94-258

75-S401-22 TESTIMONY NO: 1 | Nov. 18, 1974 p. 8-28
WITNESSES (and witness notations):
HARRIS, RONELL F. (vp, New England Fuel Inst; member, fuel oil committee, Natl Oil Jobbers Council); accompanied by MITCHELL, DOUGLAS B. (counsel)
CATMULL, KENNETH (vp, Autotronics, Inc, Houston, Tex; representing Independent Gasoline Marketers Council); accompanied by and ODEN, THOMAS J. (exec dir and counsel)
STATEMENTS AND DISCUSSION: Objection to two-tier domestic crude pricing system; support for, and criticism of FEA delay in implementing, a crude oil equalization program; importance of including gasoline, as well as crude oil, in import entitlement program.

CONTENT NOTATION: Oil pricing policy impact on independent refiners
DESCRIPTORS: NATIONAL OIL JOBBERS COUNCIL; INDEPENDENT GASOLINE MARKETERS COUNCIL

75-S401-22 TESTIMONY NO: 2 Nov. 18, 1974 p. 29-59
WITNESSES (and witness notations):
MCKAY, JOHN C. (dir, Minn Energy Agency)
MELCHER, JOHN (Rep, D-Mont)
PETRASEK, GEORGE (oil import supply mgr, Farmers Union Central Exchange, Laurel, Mont)
YANCEY, ROBERT E. (pres, Ashland Oil, Inc)
STATEMENTS AND DISCUSSION: Inability of northern States' independent refineries to operate competitively while relying on high-priced Canadian crude oil; suggested U.S.-Canadian negotiations for possible removal of Canadian tax on exported oil; criticism of FEA delays in implementing cost equalization or entitlement programs.
CONTENT NOTATION: Oil pricing policy impact on independent refiners
DESCRIPTORS: MINNESOTA ENERGY AGENCY; FARMERS UNION CENTRAL EXCHANGE; ASHLAND OIL, INC.

75-S401-22 TESTIMONY NO: 3 Nov. 18, 1974 p. 90-138
WITNESSES (and witness notations):
JOHNSON, WILLIAM (prof of economics, George Wash Univ; former Asst Administrator, Fed Energy Office)
STATEMENT AND DISCUSSION: Criticism of crude oil allocation program, two-tier price policy, and proposed entitlement program; recommended alternative actions, including opening up of naval petroleum reserves and removal of price controls with an accompanying windfall profits tax; suggested negotiations with Canada for reduction of export tax on crude oil.
CONTENT NOTATION: Oil pricing policy impact on independent refiners

75-S401-22 TESTIMONY NO: 4 Nov. 18, 1974 p. 138-186
WITNESSES (and witness notations):
KEITH, NORMAN C. (bd chm, and chief exec officer, Commonwealth Oil Refining Co)
DRYER, EDWIN J. (exec sec, Independent Refiners Assn of Amer)
LOGAN, HARRY A., JR. (pres, United Refining Co, Warren, Pa)
OLVEY, J. L. (vp, Thunderbird Petroleums, Inc, and Thunderbird Resources, Inc)
STATEMENTS AND DISCUSSION: Request for immediate action on, and suggested modifications in, proposed entitlement program; objection to policy encouraging refined petroleum product imports; proposed small refineries exemption from entitlement program; problems for independent refiners under two-tier system (sales and profit data for 1974, charts, p. 172-173).
INSERTION: Supplemental statement by Independent Refiners of Amer, criticizing Prof. Johnson's recommendations (p. 159-165).
CONTENT NOTATION: Oil pricing policy impact on independent refiners
DESCRIPTORS: COMMONWEALTH OIL AND REFINING CO.; INDEPENDENT REFINERS ASSOCIATION; UNITED REFINING CO.; THUNDERBIRD RESOURCES, INC.; JOHNSON, WILLIAM

CIS NO: 80-H781-3
TITLE: Windfall Profits Tax and Energy Trust Fund.
SOURCE: Committee on Ways and Means. House
DOC TYPE: Hearing COLLATION: iv+803 p. il.
DATE: May 9-11, 16-18, 1979
CONGRESS-SESSION: 96-1 SUDOC: Y4.W36:96-34
ITEM NO: 1028
LC CARD NO: 79-604109 MC ENTRY NO: 80-5506

Committee Serial No. 96-34. Hearings to consider Administration proposals for a tax on windfall profits accruing to petroleum companies as a result of oil prices phased decontrol scheduled as follows:
a. Old or lower tier oil, defined as oil from wells producing as of 1973, will be sold at controlled prices on a percentage decline rate through Sept. 1981 at which time all controls will terminate.
b. New or upper tier oil, defined as oil from expanded capacity old wells or wells opened since 1973, will be phased up to the world price beginning Jan. 1, 1980, and ending Oct. 1, 1981.
c. Uncontrolled tier oil, consisting of output from Alaskan North Slope, stripper wells (yielding less than 10 barrels per day), newly discovered wells, and incremental production resulting from enhanced recovery (tertiary) techniques, is currently free to earn world market price.
The proposed windfall profits tax (WPT) would be applicable to all three tiers (except Alaskan North Slope oil) and would consist of a 50% excise tax on certain gains generated by decontrol and future OPEC price increases.
WPT revenues would support a new Energy Security Trust Fund to finance energy technology R&D and commercialization, development of mass transit, and assistance to low-income persons impacted by higher energy prices.
Includes statistical data throughout. Supplementary material (p. 776-803) includes submitted statements.
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): EXCISE TAX (Oil cos windfall profits tax); PRICE REGULATION; PETROLEUM AND PETROLEUM INDUSTRY; TRUST FUNDS (Energy trust funds estab with windfall profits tax revenues); ALASKA (North Slope oil and windfall profits tax); ENERGY.RESEARCH (Energy Security Trust Fund estab); ENERGY SECURITY TRUST FUND (Estab); FEDERAL.AID.TO.TRANSPORTATION (Energy Security Trust Fund use for public mass transit assistance); POVERTY (Energy Security Trust Fund aid to low-income persons); STATISTICAL DATA: ENERGY; CAPITAL INVESTMENTS (Oil prices decontrol to stimulate reinvestment in domestic production); CORPORATIONS (Oil prices decontrol and petroleum cos profitability issues); CONSUMERS (Oil prices decontrol impact on consumers); ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES; TECHNOLOGICAL INNOVATIONS (Energy Security Trust Fund estab with windfall profit tax revenues); INFLATION (Oil prices decontrol, inflation effects)
LEGISLATIVE HISTORY OF: P.L.96-223

80-H781-3 TESTIMONY NO: 1 May 9, 1979 p. 6-66
WITNESSES (and witness notations):
BLUMENTHAL, W. MICHAEL (Sec, Treas Dept)
STATEMENT: Explanation of oil price controls in operation since 1973 and of Administration-proposed phased decontrol program, focusing on features of WPT and estimates of economic effects.
DISCUSSION: Clarification of WPT revenue impact; defense of proposal as necessarily complex given need to control inflation and encourage domestic production; explanation of price pressures impact on gasoline

availability and consumption.

Elaboration on intended Energy Security Trust Fund uses; amplification of tax rates on windfall profits generated by future OPEC price hikes;

explanation of assumption that producers will reinvest additional revenues resulting from decontrol in new production capacity (table, p. 61).
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): DEPARTMENT.OF.TREASURY; GASOLINE (Availability and consumption, price pressures impact)

80-H781-3 TESTIMONY NO: 2 May 10, 1979 p. 67-164
WITNESSES (and witness notations):
SCHLESINGER, JAMES R. (Sec, DOE)
STATEMENT: Explanation of phased decontrol program features and anticipated results (related tables and graphs, p. 73-108).
DISCUSSION: Clarification of WPT and likely economic impact; consideration of crude oil supply pressures resulting in domestic gasoline shortages; defense of DOE enforcement of price control regulations.
Explanation of domestic petroleum conservation inducement efforts; amplification of anticipated consumer price impact of decontrol; reiteration of objectives underlying Administration proposals.
INSERTION: Methodology and conclusions of ICF, Inc. analysis of private studies regarding projected capital requirements through 1985 for oil and gas exploration and dev, written statement of Richard M. Smith, DOE, with data excerpted from ICF rpt (p. 119-130).
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): DEPARTMENT.OF.ENERGY; SMITH, RICHARD M. (Oil and gas industry capital requirements for exploration and dev); ICF, INC. (Oil and gas industry capital requirements for exploration and dev); GASOLINE (Shortages, crude oil supply pressures impact); SHORTAGES (Crude oil supply pressures impact on gasoline shortages); PETROLEUM CONSERVATION; NATURAL GAS AND GAS INDUSTRY (Exploration and dev, capital requirements)

80-H781-3 TESTIMONY NO: 3 May 11, 1979 p. 165-219
WITNESSES (and witness notations):
SCHULTZE, CHARLES L. (Chm, Council of Economic Advisers)
MCINTYRE, JAMES T., JR. (Dir, OMB); accompanied by CUTLER, ELIOT R. (Assoc Dir, Natural Resources, Energy, and Science)
STATEMENTS: Explanation of Administration decontrol program, emphasizing economic imbalances attributable to present pricing system and likely near-term effects of decontrol, including inflation; review of proposal to deposit WPT revenues in Energy Security Trust Fund (draft bill language, p. 180). (p. 165-180)
DISCUSSION: Elaboration on incentives for oil companies to invest increased revenues in new production capacity; clarification of proposed tax treatment of tertiary oil; consideration of consumer impact of decontrol; defense of decontrol schedule, including permanent WPT tied to OPEC prices. (p. 180-219)
INSERTION: Possibility for oil cos to withhold production of old oil pending completion of phased decontrol, algorithmic analysis by Bill Nordhaus, Council of Economic Advisers, Dec. 8, 1978 (p. 209-216).
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): NORDHAUS, BILL (Oil cos possible withholding of production pending price decontrol completion, analysis); BUSINESS ETHICS (Oil cos possible withholding of production pending price decontrol completion, analysis); COUNCIL OF ECONOMIC ADVISERS

80-H781-3 TESTIMONY NO: 4 May 16, 1979 p. 221-345

WITNESSES (and witness notations):

- WHITE, ERSKINE N., JR. (exec vp, Textron Corp; representing Natl Assn of Mfrs (NAM))

BIXLER, ROLAND M. (chm, taxation committee, NAM)
MCINTYRE, ROBERT S. (dir, Public Citizen's Tax Reform Research Group)
FLUG, JAMES F. (dir and counsel, Energy Action Educ Fdn)
CARLSON, JACK (vp and chief economist, Chamber of Commerce of U.S)
OSWALD, RUDOLPH A. (dir, research dept, AFL-CIO)

STATEMENTS: Explanation of industrial energy users' support for decontrol and opposition to WPT and trust fund proposals. (p. 221-228)

Assessment of decontrol program impact on consumers, with recommended higher WPT than proposed by Administration; appraisal of oil industry favorable cash flows (table, articles, p. 237-242). (p. 228-242)

Explanation of calculations showing major oil companies are already receiving windfall profits without decontrol (tables, p. 246-247); criticism of decontrol as resulting in unreasonable prices for domestic oil (article, press release, p. 248-250). (p. 243-264)

Evaluation of oil price decontrol benefits, emphasizing increases in domestic production, conservation, and alternative fuels use; analysis of oil companies' profits, comparing rates of return with other industries; objections to WPT. (p. 265-286)

Arguments for continued oil price control with increased taxation. (p. 287-292)

DISCUSSION: Amplification of conflicting views on oil company profitability and investment practices, OPEC price projections, domestic production incentives, inflation and consumer impacts, and other issues surrounding decontrol and WPT; views on revising foreign tax credit rules applicable to oil companies. (p. 292-345)

INSERTIONS: "Great Cash Flow Machines," Charles T. Maxwell, Cyrus J. Lawrence, Inc., analysis of oil cos' profits, 1978-82, and probable investment strategies, part 2, July 5, 1978 and part 1, June 5, 1978 (p. 251-264).

Tax treatment of foreign source income by other countries, table (p. 300) and analysis prepared by Arthur Andersen and Co., 1978 (p. 311-322).

"1979 Fuel "Shortage:' Roots, Realities, Responsibility," Energy Action Educ Fdn, May 1979, with tables (p. 325-339).

CONTENT NOTATION: Oil price decontrol and windfall profits tax

DESCRIPTORS (and special content notations): NATIONAL ASSOCIATION OF MANUFACTURERS; ENERGY ACTION EDUCATIONAL FOUNDATION; TAX INCENTIVES AND SHELTERS (Oil cos foreign income tax credits revision); MAXWELL, CHARLES T. (Oil cos profits and investment strategies, analysis); LAWRENCE, CYRUS J., INC. (Oil cos profits and investment strategies, analysis); SHORTAGES ("1979 Fuel "Shortage:' Roots, Realities, Responsibility"); PETROLEUM CONSERVATION (Oil price decontrol impact); INVESTMENTS (Oil cos investment strategies, analysis); INCOME TAXES (Foreign nations taxation of resident corps foreign ops); ANDERSEN, ARTHUR AND CO. (Foreign nations taxation of resident corps foreign ops); PUBLIC CITIZEN TAX REFORM RESEARCH GROUP; CHAMBER OF COMMERCE OF THE U.S.; AFL-CIO

80-H781-3 TESTIMONY NO: 5 May 16, 1979 p. 345-385

WITNESSES (and witness notations):
KEPLINGER, C. HENRY (bd chm, Keplinger and Assocs; representing Energy Consumers and Producers Assn)
POWERS, DOROTHY K. (energy chair, League of Women Voters)
PODHORZER, MICHAEL (legis dir, Consumer Fedn)
LARSON, MARTIN A. (tax policy consultant, Liberty Lobby)

STATEMENTS: Arguments favoring decontrol without WPT to stimulate expanded drilling activities; defense of oil companies' profits given their

investments in exploration and development. (p. 345-363)
Support for decontrol, with recommendations concerning WPT rate; criticism of Administration decontrol program as burdensome to consumers

and economically unsound; anticipated WPT disincentive to increased domestic production. (p. 364-381)
DISCUSSION: Clarification of views. (p. 381-385)
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS: ENERGY CONSUMERS AND PRODUCERS ASSOCIATION; CONSUMER FEDERATION; LEAGUE OF WOMEN VOTERS; LIBERTY LOBBY

80-H781-3 TESTIMONY NO: 6 May 16, 1979 p. 385-446
WITNESSES (and witness notations):
LASH, JONATHAN (sr project atty, Natural Resources Def Council)
EPSTEIN, HERBERT R. (legis rep, Solar Lobby)
DELOSS, GARRY (DC rep, Environmental Policy Center)
GIBSON, JONATHAN (DC rep, Sierra Club)
MASSELLI, DAVID C. (energy policy dir, Friends of the Earth)
COOPER, L. NAPOLEON (A P Action and Co)
STATEMENTS AND DISCUSSION: Opposition to WPT as proposed by Administration; explanation of conditional support for decontrol if accompanied by a permanent stiff excise tax on profits, with revenues rebated to consumers; concerns about environmental degradation if proposed trust fund is used to promote unproven energy technologies; comments on WPT bills (comparative table, p. 399).
INSERTIONS: Environmental hazards associated with enhanced oil recovery, DOE analysis (p. 406-408).
Proposal for revitalizing U.S. economy by investing administrative and funding responsibilities for social welfare and public works programs in a private nonprofit "third sector," L. N. Cooper, conceptual analysis and demonstration project prospectus, 1979 (p. 419-443).
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): NATURAL RESOURCES DEFENSE COUNCIL; ACTION, A. P., AND CO.; ENVIRONMENTAL.POLLUTION.AND.CONTROL (Energy technologies promotion with windfall profits tax revenues, environmental impact); NONPROFIT ORGANIZATIONS (Social welfare and public works programs admin by private nonprofit organization, conceptual analysis); CORPORATIONS (Social welfare and public works programs admin by private nonprofit organization, conceptual analysis); PUBLIC.ADMINISTRATION (Social welfare and public works programs admin by private nonprofit organization, conceptual analysis); DEMONSTRATION AND PILOT PROJECTS (Social welfare and public works programs admin by private nonprofit organization, demonstration project prospectus); SOLAR LOBBY; ENVIRONMENTAL POLICY CENTER; SIERRA CLUB; FRIENDS OF THE EARTH

80-H781-3 TESTIMONY NO: 7 May 16, 1979 p. 447-465
WITNESSES (and witness notations):
BRUMLEY, I. JON (pres and chief exec officer, Southland Royalty Co; chm, crude oil pricing committee, Domestic Petroleum Council (DPC))
GREENE, JAMES E. (exec vp, Belridge Oil Co.; also representing DPC and Western Oil and Gas Assn)
GUNN, ROBERT D. (pres, Amer Assn of Petroleum Geologists)
STATEMENTS AND DISCUSSION: Arguments against WPT based on oil companies' need for reinvestment capital to expand domestic production capacity; appraisal of industry capital expenditures for exploration and development; explanation of income tax burden already shouldered by producers.
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): INCOME TAXES (Oil cos income tax obligations); WESTERN OIL AND GAS ASSOCIATION; AMERICAN

ASSOCIATION OF PETROLEUM GEOLOGISTS; DOMESTIC PETROLEUM COUNCIL; BELRIDGE OIL CO.

80-H781-3 TESTIMONY NO: 8 May 17, 1979 p. 467-611
WITNESSES (and witness notations):
MCAFEE, JERRY (bd chm and chief exec officer, Gulf Oil Corp)
SMITH, WILLIAM T. (pres, Champlin Petroleum Co)
HOOPMAN, HAROLD D. (pres and chief exec officer, Marathon Oil Co.; all also representing four oil and gas producer assns)
STATEMENTS: Analysis of global and U.S. energy consumption and production trends and international market conditions requiring exploration and development of non-OPEC reserves; appraisal of U.S. fossil fuel resources relative to future demand; overview of petroleum industry profitability and capital investment practices. (p. 467-532)
Assessment of proven domestic oil and gas reserves and of onshore and offshore areas with potentially significant deposits; need for decontrol and revision of environmental laws barring increased production; assertion of oil industry interest in expanding production capacity. (p. 533-554)
Merits of Administration decontrol program; objections to WPT as hindering domestic production goals and failing to take into account income taxes already imposed on producer revenues. (p. 554-569)
DISCUSSION: Reiteration of views on WPT and industry intention to reinvest profits in new production capacity; consideration of present refining capacity shortage and gasoline allocation problems. (p. 569-611)
INSERTIONS: "Gulf's Profit in Perspective," J. McAfee, excerpts from presentation at Gulf Oil Co. annual shareholders meeting, Apr. 24, 1979 (p. 523-532).
Major oil cos' earnings and related financial data, tables and graphs, 1973-79 (p. 569-576).
"Estimated U.S. Supply/Demand Situation," Amer Petroleum Inst monthly statistical rpt, Apr. 1979, with tables and graphs (p. 606-611).
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): FOREIGN.ECONOMIC.RELATIONS (Intl energy market conditions); PETROLEUM AND NATURAL GAS IN SUBMERGED LANDS (Domestic reserves estimates); NATURAL GAS AND GAS INDUSTRY (Domestic natural gas proven and potential reserves); ENVIRONMENTAL.POLLUTION.AND.CONTROL (Domestic oil and natural gas production expansion, barriers posed by environmental laws); INCOME TAXES (Oil cos income tax obligations); AMERICAN PETROLEUM INSTITUTE; MID-CONTINENT OIL AND GAS ASSOCIATION; ROCKY MOUNTAIN OIL AND GAS ASSOCIATION; WESTERN OIL AND GAS ASSOCIATION; GASOLINE (Allocation problems); SHORTAGES (Oil refining capacity shortage); GULF OIL CORP.; CHAMPLIN PETROLEUM CO.; MARATHON OIL CO.

80-H781-3 TESTIMONY NO: 9 May 17, 1979 p. 612-654
WITNESSES (and witness notations):
ALLEN, JACK M. (pres, Independent Petroleum Assn)
WOODS, DALTON J. (chm, tax committee)
MILLER, C. JOHN (chm, spec task force on crude oil pricing; all also representing 30 oil and gas industry assns)
STATEMENTS: Criticism of WPT proposal as likely to exacerbate recent drilling decline and further depress wellhead prices held below statutory ceilings by Energy Policy and Conservation Act regulations (letter, p. 625-626); explanation of particular financing problems faced by independent producers; arguments for decontrol without restrictions or additional taxes. (p. 612-645)
DISCUSSION: Clarification of independent producers' profitability and financing problems. (p. 645-654)
CONTENT NOTATION: Oil price decontrol and windfall profits tax

DESCRIPTORS (and special content notations): ENERGY POLICY AND CONSERVATION ACT (Crude oil wellhead price limitation); INDEPENDENT PETROLEUM ASSOCIATION; ALASKA INDEPENDENT PETROLEUM ASSOCIATION;

AMERICAN ASSOCIATION OF PETROLEUM LANDMEN; ARKOMA BASIN INDEPENDENT GAS PRODUCERS ASSOCIATION; CALIFORNIA INDEPENDENT PRODUCERS ASSOCIATION; EASTERN KANSAS OIL AND GAS ASSOCIATION; EASTERN OKLAHOMA OIL PRODUCERS AND ROYALTY OWNERS ASSOCIATION; ILLINOIS OIL AND GAS ASSOCIATION; INDEPENDENT OIL AND GAS ASSOCIATION OF WEST VIRGINIA; INDEPENDENT OIL PRODUCERS TRI-STATE INC.; INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES; INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO; KANSAS INDEPENDENT OIL AND GAS ASSOCIATION; KENTUCKY OIL AND GAS ASSOCIATION; LAND AND ROYALTY OWNERS OF LOUISIANA; LIAISON COMMITTEE OF COOPERATING OIL AND GAS ASSOCIATIONS; LOUISIANA ASSOCIATION OF INDEPENDENT PRODUCERS AND ROYALTY OWNERS; MICHIGAN OIL AND GAS ASSOCIATION; NATIONAL STRIPPER WELL ASSOCIATION; NEW YORK STATE OIL PRODUCERS ASSOCIATION; NORTH TEXAS OIL AND GAS ASSOCIATION; OHIO OIL AND GAS ASSOCIATION; OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION; PANHANDLE PRODUCERS AND ROYALTY OWNERS ASSOCIATION; PENNSYLVANIA GRADE CRUDE OIL ASSOCIATION; PENNSYLVANIA OIL, GAS, AND MINERALS ASSOCIATION; PERMIAN BASIN PETROLEUM ASSOCIATION; TENNESSEE OIL AND GAS ASSOCIATION; TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION; VIRGINIA OIL AND GAS ASSOCIATION; WEST CENTRAL TEXAS OIL AND GAS ASSOCIATION

80-H781-3 TESTIMONY NO: 10 May 17, 1979 p. 654-659
WITNESSES (and witness notations):
UPHAM, CHESTER R., JR. (pres, Texas Independent Producers and Royalty Owners Assn)
STATEMENT AND DISCUSSION: Objections to WPT as disproportionately burdensome to independent producers.
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS: TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION

80-H781-3 TESTIMONY NO: 11 May 18, 1979 p. 661-721
WITNESSES (and witness notations):
FREEMAN, RONALD M. (vp and mgr, energy group, Salomon Bros)
COPP, E. ANTHONY (vp and mgr, energy research)
EVANS, MICHAEL K. (economist)
PASTER, HOWARD G. (legis dir, United Automobile Workers)
WYMAN, STANLEY (Oil Resources Mgmt Corp)
FROMKIN, LEWIS (both independent energy producers)
HIGGS, GEORGE (representing Assn for Reduction of the Natl Debt)
HEFNER, ROBERT A., JR. (independent oil and gas operator)
STATEMENTS: Summary of findings from analysis of 33 large and middle-sized oil firms' capital expenditures and operating costs; economic analysis of WPT as proposed by Administration and containing a "plowback" provision to permit tax credits for reinvestment in drilling and exploration (tables and graphs throughout). (p. 661-682)
Criticism of WPT as too weak; explanation of WPT flaws, especially its likely impact on independent producers and stripper well production (supporting data, p. 692-701). (p. 682-719)
DISCUSSION: Clarification of views. (p. 719-721)
INSERTION: "Small Independent Producer's Role in the Rapidly Changing Oil and Gas Industry," S. Wyman, paper presented to Soc of Petroleum Engrs of the Amer Inst of Mining, Metallurgical, and Petroleum Engrs meeting, Nov. 1-3, 1978 (p. 705-713).
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): ASSOCIATION FOR REDUCTION OF THE NATIONAL DEBT; SMALL BUSINESS ("Small Independent Producer's Role in the Rapidly Changing Oil and Gas Industry"); SALOMON BROTHERS;

UNITED AUTOMOBILE WORKERS

80-H781-3 TESTIMONY NO: 12 May 18, 1979 p. 722-728

WITNESSES (and witness notations):
DINGELL, JOHN D. (Rep, D-Mich)
STATEMENT AND DISCUSSION: Deficiencies of Administration decontrol/WPT plan and summary of alternative proposal.
CONTENT NOTATION: Oil price decontrol and windfall profits tax

80-H781-3 TESTIMONY NO: 13 May 18, 1979 p. 729-775
WITNESSES (and witness notations):
BUCKLEY, JOHN G. (vp and dir, Northeast Petroleum Industries, Inc.; representing Fuel Oil Mktg Advisory Committee (FOMAC) to DOE)
STOKES, B. R. (exec vp, Amer Public Transit Assn)
WADE, JOHN B., JR. (pres, Fairlie and Wilson Co; representing Natl Oil Jobbers Council)
MACNAUGHTON, LEWIS (petroleum royalty owner, McKinney, Tex)
STATEMENTS AND DISCUSSION: Explanation of Administration decontrol and WPT plan likely effect to increase price of refined petroleum products, including gasoline and home heating oil (memos, p. 763-765); differing perspectives on WPT proposal.
INSERTION: "Low-Income Energy Assistance: A Profile of Need and Policy Options," FOMAC working paper, Mar. 19, 1979, with tables, graphs, and bibl (p. 737-755).
CONTENT NOTATION: Oil price decontrol and windfall profits tax
DESCRIPTORS (and special content notations): FUEL OIL MARKETING ADVISORY COMMITTEE; AMERICAN PUBLIC TRANSIT ASSOCIATION; NATIONAL OIL JOBBERS COUNCIL; GASOLINE (Oil prices decontrol impact on gasoline price); BIBLIOGRAPHIES (Low-income energy assistance policies); HEATING OIL (Oil price decontrol impact on heating oil price)

FOCUS - 1 OF 59 CASES

UNITED STATES v. PTASYNSKI

No. 82-1066

SUPREME COURT OF THE UNITED STATES

462 U.S. 74; 103 S. Ct. 2239; 1983 U.S. LEXIS 47; 76 L. Ed. 2d 427; 51 U.S.L.W. 4674; 83-1 U.S. Tax Cas. (CCH) P9386; 52 A.F.T.R.2d (P-H) 6495; 54 A.F.T.R.2d (P-H) 6495; 77 Oil & Gas Rep. 195

April 27, 1983, Argued
June 6, 1983, Decided

DISPOSITION: *550 F.Supp. 549,* reversed.

OPINION:

... [*75] [**2240] [***4] producers to keep the wellhead price well below the ceiling price. See *42 Fed. Reg. 41566-41568 (1977).*

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

[*76] In 1979, President [***5] Carter announced a program to remove price controls from domestic oil by September 30, 1981. See id., at 5. By eliminating price controls, the President sought to encourage exploration for new oil and to increase production of old oil from marginally economic operations. See H. R. Doc. No. 96-107, p. 2 (1979). He recognized, however, that ...

... [*76] [**2240] [***5] establishes an adjusted base price and a tax rate for each tier. See §§ 4986, 4989, and 4991. The base prices generally reflect the selling [**2241] price of particular [***6] categories of oil under price controls, and the tax rates vary according to the vintages and types of oil included within each tier. n3 [*77] See Joint Committee on Taxation, General Explanation of the Crude Oil Windfall Profit Tax Act of 1980, ...

FOCUS - 3 OF 59 CASES

UNITED STATES v. CORACE

Nos. 85-1407, 85-1424

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

803 F.2d 722; 1986 U.S. App. LEXIS 30663

September 12, 1986, Filed

NOTICE: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION SIXTH CIRCUIT RULE 24 LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 24 BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

OPINION:

... [*1] Jr. controlled the corporate defendant, United Pipe Line. The company was in the business of acquiring oil wells, and selling crude oil to [*2] refineries. In 1979, the sale of domestic crude oil was subject to federal price controls. The United States Department of Energy administered a three tier pricing system. "Old oil," or lower tier oil, was oil coming from a property that was producing oil in 1972. "New oil," or ...

... [*2] somewhat higher ceiling price than old oil. "Stripper oil," defined as oil produced from a property whose average daily production per well did not exceed ten barrels per day, was exempt from price controls. Under the three tier system, the producer and each reseller of crude were required to certify to the next immediate purchaser the number of barrels of each tier of oil sold in each transaction.

Prior to June, 1979, ...

... [*8] no defense to a prosecution for mail fraud and making false statements. *United States v. Kapp, 302 U.S. 214,* (1937). As the government notes, if the defendants had a valid objection to the constitutionality of the price controls, their remedy was to certify their oil properly, and then challenge the controls in court.

However, there is no merit to their taking claim. Economic regulation of the use of property, and the price obtained for that property, does not constitute an unconstitutional taking. *Bowles* ...

FOCUS - 6 OF 59 CASES

UNITED STATES v. EXXON CORP.

Nos. DC-91, DC-92, DC-93, DC-94, DC-95, DC-96, DC-97, DC-98, DC-99, DC-100

TEMPORARY EMERGENCY COURT OF APPEALS

773 F.2d 1240; 1985 U.S. App. LEXIS 20355

May 23, 1984, Argued
July 1, 1985

OPINION:

... [*1245] [**8] in an unitized field known as the "Hawkins Field Unit," (HFU) located near Tyler, Texas. It was claimed that the overcharges resulted from miscalculations of "old" and "new" oil within HFU from January, 1975, until the end of price controls in January, 1981.

Upon cross motions for summary judgment, the District Court found that Exxon had violated the two-tier oil price regulations set out in 10 CFR Sections ...

... [*1251] [**27] continued beyond the effective date of unitization, and through the years, until the inert gas plant was completed and put into operation in March, 1977.

B. Exxon's Pricing Policies.

The trial court found; [**28] that when oil price control regulations were initiated in 1973, Exxon already operated several multi-lease units, some of which, like Hawkins Field, were formed after 1972, the base year designated for calculation of the BPCL; that Exxon applied an ...

... [*1253] [**33] definition of this term, as being either "the application of extraneous energy sources by the injection of liquids or gases into the reservoir," or, "the increase of production allowables for any property that constitutes the unitized property," was consistent with the intent of Congress that the administration of price controls be workable and effective.

5. A "significant alteration in producing patterns" occurred at Hawkins Field on January 1, 1975, the date of unitization, because Exxon then transferred production allowables among contingent leases, thus significantly ...

... [*1253] [**34] restitution of all the overcharges, with interest.

9. Civil penalties would not be imposed because Exxon did not attempt to conceal its pricing practices.

10. Since it would be "impossible" to identify the ultimate victims of

Exxon's overcharges, due to the "pervasive system of price controls" in the petroleum industry, the Trial Court adopted a remedy used by Congress in a similar situation, and ordered Exxon to remit all overcharges to an escrow account in the United States Treasury to be ...

... [*1254] [**38] Court properly concluded that payment of Exxon's overcharges to the states is a lawful and appropriate remedy [*1255] to effectuate restitution in this case, because

1. The District Court correctly concluded that the overcharges were so widely distributed through the operation of [**39] price controls that individual harm could not be calculated with reasonable certainty; and

2. The District Court reasonably exercised its broad discretion to fashion a remedy -- payment to the states -- which achieves the central purpose of restitution under the EPAA.

VII. THE ...

... [*1263] [**68] 839-840. *We agree with the court's conclusion, found at 838-839 of 561 F. Supp.:*

"Working within the narrow constraints imposed by Congress, the FEA reasonably balanced the competing aims of increased production and price control by extending the most favorable incentives to new units. Indeed, the FEA could not have treated all units alike, whenever formed. Had the FEA allowed all units, including the Hawkins Field, to benefit from the favorable provisions of Section
...

... [*1268] [**85] n27 The Court further held that since substantial shifts in production had occurred prior to any change in underground drive mechanisms, lease-by-lease accounting thereafter would have allowed Exxon to effectively avoid price controls:

". . . the agency's decision to define significant alteration in producing patterns in terms of easily observable events is consistent with the intent of Congress that administration of price controls be workable and effective. The FEA with its limited resources could not afford to satisfy Exxon's desire that the agency send droves of petroleum engineers to the Hawkins Field to conduct elaborate tests to examine the field's underground drive mechanism. That is precisely the 'quagmire' that the agency had to avoid. . . ." *561 F. Supp. at 841.*

* * *

"To allow lease by lease accounting to continue after such shifts would have enabled unit operators to circumvent [**86] oil price controls. To require the agency to adopt a subjective test based on complex geological phenomena would have plunged the agency into an administrative quagmire which would have had the same result. The agency definition of significant alteration was a reasonable effort by the agency to fulfill its 'duty to reasonably inhibit gerrymandering of boundaries undertaken to avoid price controls.' *Pennzoil Co. v. DOE, supra, 680 F.2d at 169.* Accordingly it must be upheld." *561 F. Supp. at 843.*

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n27 Exxon contended that no significant alteration occurred at Hawkins ...

... [*1270] [**93] gather evidence and to bring multiple actions against more than 200 working interest owners, and 2200 royalty interest owners at Hawkins Field would "plunge the agency into an 'administrative quagmire' which would effectively block enforcement of oil price controls at the Hawkins Field." *561 F. Supp. at 850.*

In this appeal Exxon now takes the position that it cannot be liable for various portions of the liability because it was acting merely as the agent of other interest owners, and the trial ...

... [*1271] [**95] Exxon. It has now been found that Exxon caused the overcharges. The trial court did note that Exxon "is not without recourse against the other interest owners, and so imposing full responsibility [**96] on Exxon will aid in enforcement of price controls without unfairness to Exxon." *561 F. Supp. at 850.* With regard to this observation, it was noted that Exxon had twice warned other interest owners that recomputations of payments might become necessary because of its interpretation of pricing regulations, n30 and ...

... [*1273] [**101] oil." As a result, some royalty owners threatened to sue Texaco. This caused Texaco to adopt Exxon's method of calculation, and to allow Exxon to determine the breakdown for Texaco's production share for the remaining period of price controls.

Exxon's claim that it is entitled to a reduction in its liability on account of the Texaco production is without merit.

2. The Interpleader Action: Overcharges October, 1980 -- January, 1981. Exxon complains that it can not be held liable for overcharge amounts "that were never paid or received" by anyone. In this respect, Exxon claims that during the period from October, 1980, until the end of price controls on January 28, 1981, it suspended payments to those Hawkins Field interest owners from whom it purchased crude oil of all amounts in excess of a price derived from unit-wide accounting, as opposed to lease-by-lease ...

... [*1274] [**104] old and new oil in the Hawkins Field, was ably described by the trial court, *561 F. Supp. at 852:*

". . . Exxon's portrayal of itself as victim ignores the workings of the mandatory Entitlements Program which, together with price controls on refiners, resellers and retailers, allowed Exxon to spread the cost of its Hawkins Field overcharges across the land. The purpose of the Entitlements Program was to permit all refiners to share the financial benefits of the limited available quantity of relatively inexpensive ...

... [*1280] [**124] REMEDY

Having determined the nature and extent of Exxon's liability, the district court was required to fashion an appropriate remedy in restitution commensurate with the extent of that liability. In so doing, the court first determined that, because of the nature of the Entitlements Program, and the price control regulations, the effect of Exxon's wrong had been spread throughout the distribution chain, to the ultimate consumers, so that it was impossible to trace the overcharges to specific victims, or to calculate precise damages sustained by such persons. Under these circumstances, the district court ...

... [*1282] [**131] Service Co. v. Department of Energy, supra, 715 F.2d 572, *determining that Cities Service had no right to intervene in a DOE enforcement action against Pennzoil for violation of price controls on crude oil. At issue was a DOE counterclaim against Pennzoil, filed under Section 209 of the ESA, which was settled by Pennzoil's agreement to pay $14,750,000 to the United States Treasury. In so doing, we discussed the ...*

... [*1284] [**139] L. Ed. 2d 433, 103 S. Ct. 1186 (1983), *we noted that:*

"Certifications of price-controlled crude oil as exempt crude oil . . . reduced the total amount of crude oil production subject to price controls each month and therefore increased the total cost of the available crude oil supply. As a result, the benefits of price-controlled crude oil which were distributed among all refiners by the Entitlements Program were reduced. Thus, to the extent that crude ...

... [*1285] [**141] difficulty of any such accounting is particularly clear in view of the fact that the DOE has not yet completed [**142] or issued a final January 1981 "Entitlements List," designed to settle accounts between the refiners following expiration of price controls. 10 C.F.R. Section 211.69 (1983). See Navajo Refining Company v. United States Department of Energy, No. 83-1492-M, D.C. New Mexico, Memorandum and Order of March 30, ...

DISSENT:

... [*1288] [**153] Warner Holding Company (Warner Holding), supra, 328 U.S. 395, 66 S. Ct. 1086, 90 L. Ed. 1332 (1946), *the duty and power of a federal court under the Emergency Price Control Act of 1942 (Act),* 50 U.S.C. § 925*(a), to order restitution of rents collected in excess of legally permissible ceiling rates were defined and enforced by the Supreme Court. In that case, the ...*

... [*1303] [**204] pass-through provisions for increased costs also applied to crude oil resellers, product resellers and retailers. See 10 C.F.R. Part 212, Subparts F and L. As a result of the pervasive system of price controls which then existed, therefore, Exxon's overcharges were not, as it simplistically asserts, borne by Exxon itself, but instead were borne by ultimate consumers of petroleum products throughout the entire country. n56

(Footnote) "56 on November ...

... [*1307] [**218] joining in its brief on appeal, among other things, claim that the District Court erred in concluding without a hearing that all the overcharges were passed through to the ultimate consumers as a result of the pervasive system of price controls. They contend that the system of price [**219] controls (10 C.F.R. Part 212) did not require passing through of increased costs but merely permitted it.

[*1308] In regard to PECO it is reasonable to believe that PECO as a public utility supplying electricity and gas to ...

FOCUS - 12 OF 59 CASES

DOE v. LOUISIANA

Nos. 5-65 (And Consolidated Case No. 5-66)

TEMPORARY EMERGENCY COURT OF APPEALS

690 F.2d 180; 1982 U.S. App. LEXIS 25557

May 14, 1982, Argued
September 17, 1982, Decided
October 4, 1982, Judgment Entered

OPINION:

... [*184] [**4] gas pricing regulation. A finding to this effect would classify the oil as new oil, and Texaco would not be liable to a claim for overcharges as to such oil.

I.

REGULATORY BACKGROUND

The Meaning of "Property" under the Federal Price Control System

The two-tier pricing [**5] system for crude oil was promulgated by the Cost of Living Council (CLC) on August 17, 1973, under authority of the Economic Stabilization Act of 1970. *38 Fed.* ...

... [*188] [**21] Aug. 10, 1973 (quoted in Ruling 1977-1, *42 Fed. Reg. 3628, [*189] 3630* (Jan. 19, 1977)). Three months after the program was established, EPAA was enacted. Congress directed that the price control and allocation system be continued and reaffirmed the dual objectives of the pricing system. "Most importantly, the President must, in exercising this authority, strike an equitable balance between the sometimes conflicting needs of providing adequate inducement ...

... [*189] [**23] future the LOC unit designation would better achieve the goal of the pricing system to find new oil.

The preamble to the amended regulations stated that they were promulgated pursuant to EPCA. Section 401 of that act mandated revisions in the price control program to optimize domestic production while maintaining an initial weighted average first sale price for domestically produced oil not in excess of $7.66 per barrel. *15 U.S.C. §* ...

... [*190] [**26] production patterns by shifting producing wells from one lease to another.

Ruling 1975-15 dealt with this problem by declaring, inter alia, that the entire unitized premises constituted the property for federal price control purposes. In Grigsby, the court upheld this interpretation as applied to a group of leases in Louisiana which had been unitized by LOC order. A more recent decision by this court has reaffirmed the rule that where the issue is ...

UNITED STATES v. ZANG

No. 10-26

TEMPORARY EMERGENCY COURT OF APPEALS

645 F.2d 999; 1981 U.S. App. LEXIS 19597

January 12, 1981, Argued
March 5, 1981, Decided

OPINION:

... [*1001] [**5] new was approximately $ 11.25/barrel. (Govt.Br.3)

"Exempt oil" is other categories of oil, including stripper (10 C.F.R. § 212.54) and foreign (10 C.F.R. § 212.53) oil, which are exempt from price controls. The average price for West Texas stripper crude was approximately $ 13.50/barrel. (Govt.Br.3)

n3. These mandatory temporary petroleum pricing and allocation regulations were upheld as valid and constitutional in *Consumers* ...

... [*1006] [**21] A. INTRODUCTION

1. There was in existence the Emergency Petroleum Allocation Act (EPAA) of 1973, Title *15, United States Code, Section 751*, et seq., and the regulations promulgated thereunder, which provided for price controls and mandatory allocation of all crude oil produced in or imported into the United States.

2. In order to require a producer, seller, or reseller of domestic crude oil to maintain its historic profit margin with respect to ...

... [*1006] [**22] price that may be charged for domestic crude oil was dependent on the regulatory category of the crude oil.

3. The regulatory categories "old" (also referred to as "lower tier"), "new" (also referred to as "upper tier"), and "stripper" were strictly price control categories and were not based upon any physical or chemical characteristics of the crude oil but were based upon the history or the level of production from an oil producing property. 10 C.F.R. §§ 212.71-212.74.

4. "Old" ...

... [*1006] [**23] selling price. "Stripper" oil, defined as that crude oil produced from a property whose average daily production per well did not exceed ten barrels per day during the qualifying period, was exempt from price controls and could be sold at the world market price. 10 C.F.R. § 212.54.

5. The Mandatory Petroleum Price Regulations provided for a certification

requirement with regard to the purchase and sale of domestic crude oil.

6. ...

FOCUS - 21 OF 59 CASES

TENNECO OIL CO. v. FEDERAL ENERGY ADMIN.

No. 5-40

TEMPORARY EMERGENCY COURT OF APPEALS

613 F.2d 298; 1979 U.S. App. LEXIS 10051; 65 Oil & Gas Rep. 452

September 28, 1979, Argued
December 3, 1979, Decided

SUBSEQUENT HISTORY: [**1]

Rehearing Denied January 18, 1980.

OPINION: [*299]

The central issue in this case is whether the use by Tenneco of its own oil on its own oil producing properties was a "sale" under the terms of the petroleum price control regulations. The district court found, and we agree, that the Federal Energy Administration's (FEA) n1 application of the price control regulations to the facts in this case was erroneous.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n1. The complaint in this case was filed against the FEA, although the current successor to the FEA's responsibilities is the Department of Energy, pursuant to the Department of Energy Organization Act, ...

... [*299] [**1] End Footnotes- - - - - - - - - - - - - - - - - [**2]

I. THE FACTS

The regulations in question were first promulgated by the Cost of Living Council (CLC) n2 under the authority granted by the Economic Stabilization Act of 1970. n3 The petroleum price control authority was inherited by the FEA under the Emergency Petroleum Allocation Act of 1973, *15 U.S.C. §§ 751*, Et seq., and the FEA carried forward the regulations first issued by the CLC in ...

... [*299] [**2] codified as amended in 10 C.F.R. pt. 212).

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

The regulations created a two-tier pricing system which placed a ceiling on "old" oil but exempted "new" oil from price controls. n5 In simple terms, new oil represented the amount of increase in production from a well since 1972. Old oil was that portion of production that was equal to what was [**3] produced from the well in 1972. It is the language of ...

... [*299] [**3] month in 1972. The purpose of the two-tier pricing system was to dampen the inflationary impact of world market oil prices while stimulating the production of additional domestic supplies of oil. New oil was exempted from price controls as an incentive for intensified domestic production. n6 These objectives were recognized approvingly by Congress in the Conference Report which accompanied the Emergency Petroleum Allocation Act. n7

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n5. 10 C.F.R. § ...

... [*300] [**6] FEA took the position that the 1972 processing agreement between Tenneco and West Coast and the use by Tenneco of its own oil on its property constituted a sale for purpose of the "produced and sold" standard in the price control regulations. Following oral and written submissions by Tenneco to the FEA, the FEA issued a Remedial Order to Tenneco on June 8, 1976. In the Remedial Order, the FEA concluded, Inter alia, that Tenneco had ...

... [*301] [**8] Tenneco would have accounted for the value involved as an operating expense if the firm had purchased the residual fuel oil from a third party for the identical purpose. [**9]

Clearly, the FEA has grounded its position on the hypothesis that, for purposes of the price control regulations, the requirement of a "sale" is met whenever a person derives value from property. Under this view of the regulations, Tenneco derived value from its Fee C oil and thereby "sold" Fee C oil either when ...

... [*302] [**11] consumed by Tenneco be included in the Fee C BPCL whether consumed on the Fee C or elsewhere. n10

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n10. The use of oil from one lease to fuel generators on many leases is not an evasion of the price control regulations. During the time Tenneco used the Fee C primarily to supply its own needs on many leases, the price control regulations did not yet exist. Even if Tenneco could be credited with having foreseen the two-tier pricing system, its use of Fee C oil on other leases was of no advantage. Assuming that off-site consumption is the critical ...

... [*302] [**11] operations in which on-site consumption of oil was obviated by the availability of Fee C oil.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -
[**12]

Thus, the narrow issue presented to this court is whether the use or processing of oil is a sale of that oil for purposes of the price control regulations.

III. IS OIL SOLD WHEN PROCESSED OR USED?

The thrust of Tenneco's position is that the FEA application of the price control regulations in this case is contrary to the plain meaning and industry understanding of the terms employed by the regulations. In searching for the true meaning of these regulations, we are reminded that ordinarily an agency's interpretation of its own regulations is entitled to ...

... [*303] [**17] a regulation that was intended but never enacted. *Diamond Roofing v. Occupational Safety and Health Review Commission, 528 F.2d 645 (5th Cir. 1976)*. If Tenneco's "plain meaning" interpretation of the price control regulations is incorrect, Tenneco may be exposed to civil or criminal penalties for its alleged overcharges. 10 C.F.R. § 205.202. As this court stated in *Longview Refining Co. v. Shore, 554 F.* ...

... [*304] [**19] question "When did you stop beating your wife?"
[**20]

While the meaning of the phrase "produced and sold" was not further addressed by the COLC, the COLC price regulations did contain a definition of "sale" which was made applicable to the petroleum price control rules. A "sale" was defined to mean "an exchange, transfer, or other disposition in return for valuable consideration." *38 Fed.Reg. 21600 (1973)*. Even more revealing is a Memorandum of November 12, 1973, from George V. Biondi to David G. Wilson, COLC Assistant General Counsel, suggesting changes in the regulations in order to implement an exemption from price controls for stripper wells. The Memorandum proposed a definition of stripper well based on production, And not on production and sales, "since that is the real test of stripper well status, and will minimize the risk of a producer ...

FOCUS - 25 OF 59 CASES

MAPCO INC. v. CARTER

No. 10-13

TEMPORARY EMERGENCY COURT OF APPEALS

573 F.2d 1268; 1978 U.S. App. LEXIS 12184

November 18, 1977, Argued
March 14, 1978, Decided

SUBSEQUENT HISTORY: [**1]

As Amended March 27, 1978. *Cert. Denied, 437 U.S. 904 (1978).*

OPINION:

... [*1273] [**10] 60 percent of domestic crude production. Although accounting for approximately 13 percent of domestic crude production, stripper wells, those producing less than ten barrels per day, are specifically exempt from allocation and price controls. *15 U.S.C. § 753*(e)(2). FEA's regulation of the remaining oil, 'new' and 'released,' which account for 16 and 11 percent respectively of domestic crude production, is at the heart of this dispute.

"The price of both ...

... [*1275] [**15] among other things, the following:

"The defendants misconceive the entire thrust of the plaintiff's [sic] complaint. The plaintiffs' contention is that the ninth amendment right to trust the government and rely on the integrity of its pronouncements has been violated, not by the imposition of price controls, but by the retroactive rollback of prices (note omitted). It is the retroactive application of the price rollback mandated by the Energy Act that breaches the right of trust. The power of the government to impose price controls over new oil, or even to lower new oil prices prospectively is not presently challenged. The plaintiffs challenge the retroactive application of the crude oil price rollback to include oil that was discovered as a result of ...

... [*1276] [**18] Effect of the Addition in 1975 of § 757 to the Allocation Act

The Energy Policy Act, enacting the new § 757 and adding [**19] it to the Allocation Act, became effective December 15, 1975. The crude oil price controls under the Allocation Act of 1973 existing before December 15, 1975, and the purpose and effect of new § 757 are described in the following excerpts from House Report No. 94-340 accompanying H.R. 7014 containing the original draft of § 757:

"Existing Price Controls

"The Emergency Petroleum Allocation Act of 1973, was enacted in November, 1973, against a background of severe shortage of crude oil and its products. The principal aims of the Act were to meet the nation's priority petroleum needs, to distribute the remaining available products equitably, and at equitable prices, and to accomplish these objectives in ways that would preserve the competitive viability of the independent segments of the industry. At the time the Allocation Act was passed, price control authority over the petroleum industry and the rest of the economy as well was lodged in the Cost of Living Council which had discretionary price and allocation authority under the terms of the Economic Stabilization Act of 1970. Upon enactment of the Allocation ...

... [*1277] [**22] rollback" of domestic crude oil (up-per-tier) prices mandated by § 757 was accomplished by the President and FEA by executive order and regulations establishing an amended "two-tier" system of price controls effective in February 1976 *(41 F.R. 4931)* adjusted in March and July 1976, and thereafter in minor respects not significant in the context of this case.

It is uncontroverted that this "rollback" of permissible prices of " ...

... [*1281] [**35] upholding as a temporary measure the upper-tier of the two-tier system under the original Allocation Act of 1973 without the amendments of the Energy Policy Act. Noting that much of the jurisprudence in "permanent" market price control concerns public utilities, the plaintiffs rely primarily upon the *Permian Basin Area Rate Cases, 390 U.S. 747, 88 S. Ct. 1344, 20 L. Ed. 2d 312,* [**36] reh. ...

... [*1281] [**36] In this connection, as stated above, plaintiffs argue that the Allocation Act as amended by § 757 establishes a "permanent" scheme of comprehensive market regulation without a required non-confiscatory standard of price control. The fact of permanence is said to be established by the affidavits of Robert E. Thomas, Chief Executive Officer of Mapco, and plaintiff T. A. Manhart, the admissibility and relevance of which is challenged by defendants.

Plaintiffs argue that § 757 of the ...

... [*1281] [**36] current system on which plaintiffs' arguments are based is conclusively absent, citing the direction to the President "to exercise specific temporary authority . . ." *15 U.S.C. § 751*(b), and inviting attention [**37] to the provision that mandatory crude oil price controls imposed by the Energy Policy Act amendments expire 40 months after enactment of that Act, and that the authority for discretionary controls expires in September 1981. *15 U.S.C. § 760g* (Defendants' ...

... [*1283] [**42] Condor Operating Company v. Sawhill (Temp. Emer. Ct. App. 1975), supra, 514 F.2d 351, *l.c. 359-362. As stated in* Bowles v. Willingham, supra, *"of course, price control, the same as other forms of regulation, may reduce the value of the property regulated. But, as we have pointed out in the Hope Natural Gas Co. case, . . . that does not mean that the regulation is unconstitutional." Further, there has been no unconstitutional taking of plaintiffs' property for public use under the two-tier price controls.* Griffin v. United States (Temp. Emer. Ct. App. 1976) 537 F.2d 1130, *l.c. 1139-1140; Cf.* Bowles v. Willingham, 321 U.S. 503, 64 S. ...

FOCUS - 26 OF 59 CASES

NORTH CENT. AIRLINES, INC. v. CONTINENTAL OIL CO.

No. 76-1911

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

187 U.S. App. D.C. 371; 574 F.2d 582; 1978 U.S. App. LEXIS 12482; 23 U.C.C. Rep. Serv. (Callaghan) 581

September 16, 1977, Argued
February 23, 1978, Decided

OPINION:

... [*585] [**5] 21 (1976).

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

Cognizant of the developing situation in world oil markets, the Federal Cost of Living Council (CLC) on August 19, 1973 imposed in connection with the introduction of Phase IV price controls a program of two-tier crude oil price regulations *(38 Fed. Reg. 22536 (1973))*. n7 Simply put, this regulatory scheme attempted to stabilize prices while at the same [**6] time providing ...

... [*585] [**6] 15, 1973, plus a small incremental amount pegged in the regulation *(38 Fed. Reg. 22538 (1973))*. The regulations established a second tier of "exempt" or "new" oil that was not subject to price control. This tier included, inter alia, all crude oil produced from existing wells in excess of "old" oil quantities. The regulations provided for a ceiling on domestic crude petroleum prices but allowed ...

... [*585] [**7] 19, 1973 *(38 Fed. Reg. 19464 (1973))*. The system became effective on August 19, 1973, pursuant to action of the Council of August 17, 1973 *(38 Fed. Reg. 22536 (1973))*.

n8 The price control scheme described herein was codified in regulations appearing at *39 Fed. Reg. 1949 (1974)*. Since the period of time relevant to the facts of this case, the price control scheme has been substantially altered. On September 1, 1975, the FEA amended its regulations to provide for the gradual decontrol of crude oil prices, *40 Fed. Reg. 31747 (1975)*. The scheme was revised by Section ...

... [*585] [**7] float freely (see *42 Fed. Reg. 3635 (1977)*. Thus, the regulations have been revised further (see 10 C.F.R. Part 212 (1977)).

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -
[**8]

During the first few months of two-tier price controls, Conoco did not publish price bulletins for exempt oil (J.A. 299-300). Since its only posted prices for crude oil during this period were for old oil, Conoco charged ...

... [*586] [**11] increases and decreases were to be determined. And it is undisputed what "posted price" meant at the time the contract was written including the term in the escalation clause. Defendant's position is simply that the two-tier pricing system which was created by federal price controls changed the meaning of "posted price" as used in the contract. However, the course of performance between the parties and significant practice in the oil industry indicated to the contrary. Although federal regulation of prices created havoc in the ...

... [*586] [**11] Plaintiff argued that Conoco's use of a weighted average to compute the contract price was improper. In addressing this issue, the court made the following statement:

The Court is not persuaded by Defendant's argument that the federal price controls rendered the escalation provision inoperable thus mandating the imposition of a "reasonable price." U.C.C. § 2-305(1)(c), D.C. Code 28:2-305(1)(c). It is clear that permitting North Central to ...

... [*589] [**21] bulletins for new oil were not posted prices within the meaning of the contract. Br. at 21. We are not persuaded that the failure of a periodical to list a price means that the price is not posted. Indeed, the "Price-Control Notice" published in Platt's (J.A. 543) does not refute the argument that exempt oil postings are in fact posted prices, but only indicates that Platt's is not publishing the prices circulated for ...

... [*590] [**23] time the contract was written including the term in the escalation clause." (J.A. 14). But from that point the court reasons incorrectly: "Defendant's position is simply that the two-tier pricing system which was created by federal price controls changed the meaning of 'posted price' as used in the contract . . . . federal regulation of prices . . . . did not change the meaning of 'posted price' as used in this contract." (Id.) We believe the court misapprehended the nature of Conoco's argument. It is ...

FOCUS - 36 OF 59 CASES

CARIBOU FOUR CORNERS, INC. v. AMOCO

Civil No. C84-2173G

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

628 F. Supp. 363; 1985 U.S. Dist. LEXIS 13827

November 18, 1985, Decided

OPINION:

... [*364] [**2] Congress enacted the Emergency Petroleum Allocation Act (EPAA), [**3] Pub. L. No. 93-159, 87 Stat. 627 (codified at *15 U.S.C. § 751* et seq.) for the purpose of continuing price controls which had been implemented under the Economic Stabilization Act of 1970 (ESA), Pub. L. No. 92-210, 85 Stat. 743 (codified as amended at *12 U.S.C. § 1904* note). Section 4(a) of the ...

... [*364] [**3] produced and sold that were in excess of the volumes produced and sold from the same property during the base period were called "new oil" and could be sold at market prices. All imported oil and "stripper well" crude oil were also exempt from price controls. In addition, the DOE provided incentives to producers by permitting old oil to be released from price controls based on increased [**4] production of new oil.

[*365] The artificial constraints on domestic crude oil, combined with significant increases in the price of foreign crude oil during the latter part of 1973 and most of 1974, caused ...

... [*365] [**6] average access to the "old oil" were obliged to purchase the entitlements. n2 By imposing this regulatory scheme, the FEA basically equalized the average weighted crude oil costs of all refiners, [**7] eliminating the inequities created [*366] by the price controls and placing the petroleum industry in the competitive situation that existed prior to the two-tier system.

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n2 The value of an entitlement was equal to the "exact differential between the weighted average cost of old oil and such weighted ...

... [*366] [**9] purchase obligations on the Entitlements Notice that was issued for December 1980. Before explaining that error, however, the Court must explain the Entitlements Exception Relief Program, which has particular significance to this case and to the Agency action.

Throughout the period of price controls, small refineries were the beneficiaries of various special subsidies implemented through the machinery of the Entitlements Program. See, e.g., *49 Fed. Reg. 27410, 27411-12* (July 3, 1984). The costs of these subsidies were borne on a ...

FOCUS - 42 OF 59 CASES

INDIANA FARM BUR. COOP. ASSN. v. UNITED STATES DOE

No. IP 81-424-C

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

1981 U.S. Dist. LEXIS 9616

June 8, 1981

OPINION:

... [*2] cooperative incorporated in Indiana and operates a petroleum refinery located at Mt. Vernon, Indiana.

2. Defendants are the United States Department of Energy (DOE) and the Secretary of Energy which have the responsibility for administering the allocation and price control authority contained in the Emergency Petroleum Allocation Act of 1973, as amended. *15 U.S.C. § 751* et seq.

B. Entitlements Program.

3. The Entitlements Program, 10 C.F.R. § 211.67, is ...

... [*3] United States was becoming increasingly dependent on foreign crude oil to meet its growing supply needs and foreign oil prices were rising substantially above their previous levels. In light of those developments, CLC determined that price controls must be implemented which would minimize the inflationary impact of foreign oil prices on the United States economy, but at the same time encourage domestic production. To accomplish those dual objectives, CLC imposed a ceiling price on ...

... [*3] 8, 1976); *41 Fed. Reg. 4931* (Feb. 3, 1976). Thus since early 1976, there have been three basic price categories, i.e., "old," "new" and "uncontrolled." [*4]

4. Shortly after the implementation of the two-tier price control system, the price of foreign crude and upper tier domestic crude oil increased dramatically in relation to the price of controlled, lower tier oil. This price disparity had unequal impact on refiners. These cost differences ...

FOCUS - 59 OF 59 CASES

AMERADA HESS CORP. v. DIRECTOR

Nos. A-61, A-62, A-63, A-64, A-65, A-66, A-67, A-68, A-69, A-70, A-71

Supreme Court of New Jersey

107 N.J. 307; 526 A.2d 1029; 95 Oil & Gas Rep. 205

November 18, 1986, Argued
June 22, 1987, Decided

OPINION:

... [*313] [**1032] profits tax on domestic crude oil," I.R.C. §§ 4986-4998 (1980), was imposed after President Carter announced that he would gradually decontrol domestic crude oil prices beginning in June 1979. The price controls originated with President Nixon's Wage and Price Controls in August 1971. The Energy Policy Act made them mandatory through May 1977 and gave the President discretion to remove them until 1981. See H.R.Rep. No. 304 96th Cong. 1st ...

... [*313] [**1032] 462 U.S. 74, 76-77, 103 S.Ct. 2239, 2240, 2241, 76 L.Ed.2d 427 (1983).

In 1979, President Carter announced a program to remove price controls from domestic oil by September 30, 1981. [See H.R.Rep. No. 96-304, 5 (1979) reprinted in 1980 U.S.Cong. & Ad.News 593]. By eliminating price controls, the President sought to encourage exploration for new oil and to increase production of old oil from marginal economic operations. See H.R.Doc. No. 96-107, 2 (1979). He recognized, however, that deregulating oil ...

... [*314] [**1033] tiers and establishes an adjusted base price and tax rate for each tier. See §§ 1986, 1989, and 4991. The base prices generally reflect the selling price of particular categories of oil under price controls, and the tax rates vary according to the vintages and types of oil included within each tier. See Joint Committee on Taxation, General Explanation of the Crude Oil Windfall Profit Tax Act of 1980, 96th ...

... [*324] [**1038] difference between the removal or selling price and the adjusted base price plus severance tax adjustment. I.R.C. § 4988(a). The adjusted base price is essentially the price that could have been obtained for the oil under price controls, adjusted for inflation. The windfall profit cannot be equated with the market value of oil; it is a net amount, not simply the sales price, as in the case of federal transactional excise taxes.

The average adjusted ...

... [*325] [**1039] additional severance tax that arises as a result of the increase in the removal price of the oil as a result of price decontrol. This adjustment permits a dollar for dollar recovery of those incremental costs.

Under price controls, base prices were supposed to permit economic recovery of crude oil. This means that the crude oil production operations must obtain at least a normal profit under price controls. If they did not, then producers would be expected to shut down operations and invest their money in other activities, all of which would be contrary to energy policy at the time. The prices allowed under price control should, therefore, permit a producer to recover production costs plus a reasonable return on production. To the extent that the prices in the price control system carried over to the Windfall Profit Tax as adjusted base prices, deduction of the adjusted base prices from revenue may be viewed as a deduction in lieu of itemizing production costs and normal profits. The ...

... [*326] [**1040] See also *Lewis v. Reagan, 516 F.Supp. 548, 553 (D.D.C.1981)* ("The Windfall Profit Tax taxes the increased income that will accrue to the owners of domestic oil properties after the lifting of price controls.") (emphasis supplied); *United States v. Ptasynski, supra, 462 U.S. at 103, 103 S.Ct. at 2255, 76 L.Ed.2d at 436* ("[Congress] perceived that the decontrol legislation would result -- in ...

... [*333] [**1043] Bruun, 309 U.S. 461, 469, 60 S.Ct. 631, 634, 84 L.Ed. 864, 869 (1940). *While there may be no sale, the value of the oil is plainly "ascertainable." Posted prices control the amounts at which crude oil passes from hand to hand in the fields to which they relate. They are a bonafide competitive price, not subject to manipulation or rigging, for the reason, aside from others, that their maintenance is effectively policed by ...*

... [*335] [**1044] Injunction Act, the court in *Lewis v. Reagan, supra, 516 F.Supp. at 552,* noted that "The W.P.T. taxes the increased income that will accrue to the owners of domestic oil properties after the lifting of price controls."

As the Tax Court properly stated, "The precise issue in this litigation is whether the crude oil windfall profit tax is a tax 'on or measured by profits or income' within the intent of the Corporation Business Tax Act." ...

The New York Times

Price Freeze to Continue On 'Gas' and Diesel Fuel

Cost of Living Council Says Controls Will Be Removed Monday From Other Petroleum Products

WASHINGTON, Aug. 16 (AP) — A price freeze on gasoline and diesel fuel will be continued until Aug. 31, but will be lifted from other petroleum products this coming Monday, the Cost of Living Council announced today.

It was the second time the freeze had been extended for gasoline and No. 2 diesel fuel. Originally it had been scheduled to expire for the oil industry along with the rest of the economy last Monday.

Final Phase 4 regulations for the oil industry are scheduled to be released tomorrow. John T. Dunlop, director of the Cost of Living Council, indicated there would not be enough time for gasoline retailers to work out proposed new ceiling prices by this coming Monday, the date the freeze expires on the rest of the industry.

Deadline for Stickers

The action means there can be no increase in the retail price of gasoline or diesel fuel prior to Sept. 1. That is also the deadline for gasoline retailers to post special Government stickers on their gasoline pumps listing new price ceilings and octane ratings for gasoline.

Meanwhile, a Federal judge refused to issue a temporary injunction restraining the council from implementing the Phase 4 rules.

The National Congress of Petroleum Retailers, which represents 165,000 dealers, had sought the injunction in a suit against the council and Mr. Dunlop. The retailer said the rules discriminated against them.

But United States District Court Judge Barrington Parker said the proposed regulations have not taken effect and an injunction would be premature.

The June 13 price freeze was extended over the oil industry an extra week because the new oil regulations were not ready on schedule last week, and drafters have been racing the clock to have them ready this week.

Mr. Dunlop said, meanwhile, that 68 major companies had filed notice with the Government by yesterday of their intention to increase prices in 30 days.

Mr. Dunlop said names of the companies would be made public later. A spokesman for the Internal Revenue Service said that in addition to steel companies and auto makers the following major companies are proposing price increases: Dunlop Tire, Uniroyal Tire, B.F. Goodrich Company, Inc., and Goodyear Tire & Rubber.

Mr. Dunlop cited additional evidence to support the Administration view that there was not going to be a serious nationwide beef shortage as the result of price ceilings being left on beef until Sept. 12.

Rules Due Tomorrow

He said a total of 103,000 head of cattle were slaughtered Wednesday, only slightly below the July daily average of 106,000, and up from the recent low of 75,000 on Aug. 6.

When the final oil regulations are announced tomorrow, the industry — from major refiners to gasoline retailers — will have less than three days to put them into effect.

William N. Walker, the council's general counsel, told newsmen he thought this would be enough time, although he noted it would require weekend work by the industry.

The regulations will provide for price ceilings on gasoline and fuel oil based on the costs of the product plus the dealers' added price — or markup — that existed on Jan. 10.

ASIS GROUP
) TO LIBYANS

Turn Over 51%
of Oil Operations

ILLIAM D. SMITH

won another victory
in its running con-
with Western oil in-
ien three of the four
of the Oasis Group of
nies, the Continental
ıny, the Marathon Oil

Big Board List W

opes

ils Icemat,
oundations.

of Atlantic
lers.

aulers
Homes
e-Fixing

PRICES OF GRAINS RESUME ADVANCE

Rises Also Set by Soybean and Livestock Futures —Wheat Up by Limit

By H. J. MAIDENBERG

Prices of most grains, soybean and livestock products resumed their advance yesterday in hectic trading, ending two days of limit declines on the Midwest commodity exchanges.

Wheat closed up the 20-cent-a-bushel limit on all deliveries. Corn, up the limit of 10 cents early in the session, weakened to finish about 1 to 8 cents lower. New-crop soybeans ended 10 to 28 cents a bushel higher on the day.

Most cattle, hog and egg futures posted their first advances in a week, with strength pronounced in the more distant months.

The dramatic reversal in these key commodity markets came in the wake of a spate of news announcements that encouraged buyers.

News Encouraging

First, there were the Washington reports on continued strong export bookings of grain and soybeans, which were issued after the close Thursday.

Then came a dispatch quoting Pravda, the leading Soviet newspaper, as saying that harvesting problems had developed in that country.

Pravda noted that although the grain harvest there was nearly half completed, farmers were turning in large amounts of unripened grains. The newspaper complained that much of this was moist and unfit for storage despite the use of highways to dry it.

Chicago traders interpreted this to mean that the piling of grain on the roads and the reported harvest progress reflected efforts by district farm officials to meet quotas under presssure from Moscow.

Some Scarcity

Meantime, Washington's data on export bookings revealed that the Soviet Union had ordered 1973-crop soybeans for the first time this year. The 4.5 million bushels of beans ordered indicated a need for livestock feed and raised the prospect of more such business.

Another significant news item was a report by the Canadian Wheat Board saying that the world's second major grain exporting country, after the United States, had far less supplies on hand than had been expected.

On July 31, the end of Canada's wheat-crop year, that country had 366 million bushels on hand, compared with 584 million on the year-ago

Profits Rise to Record Rate; Gasoline Prices Facing Cuts

Rollbacks at Many Stations Set Under Revised Ceilings

WASHINGTON, Aug. 17 (AP) —The Cost of Living Council said today the new price ceilings for gasoline would force many service stations to reduce their retail prices between 1 and 3 cents a gallon on Sept. 1.

A spokesman said these stations are already charging higher prices than would be allowed under the new price ceilings. Others, however, may be able to increase prices by a few cents.

The council released its new Phase 4 regulations for the oil industry and said they will take effect for all of the industry except retail gasoline and diesel fuel dealers on Monday.

New Ceiling Levels

The regulations provide for ceiling prices on gasoline, diesel fuel, heating oil, crude oil and other petroleum products.

A council spokesman said users of heating oil, especially in the Northeast, will face some increase in prices. That is because higher costs of imported heating oil can be passed on to the consumer automatically although other costs may not.

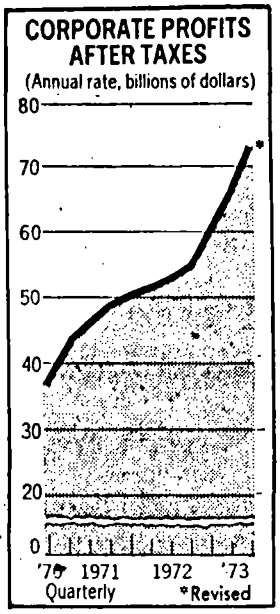
The June 13 price freeze has been extended for retail gasoline and diesel fuel sales until Sept. 1 to give retailers time to compute new price ceilings. It will be lifted from heating oil and other petroleum products on Monday.

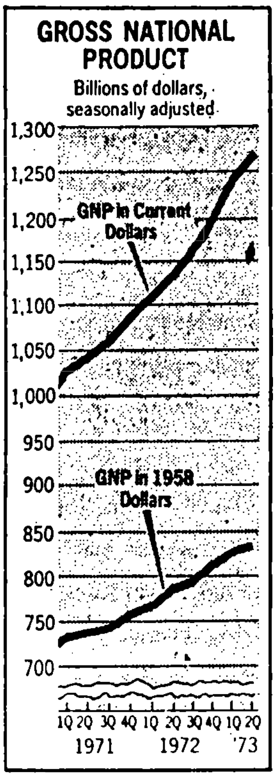
Meanwhile, the council said the ceilings should also result in some rollbacks of crude and heating oil prices by some concerns, and increases for others.

The final Phase 4 oil regulations are little changed from the preliminary regulations released by the council last week.

But William N. Walker, gen-

Continued on Page 31, Column 6





The New York Times/Aug. 18, 1973

A 2d-Quarter Gain of $10.5-Billion Is Registered

By EDWIN L. DALE Jr.
Special to The New York Times

WASHINGTON, Aug. 17—Corporate profits before taxes soared by a further $10.5-billion in the second quarter of this year and were 37 per cent above a year earlier, the Commerce Department reported today.

Second-quarter before-tax profits were at the record annual rate of $130.1-billion, with after-tax profits also at a record of $72.6-billion, up $5.7-billion from the first quarter total of $66.9-billion.

Today's report indicated, however, that an unusually large portion of profits in the April-June quarter stemmed from the technical effect of inflation on the value of corporate inventories.

After making what it calls an "inventory valuation adjustment," the Commerce Department put profits in the second quarter at a rate of $109-billion, up from a similarly adjusted $104.3-billion in the first quarter and $88-billion in the second quarter of last year.

Unions May Press Demands

Even with the adjustment, however, profits have clearly been booming and may provide a magnet for larger union wage demands in the future.

Second-quarter earnings were not affected by the recent price freeze and the subsequent Phase 4 controls, which began this week. Both could potentially depress profits somewhat, and the third-quarter earnings figures may not be as good as in the second quarter.

Today's report also contained the regular revisions of the gross national product figures for the second quarter, originally published a month ago. The revision showed that, by

Continued on Page 30, Column 2

Trust Houses Forte Offers $11\frac{1}{2}$ a Share In Travelodge Bid

By CLARE M. RECKERT

Trust Houses Forte, Ltd., of London, in a bid to expand its hotel interests in the United States, offered yesterday to buy Travelodge International, Inc., a California-based com...

Stock Prices End Mixed In Listless Trading Day

By ALEXANDER R. HAMMER

The stock market finished mixed yesterday in listless trading.

A bullish economic report released by the Commerce Department at 1:34 P.M. spurred

Market Profile
Friday, August 17, 1973
New York Stock Exchange
Volume: 11,110,000 Shares

Up 667

ISSUES TRADED 1,719