

Report To

The Mississippi Legislature



A REVIEW OF THE DEPARTMENT OF ECONOMIC AND COMMUNITY
DEVELOPMENT, DIVISION OF ENERGY AND TRANSPORTATION'S
OIL OVERCHARGE PROGRAM

July 31, 1991

Oil overcharge funds were intended to provide court-ordered restitution to consumers overcharged by oil companies from 1973 through 1981. In Mississippi, the Department of Economic and Community Development's Division of Energy and Transportation promotes energy conservation and assistance programs through grants and contracts to individuals or firms who submit proposals for overcharge funds.

A July 1988 Division of Energy and Transportation news release and legal notice did not adhere to the division's own standard operating procedures for soliciting and selecting proposals. At the time of the 1988 news release and legal notice, the Board of Energy and Transportation had not prepared a statewide energy and transportation plan as mandated by state law. Without such a plan, the division had no basis on which to develop formal criteria to evaluate stripper well proposals in the context of the state's energy needs and court-ordered guidelines.

The division advanced installments of loan awards which were contingent upon completion of incremental tasks prior to the borrowers' completion of such tasks. The division also paid contractors who did not submit deliverables or failed to complete projects on schedule. PEER also identified a possible violation of state law involving a contractor who falsely claimed to be a registered professional engineer. Upon PEER's inquiry, the contractor suggested that this misrepresentation was due to an inadvertent error made during production of contract proposal documents.

The PEER Committee

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**A REVIEW OF THE DEPARTMENT OF ECONOMIC AND COMMUNITY
DEVELOPMENT, DIVISION OF ENERGY AND TRANSPORTATION'S
OIL OVERCHARGE PROGRAM**

July 30, 1991

**The PEER Committee
Mississippi Legislature**

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An extension of the Mississippi Legislature's constitutional prerogative to conduct examinations and investigations, PEER is authorized by law to review any entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

As an integral part of the Legislature, PEER provides a variety of services, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and agency examined.

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The Mississippi Legislature
Joint Committee on Performance Evaluation and Expenditure Review
PEER Committee



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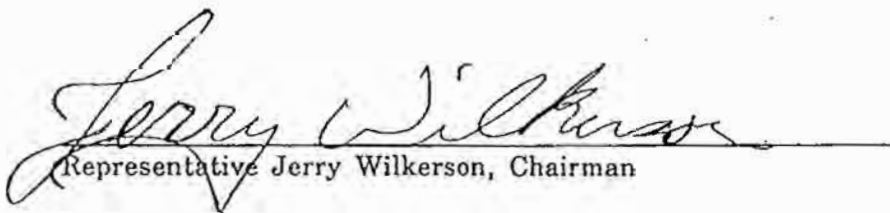
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July 30, 1991

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MEMBERS OF THE MISSISSIPPI STATE LEGISLATURE

At its meeting of July 30, 1991, the PEER Committee authorized release of the report entitled **A Review of the Department of Economic and Community Development, Division of Energy and Transportation's Oil Overcharge Program.**


Representative Jerry Wilkerson, Chairman

**This report does not recommend increased
funding or additional staff.**

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A REVIEW OF THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, DIVISION OF ENERGY AND TRANSPORTATION'S OIL OVERCHARGE PROGRAM

EXECUTIVE SUMMARY

INTRODUCTION

Oil overcharge funds are meant to provide court-ordered restitution to consumers overcharged by oil companies for petroleum products during the period of federal regulation of petroleum pricing from 1973 through 1981. In Mississippi, the Department of Economic and Community Development's Division of Energy and Transportation (DET) is the agency primarily responsible for utilizing oil overcharge program funds to promote energy conservation and assistance programs through grants and contracts to individuals or firms who submit proposals. (As a result of state government reorganization, the Department of Energy and Transportation became a division of the Department of Economic and Community Development on July 1, 1989.) A legislator expressed concern over the state's administration and awarding of such grants and contracts and requested PEER to review DET's oil overcharge program.

Background

In response to the Arab oil embargo in late 1973 and to prevent price gouging by domestic crude oil producers, Congress passed the Emergency Petroleum Allocation Act of 1973. Between August 1973 and January 1981, the United States Department of Energy established and enforced the allocation and pricing of crude oil and refined petroleum products by oil companies and subsequently charged several companies with committing civil violations of pricing regulations by overcharging for products. Two of the largest enforcement suits involved the decision in *U.S. v. Exxon Corporation* and the settlement agreement in *In Re: Department of Energy Stripper Well Exemption Litigation*. The U. S. Department of Energy disburses funds from these settlements to state governments through petroleum violation escrow accounts, otherwise known as oil overcharge funds. As of November 1989, Mississippi had received \$28.4 million in Exxon funds and \$16.9 million in stripper well funds.

The courts directed that the U. S. Department of Energy disburse oil overcharge funds to each

state according to a formula based primarily on the state's consumption of refined petroleum products during the period of regulation. State governments are to allocate the funds, within guidelines specified in each decision, to new or existing energy programs in a manner designed to provide restitution to the class(es) of purchasers who bore the burden of the overcharges. In Mississippi, stripper well funds are deposited into an interest-bearing clearing account at the Department of Finance and Administration. DET, as the Governor's designee, develops the state's expenditure plan. After approval of this state plan by the Governor, DET submits the plan to DOE for approval. The four departments which administer programs funded by oil overcharge monies are the Department of Human Services, Division of Community Services; Department of Wildlife, Fisheries and Parks; Department of Environmental Quality; and, Department of Economic and Community Development, Division of Energy and Transportation.

FINDINGS

PEER's review documented the Department of Economic and Community Development's failure to adhere to its standard operating procedures for soliciting and selecting proposals for disbursement of stripper well funds as well as its lack of a state-wide energy and transportation plan. The review also identified a possible violation of state law involving a contractor who falsely claimed to be a registered professional engineer.

A July 1988 Division of Energy and Transportation news release and legal notice (which served as DET's request for proposal) did not adhere to the division's own standard operating procedures for soliciting and selecting proposals for disbursement of stripper well funds.

As of January 1, 1991, DET had issued only one request for proposals (RFP) to solicit proposals to be funded with stripper well monies. DET issued a

news release and a legal notice (which served as DET's request for proposal) requesting energy-related projects and proposals funded by oil overcharge funds in July 1988. Both the news release and the legal notice stated that Governor Ray Mabus and DET officials had designated education, economic development, and quality of life as the categories of projects to provide restitutionary benefit to the people of Mississippi.

Neither the department's July 1988 news release nor its legal notice fully complied with its own established standard operating procedures for requesting project proposals because:

- neither the news release nor the legal notice contained the elements of a formal request for proposals;
- neither contained a detailed description of projects and scope of work;
- neither contained specific evaluation criteria; and,
- neither contained a statement of relative importance of each evaluation criteria.

In addition, DET's process for evaluating proposals received did not fully comply with the department's established standard operating procedures for selecting firms to receive contracts because:

- the proposals were not reviewed by an in-house review committee;
- three task forces reviewed only brief descriptions of project proposals;
- the task forces did not maintain minutes of all their meetings;
- DET's Executive Director did not select projects from the task forces' "short list;" and,
- DET's Executive Director did not compile a memo summarizing his rankings.

The department's failure to comply with its own standard operating procedures could result in biased treatment of project proposals.

At the time of the July 1988 news release and legal notice, the Board of Energy and Transportation had not prepared a statewide energy and transportation plan as mandated by MISS. CODE ANN. Section 57-39-9 (1972). Without such a plan, DET had no basis on which to develop formal criteria to evaluate stripper well proposals in the context of the state's energy needs and court-ordered guidelines.

MISS. CODE ANN. Section 57-39-9 (1972) requires the Executive Director of the Department of Economic and Community Development to prepare the Mississippi Energy and Transportation Plan directed at achieving a coordinated and balanced energy program and transportation system for Mississippi. According to DET personnel, the division has not yet formulated a statewide energy and transportation plan although the Legislature mandated such a plan during its 1980 session.

The federal court's stripper well order provides state governments with the responsibility of selecting the specific programs on which to utilize stripper well funds to provide restitution to the state's citizens. Although DET currently has standards for the issuance of requests for proposals, the division has no specific proposal evaluation criteria which relate to and ensure compliance with the stripper well court settlement. Such evaluation criteria for stripper well proposals should flow from the statewide energy and transportation plan and provide DET with a perspective of the state's needs and a point of reference in reviewing contract proposals and awarding stripper well funds.

The lack of a statewide energy and transportation plan and specific stripper well proposal evaluation criteria could be an explanation for the fact that DET has expended only 27% of Mississippi's available stripper well funds. Unallocated and unexpended stripper well funds do not further the purpose of the oil overcharge program to fund new or existing energy-related programs which are designed to benefit, directly or indirectly, consumers of petroleum products within the state.

In sixteen of forty-one (39%) active stripper well program contracts reviewed by PEER, the DET staff failed to require contractors to comply fully with the terms of their contracts. Of these sixteen contracts, DET made payments to eleven contractors (69%) even though they did not produce the deliverables required by their contracts.

PEER reviewed a sample of forty-one of the department's sixty-four stripper well contracts to evaluate conformity and timeliness of deliverables to contract specifications. Within these forty-one contracts, DET staff failed to require sixteen contractors (39%) to comply fully with terms of their contracts (i.e., deliverables were not produced in accordance with contract specifications). In addition, DET made contract payments to eleven of the sixteen contractors (68%) even though they did not produce the deliverables required by their contracts. Incidents such as these do not contribute to the oil overcharge program's purpose of providing restitution to consumers injured by the petroleum overcharges.

In reviewing DET's stripper well project files, PEER found that DET staff do not consistently adhere to the division's monitoring procedures and are not uniform in their monitoring of stripper well contracts. In addition, DET does not follow a policy of requiring contractors to submit proof of compliance with their contracts prior to receiving payment. Because of these weaknesses, DET staff have paid contracts even though contract-required deliverables were not produced.

Concerning one contract, PEER staff found that DET paid \$48,000 to Alpha Company in installments subsequent to the completion (as reported by the company, but unverified by DET staff) of each task of a three-task project to develop designs for using concrete in place of steel for large off-shore vessels and submersible platforms. Eighteen months after its projected completion date, none of the contract's three tasks have been completely fulfilled according to DET status reports. Despite the contractor's failure to fulfill the terms of the contract, DET staff continued making payments to the contractor, which is a possible violation of MISS. CODE ANN. Section 97-11-29 (1972). In addition, the contractor is in potential violation of MISS. CODE ANN. Section 97-7-10 (1972) for intent to defraud the state.

In conducting this review, PEER determined that Larry Jennings, who is not a registered professional engineer, represented himself as a registered professional engineer to DET in a proposal submitted for the purpose of obtaining oil overcharge funds.

According to DET's "Contract Status Report as of April 30, 1991," the division has awarded EMC, Inc., an engineering management consultant firm owned by Larry Jennings, three contracts, with two of those funded by stripper well funds totalling \$181,119. In July 1989, Jennings submitted a joint-venture proposal with Neel-Schaffer, Inc., to obtain oil overcharge funds to conduct a project entitled *A Technical Assistance and Energy Conservation Program for Local Government*. DET approved EMC/Neel-Schaffer's proposal and awarded the joint venture \$100,000 to complete the project by June 30, 1991. As of April 30, 1991, the joint venture had received \$4,830.

The joint venture's proposal package contains a resume' for Larry Jennings which lists his registration as "*Professional Engineer: Mississippi*." Although Jennings has a Bachelor of Science degree in Electrical Engineering from Mississippi State University, he is not a registered professional engineer according to records of the State Board of Registration for Professional Engineers and Land Surveyors.

Thus, in his joint-venture proposal submission, Jennings misrepresented his professional qualifications and violated Mississippi statutes and board rules and regulations. MISS. CODE ANN. Section 97-7-10 (1972) provides that any person convicted of making fraudulent statements against the state shall be punished by a fine of not more than \$10,000, imprisonment for not more than five years, or both.

CONCLUSION REGARDING OVERSIGHT OF OIL OVERCHARGE FUNDS

Oversight of the allocation of oil overcharge funds helps to insure fair allocation and efficient utilization of these funds. Although thirty-three states require varying degrees of legislative oversight of such funds, seventeen states (including Mississippi) delegate such responsibility to the governor, an executive agency or an advisory commission.

Historically, the Mississippi Legislature's involvement has been limited to appropriating allocations made to specific agencies by the Department of Finance and Administration, rather than approving specific energy-related projects and contractors. The current process does not provide for a statewide perspective regarding the disbursement of oil overcharge funds. In addition, the Legislature, which represents the total interests of the state, is limited to appropriation actions based on allocation decisions previously made by the Governor.

RECOMMENDATIONS

1. The Division of Energy and Transportation should adhere to its own standard operating procedures in soliciting and selecting proposals in its administration and management of oil overcharge funds.
2. The Division of Energy and Transportation should prepare, implement and submit to the Legislature the Mississippi Energy and Transportation Plan as mandated by MISS. CODE ANN. (1972) Section 57-39-9. In addition, the Legislature should require the Division of Energy and Transportation to compile a report and submit it annually to the Legislature which details the disbursement and utilization of oil overcharge funds. In particular, the report should address the effectiveness of all contracts funded by oil overcharge funds.
3. The Division of Energy and Transportation should adopt a policy requiring contractors to submit proof of compliance with their contract(s) prior to receiving payments. In addition, the division should not enter into contracts with persons who have not fulfilled all obligations of previous contracts with the division.
4. The Executive Director of the PEER Committee should forward a copy of this report to the Department of Audit and Attorney General's Office for investigation and prosecution of DET employees for potential violation of MISS. CODE ANN. Section 97-11-29 (1972) by approving expenditures for which there were no deliverables.
5. The Executive Director of the PEER Committee should forward a copy of this report to the Department of Audit and Attorney General's Office for investigation and potential prosecution of Larry Jennings and Jerry Hemphill (President of Alpha Company) for violation of MISS. CODE ANN. Section 97-7-10 (1972) by making fraudulent representations.
6. The Executive Director of the PEER Committee should forward a copy of this report to the Board of Engineers for its review and investigation.
7. The Legislature should consider approving an expert review committee within the Division of Energy and Transportation to review proposals and approve all oil overcharge-funded contracts entered into by that division. (See Appendix E, page 39, for proposed legislation.)

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INTRODUCTION

Oil overcharge funds are meant to provide court-ordered restitution to consumers overcharged by oil companies for petroleum products during the period of federal regulation of petroleum product pricing from 1973 through 1981. In Mississippi, the Department of Economic and Community Development's (DECD) Division of Energy and Transportation (DET) utilizes oil overcharge program funds to promote energy conservation and assistance programs. (As a result of state government reorganization, the Department of Energy and Transportation became a division of the Department of Economic and Community Development on July 1, 1989.) A legislator expressed concern over the state's administration and awarding of such grants and contracts and requested PEER to conduct a review.

Authority

At its meeting on February 14, 1990, the PEER Committee approved a review of DET's oil overcharge program. The Committee acted in accordance with MISS. CODE ANN. Section 5-3-57 (1972).

Scope and Purpose

PEER's review focused on DET's administration of funds received through the oil overcharge program. This report concentrates on whether DET complied with all relevant court orders, federal regulations and generally accepted management principles in management of its share of Mississippi's oil overcharge funds, particularly its solicitation of proposals and awarding of contracts funded with money allocated to DET as a result of the stripper well settlement. Funds from this settlement are intended to provide restitution to consumers injured by miscertification of federally controlled crude oil in the 1970's. This report does not analyze the effectiveness of DET's use of oil overcharge funds.

Methodology

In conducting this review, PEER performed the following tasks:

- Interviewed staff of the U. S. Department of Energy, Office of General Counsel;
- Interviewed current and former employees of the Department of Economic and Community Development's Division of Energy and

Transportation and the Board of Registration for Professional Engineers and Land Surveyors;

- Reviewed federal regulations governing allocation of oil overcharge funds; and,
- Reviewed DET oil overcharge program files.

Overview

In Mississippi, oil overcharge funds are received from the United States Department of Energy and deposited into an interest-bearing clearing account at the Department of Finance and Administration. These funds are then allocated by the Governor to the Department of Human Services, Division of Community Services; Department of Wildlife, Fisheries and Parks; Department of Environmental Quality; or, the Department of Economic and Community Development, Division of Energy and Transportation.

A July 1988 DET news release and legal notice did not adhere to the division's own standard operating procedures for soliciting and selecting proposals for disbursement of stripper well funds. (As of January 1, 1991, DET had issued only one request for proposals to solicit proposals to be funded with stripper well monies.) The department's failure to comply with its own standard operating procedures could have resulted in biased treatment of project proposals.

At the time of the July 1988 news release and legal notice, the Energy and Transportation Board had not prepared a statewide energy and transportation plan as mandated by MISS. CODE ANN. Section 57-39-9 (1972). Failure of the board to formulate a statewide energy and transportation plan left the department without a basis on which to develop formal criteria to evaluate stripper well proposals in the context of the state's energy needs and court-ordered guidelines. The lack of a statewide plan and stripper well evaluation factors is one explanation as to why DET has expended only 27% of Mississippi's available stripper well funds.

PEER reviewed stripper well program contracts and determined that DET has not ensured that all contractors strictly comply with the requirements of their contracts (i.e., deliverables were not produced in accordance with contract specifications). In some of the contracts, DET made payments to contractors although deliverables were not provided. In addition, PEER determined that Larry Jennings, who is not a registered engineer, represented himself as a registered professional engineer to DET in a proposal submitted for the purpose of obtaining oil overcharge funds.

BACKGROUND

In late 1973 and early 1974, the Organization of Petroleum Exporting Countries (OPEC) embargoed crude oil exports to the United States and then substantially increased the price of its crude oil exports. In response to the Arab oil embargo and to prevent price gouging by domestic crude oil producers, Congress passed the Emergency Petroleum Allocation Act (EPPA) of 1973 (15 U.S.C. 751 et seq.). Between August 1973 and January 1981, the United States Department of Energy (DOE) established and enforced the allocation and pricing of crude oil and refined petroleum products by oil companies.

Under the initial regulations of the EPPA, only two kinds of oil were exempt from price controls: crude oil produced in excess of 1972 production levels (referred to as upper tier or "new" oil) and crude oil produced from stripper wells. Stripper wells were classified as wells which produced ten or fewer barrels of crude each day. Stripper well oil was exempt to encourage more production from such wells, in hopes of producing as much domestic oil as possible in response to the OPEC embargo. All other domestic crude oil (referred to as lower tier or "old" oil) was price-controlled. The Energy Policy and Conservation Act (Public Law 94-163), passed by Congress on December 22, 1975, amended the EPPA and required DOE to establish ceiling prices for all domestic oil, including stripper well oil. However, the Energy Conservation and Production Act (Public Law 94-385), passed by Congress on August 14, 1976, re-enacted the stripper-well exemption, but pricing of new and old oil remained regulated. Thus, between 1976 and the end of price controls in 1981, there were three basic price classes for domestic crude oil: old, new and uncontrolled.

DOE charged several companies with committing civil violations of these regulations by overcharging for such products. Several suits were filed against Exxon, Sohio, Amoco and other oil companies for overcharges during the regulated era, and negotiated settlements with these companies provide restitution to consumers via state government programs and federal programs administered by the states. The United States Department of Energy disburses funds from these settlements to state governments through Petroleum Violation Escrow (PVE) accounts.

Exxon and Stripper Well Settlements

Two of the largest enforcement suits ever brought by the federal government involved the decision in *U.S. v. Exxon Corporation* and the settlement agreement in *In Re: Department of Energy Stripper Well Exemption Litigation*. Since March 1986, the states and the U.S. territories have received approximately \$3.3 billion in funds obtained through the Exxon decision and stripper well settlement. Federal sources estimate that another \$1 billion may still be collected from oil companies during the next five to ten years.

Exxon Settlement

In July 1985 a U.S. court of appeals affirmed a district court's decision and found the Exxon Corporation in violation of the price control regulations. This decision resulted in the distribution of \$2.1 billion to the states and U.S. territories which, in turn, were to return these funds to consumers through five designated federal energy programs. These five programs, as specified in the decision, include the State Energy Conservation Program, the Energy Extension Service, the Institutional Conservation Program, the Weatherization Assistance Program and the Low-Income Home Energy Assistance Program. DOE administers the first four programs and the Department of Health and Human Services administers the last program through a block grant.

As of November 1989, Mississippi had received \$28.4 million in Exxon funds.

Stripper Well Settlement

The stripper well case was settled in 1986 before a district court in Kansas. The stripper well settlement resulted from allegations that crude oil producers had miscertified federally controlled crude oil to avoid price restrictions. The charges related to the issue of whether producers had incorrectly classified oil produced from injection well properties as stripper well oil, which was exempt from federal petroleum price controls. An injection well is one of the various types of wells used in secondary recovery operations. Fluids are forced into the underground crude oil reservoir through injection wells to maintain reservoir pressure and thus help increase production from nearby producing wells. DOE's Ruling 1974-29 stated that injection wells were to be excluded from the well count for purposes of calculating the average daily production per well. As stated earlier, stripper wells are those wells which produce ten or fewer barrels of oil each day. The Kansas district court decided that producers had improperly certified the oil in question which resulted in overcharges to the customers.

The stripper well settlement allows states to utilize funds for public projects allowable under the five above-mentioned federal grant programs and certain non-grant projects approved in previous oil overcharge cases, including ones approved by DOE's Office of Hearing and Appeals. Such projects include energy audits, public transportation projects and highway and bridge maintenance. In addition, stripper well funds may be used for restitutionary programs that may be approved by the court which approved the stripper well agreement. The settlement states that "*monies received by any state shall be utilized to fund one or more existing or new energy-related programs which are designed to benefit, directly or indirectly, consumers of petroleum products within the state*" and that "*each state shall take into consideration the facts relating to usage of petroleum*

products within such state during the Settlement Period by various categories of such consumers."

As of November 1989, Mississippi had received \$16.9 million in stripper well funds.

Administration of Oil Overcharge Funds

Disbursement of Oil Overcharge Funds

In both the Exxon and stripper well decisions, the courts directed that the U. S. Department of Energy disburse the funds to each state according to a formula based primarily on the state's consumption of refined petroleum products during the period of regulation. State governments are to allocate the funds, within guidelines specified in each decision, to new or existing energy programs in a manner designed to provide restitution to the class(es) of purchasers who bore the burden of the overcharges. Certain minimal public participation requirements apply. All of the funds must be used to supplement, not supplant, available resources--that is, funds must be utilized to complement, not replace, existing resources. There are two additional stipulations made by the Kansas district court relevant to the states in the stripper well case: first, the states must spend an "equitable share" of the funds on exclusively low-income programs; and, second, Indian tribal governments are entitled to receive "an appropriate equitable share" of the benefits provided by the states.

States received about \$727 million, including interest, in stripper well funds in August 1986. DOE distributed additional stripper well funds totalling approximately \$127 million to the states in November 1986, April 1987 and June 1987. The courts did not specify a time frame for spending Exxon or stripper well funds.

Limited Federal Oversight of Funds

Federal regulations tightly control funds in such programs as Medicaid and Medicare. The oil overcharge program is funded from federal escrow accounts, but it is not under stringent federal regulations. DOE has determined that, after disbursement to the states, oil overcharge funds are not federal funds. U. S. Department of Energy officials define federal funds, or public funds, as "revenue," or "*the income of the government arising from taxation, duties and the like.*" Oil overcharge funds are not revenue, rather they are funds improperly paid by oil consumers which were held in escrow by the court and DOE to be distributed to the states as indirect restitution to their citizens.

DOE monitors the states' use of funds after approving states' plans and has established two sets of procedures for monitoring funds--one for

projects allowable under energy grant programs and another for non-grant projects. DOE's procedures for monitoring grant project funds place primary reliance on the states for carrying out on-site monitoring. Its procedures for monitoring stripper well funds used for non-grant projects call for even less DOE involvement and do not set expectations for state on-site monitoring. Monitoring non-grant projects is limited to reviewing state plans for spending and annual state expenditure reports. States must submit an annual report to the DOE as to the expenditure of PVE funds for that year.

States' Administration of Oil Overcharge Funds

Each state follows these steps in administering its oil overcharge funds:

1. *Formulation and approval of plans within the state.* The Exxon decision requires states to submit proposed spending plans to DOE for approval. The stripper well settlement requires states to submit proposed spending plans to both DOE and the Kansas district court thirty days prior to such expenditures and to submit an annual expenditure report.
2. *DOE/Department of Health and Human Services concurs with the state's plan.* Any changes to the plan must also be approved.
3. *The state obligates funds with contractors or recipients.*
4. *The state expends the funds.* The state's administering agency issues payments to contractors after contract specifications have been met.

Mississippi's Administration of Oil Overcharge Funds

Five executive departments administer programs funded by oil overcharge monies in Mississippi. DET, as the Governor's designee, develops the state's expenditure plan. After approval of this state plan by the Governor, DET submits the plan to DOE for approval. The five departments which administer oil overcharge monies are:

- *Department of Finance and Administration* serves as the receiver of oil overcharge funds from the Department of Energy and administers Exxon and stripper well funds from two separate clearing accounts. Upon the Governor's instructions, the department disburses the appropriate funds to the four other departments.
- *Department of Human Services, Division of Community Services* administers the Weatherization Assistance Program, which

provides funds to weatherize homes of low-income Mississippians which meet certain income guidelines.

- *Department of Wildlife, Fisheries and Parks* administers funds under the State Park Energy Improvement Program which funds energy audits and projects designed to promote alternative and renewable energy resource utilization in state park facilities;
- *Department of Environmental Quality* administers the Solid Waste Management Plan and provides matching grants for waste minimization projects; and,
- *Department of Economic and Community Development, Division of Energy and Transportation* supports the development and/or implementation of energy-efficient projects in accordance with the stripper well settlement agreement. DET submitted its first plan for the allocation of stripper well funds to DOE in December 1987.

Prior to state government reorganization in 1989, the Energy and Transportation Board approved all contracts funded by oil overcharge monies. Since state government reorganization, the Executive Director of the Department of Economic and Community Development approves oil overcharge contracts. (MISS. CODE ANN. Section 57-1-3 (2) (1972) establishes a twenty-five member advisory board to advise DECD staff on matters under the jurisdiction of the department. However, the advisory board has no authority to approve or disapprove oil overcharge contracts.)

Unlike personal services contracts, oil overcharge contracts are not subject to the State Personnel Board's (SPB) review and approval/disapproval. SPB's *Contract Personnel Service Policies and Administrative Procedures*, promulgated in accordance with MISS. CODE ANN. Sections 25-9-107 and 25-9-133 (1972), states that contracts involving the transfer of funds, pass-through funds, allocation of block grants and assessments are excluded from Personnel Board contract approval requirements.

FINDINGS

The Department of Economic and Community Development, through its Division of Energy and Transportation (DET), is the agency primarily responsible for administering the state's oil overcharge fund program. This review documented DET's failure to adhere to its standard operating procedures for soliciting and selecting proposals for disbursement of stripper well funds as well as its lack of a statewide energy and transportation plan on which to base proposal evaluation criteria. The review also identified a potential violation of state law involving a contractor who falsely claimed to be a registered professional engineer.

A July 1988 Division of Energy and Transportation news release and legal notice (which served as DET's request for proposal) did not adhere to the division's own standard operating procedures for soliciting and selecting proposals for disbursement of stripper well funds.

As previously stated, the stripper well federal court order provides that states "*are in the best position to select the specific programs that will most effectively provide restitution to their citizens.*" While the court makes the states responsible for selection decisions, it does not mandate the methods which must be utilized to make such decisions. In addition to the stripper well funds, DET has other programs which it administers and to which it awards contracts. As a result, DET has standard operating procedures for requests for proposals which could be utilized to award funds from any program within its purview. As of January 1, 1991, DET had issued only one request for proposals (RFP) to solicit proposals to be funded with stripper well monies. This RFP was issued in July 1988.

DET's standard operating procedures for requests for proposals

DET's standard operating procedures for requests for proposals state that the RFPs should contain a clear and accurate description of the technical requirements of a project. In addition, requests for proposals should include information regarding deadlines for submission; a description of the rating system to be used in evaluating the proposals, including the evaluation criteria; and any other special conditions to be considered as part of the procurement process.

DET's standard operating procedures for requests for proposals are consistent with those contained in the American Bar Association's *Model Procurement Code for State and Local Governments*. (The American Bar Association [ABA] approved the suggested statutory provisions and Code Commentary on February 13, 1979, for use by state and local governments.) The ABA recommends that state and local entities utilize competitive selection procedures for procuring professional services. In particular, the Code recommends that state and local governing authorities' procurement

officers should utilize a request for proposals to give adequate notice of the need for such services. The request for proposal should describe the services required, list the type of information and data required of each offerer, and state the relative importance of particular qualifications. The ABA's recommended standards recognize the importance of requests for proposals as tools to objectively solicit and evaluate proposals to provide needed services. DET's RFP requirements are in accordance with these recommended standards.

DET's standard operating procedures for evaluating proposals

DET's standard operating procedures for RFPs state that after determining that outside services are needed to meet the department's needs, the executive director will appoint a selection committee (of DET employees) to develop a request for proposal, receive responses, and perform an initial evaluation of the responses. Standard operating procedures require that selection committee members to review proposals in their entirety for completeness. DET's standard operating procedures require selection committee members to analyze all proposals received and assign numerical rankings, with each evaluation factor having a value of ten points.

The selection committee then meets to develop a "short list" of firms to be recommended to the executive director for contact. The procedures require firms receiving the highest numerical ratings to become a part of the "short list." In addition, the "short list" must contain a minimum of three firms if at least three firms responded. After compiling the "short list," the selection committee submits the list to the executive director without numerical rankings. The executive director then reviews the short list firms and, based on evaluation factors stated in DET's standard operating procedures, selects the firm most qualified to receive a contract. The department's standard operating procedures also require the director to construct a memorandum summarizing his/her ratings and review of the short-listed firms.

DET's 1988 RFP

In July 1988, DET issued a news release and legal notice requesting energy-related projects and proposals to be funded by oil overcharge funds. (Stripper well funds are one type of oil overcharge funds. See pages 3 and 4 for an explanation of oil overcharge, or PVE, funds.) DET staff informed PEER that these documents served as the RFP. PEER concludes that DET's use of the news release and legal notice and evaluation of proposals received did not comply with the division's established standard operating procedures.

- ***DET's 1988 PVE proposals news release and legal notice did not comply with its standard operating procedures for requests for proposals***

The department's July 1988 news release and legal notice did not fully comply with its own established standard operating procedures for requesting project proposals.

- ***No Formal Request for Proposal Document*** - DET utilized a brief news release issued by the department's media office and a legal notice as a request for proposals to notify the public of the availability of stripper well funds for energy-related proposals. Because the news release was simply a "for immediate release" notification to the media, the document did not have the character of a formal "*solicitation document*" described in the department's standard operating procedures. In addition, the department had no guarantees as to how the information would be disseminated to the general public by the print and audiovisual media. This differs from an official request for proposal, which is clearly and formally written to describe the services requested and widely advertised through the media.
- ***No Detailed Description of Project and Scope of Work*** - The news release and legal notice did not describe in detail a particular project (or projects) for which DET was soliciting proposals. The department simply requested energy-saving proposals which complied with the three broad categories determined by Governor Mabus and DET officials. (The news release and legal notice did not provide any explanation as to how and why the Governor and DET officials determined that the categories of education, economic development, and quality of life were the most appropriate areas to provide energy-related restitutionary benefits to the state's citizens. At the time of the news release, the federal Department of Energy had not determined the department's three broad categories of stripper well proposals to be consistent with the court's settlement agreement. On January 2, 1990, and March 29, 1990, approximately nineteen and twenty-one months, respectively, after the July 1988 news release, the Department of Energy [DOE] determined the categories of education, economic development and quality of life to be consistent with the settlement agreement.)
- ***No Specific Evaluation Criteria*** - Evaluation criteria listed in the news release and legal notice were stated in "*broad*" terms and did not include the specific evaluation factors listed in the department's standard operating procedures. DET's news release stated that "*criteria for funding will include but not be limited to energy savings to be realized, type of restitutionary benefit and the size of the population receiving the benefit, time periods for project development and results and justification for need of this project.*"

- ***No Statement of Relative Importance of Each Evaluation Criteria*** - The news release and legal notice also did not state the relative importance of each evaluation criteria as required by department procedures. PEER agrees that the department should have the flexibility to impose additional evaluation criteria unique to particular projects. However, the use of broad, non-descriptive criteria deprives department employees from evaluating all contract proposals according to standardized criteria designed to comply with the intent of the program.

DET's July 1988 news release noted that PVE funds must be utilized to give restitution and benefit to the consumers of each state by developing energy saving projects and programs. The news release further stated that Governor Ray Mabus and DET officials had designated the following categories of projects and programs in order to provide restitutionary benefit to all of the people of Mississippi: education, economic development, and quality of life. The news release provided examples of prior DET energy contracts which represented each of these categories. PEER staff questions whether these three categories of projects fulfill the purpose of the oil overcharge program of providing restitution to those consumers overcharged by oil companies during federal pricing regulations.

- ***DET's process for evaluating proposals received did not fully comply with the department's standard operating procedures for requests for proposals.***

DET's process for evaluating proposals received did not fully comply with the department's established standard operating procedures for selecting firms to receive contracts.

- ***Proposals Not Reviewed by In-House Review Committee*** - Although DET's news release states that "*proposals will be reviewed by an in-house review committee appointed by Mr. Andrew Jenkins, Executive Director of the Agency,*" the proposals were actually reviewed by three task forces which consisted primarily of non-DET individuals. (See Exhibit 1, page 12, for a listing of the three task forces and their membership.)
- ***Task Forces Did Not Review Actual Proposals*** - The task forces met three times and reviewed brief descriptions of each project proposal. Task force members were not provided complete copies of actual proposals as required by DET's standard operating procedures.
- ***Task Forces Did Not Maintain Minutes of All Meetings*** - Although the task forces maintained minutes of their two organizational meetings, DET officials could not provide to PEER minutes of their third meeting, at which they determined their selection criteria

EXHIBIT 1

1988 TASK FORCES WHICH REVIEWED OIL OVERCHARGE PROGRAM PROPOSALS

EDUCATION TASK FORCE

Andrew Jenkins	Executive Director, Department of Energy and Transportation
Dr. Ray Cleere	Commissioner of Higher Education
Olan Ray	Education Specialist, Governor's Staff
Jere Nash	Policy Director, Governor's Staff
Earl Washington	DET Board Member
John Lee	DET Board Member
Donna Sones	Governor's Staff

ECONOMIC DEVELOPMENT TASK FORCE

Andrew Jenkins	Executive Director, Department of Energy and Transportation
P. D. Fyke	Economic Development Specialist, Governor's Staff
Kevin Bennett	Attorney, Department of Economic Development
John Horhn	Tourism Director, Department of Economic Development
Jere Nash	Policy Director, Governor's Staff
Kenneth Williams	DET Board Member
Sam Dunlap	DET Board Member
Donna Sones	Governor's Staff
J. Mac Holladay	Executive Director, Department of Economic Development

QUALITY OF LIFE TASK FORCE

Andrew Jenkins	Executive Director, Department of Energy and Transportation
Anne Sapp	Health Specialist, Governor's Staff
John Horhn	Tourism Director, Department of Economic Development
Jere Nash	Policy Director, Governor's Staff
Lisa Bourdeaux	Reorganization Specialist, Governor's Staff
"Hoot" Gipson	DET Board Member
Earl Washington	DET Board Member
Donna Sones	Governor's Staff

SOURCE: DET documents (Note: All position titles reflect agency names prior to state government reorganization in 1989.)

and recommendations of proposals to be funded by stripper well funds.

- ***DET Executive Director Did Not Select Projects from the "Short List"*** - After the task forces' final meeting, an in-house committee composed of four DET engineers divided the proposals by the state's five congressional districts and ranked them according to the engineers' own criteria and the recommendations of the task forces. The in-house selection committee developed and submitted to DET's executive director their "short list" of recommended proposals as required by the department's standard operating procedures. As previously stated, DET's standard operating procedures require the department's executive director to award contracts from proposals which appear on the "short list" compiled by the in-house selection committee. With regard to the July 1988 proposals, Andrew Jenkins, DET Executive Director, selected proposals to receive stripper well funds and determined their level of funding based solely on his discretion. (The Board of Energy and Transportation reviewed and approved Jenkins' selection of stripper well proposals to be funded.)
- ***DET Executive Director Did Not Compile Memo Summarizing Rankings*** - Andrew Jenkins did not compile a memorandum summarizing his ratings and review of the short-listed firms as required by DET's standard operating procedures.

DET's failure to comply with its own standard operating procedures could have resulted in biased treatment of project proposals.

At the time of the July 1988 news release and legal notice, the Board of Energy and Transportation had not prepared a statewide energy and transportation plan as mandated by MISS. CODE ANN. Section 57-39-9 (1972). Without such a plan, the department had no basis on which to develop formal criteria to evaluate stripper well proposals in the context of the state's energy needs and court-ordered guidelines.

MISS. CODE ANN. Section 57-39-9 (1972), initially enacted in 1980, required the Board of Energy and Transportation (now the Department of Economic and Community Development) to prepare the Mississippi Energy and Transportation Plan directed at achieving a coordinated and balanced energy program and transportation system for Mississippi. State law requires that the plan be furnished to members of the Legislature and be used by all state agencies and offices to guide and coordinate energy and transportation activities. MISS. CODE ANN. Section 57-39-11 (3)(e) states that the plan shall include "*a program for directing the expenditure of local, state and federal energy and transportation funds in conformity with the statewide plan.*" These sections of state law present evidence that dictates that the state's energy and transportation efforts be conducted in a comprehensive and efficient manner.

The formulation of a statewide energy and transportation plan is important given the restitutionary nature of stripper well funds. The federal court's stripper well order [In Re: The Department of Energy Stripper Well Exemption Litigation] provides state governments with the responsibility of selecting the specific programs on which to utilize stripper well funds to provide restitution to the state's citizens. The federal court order states that "*state governments are familiar with the particular energy needs of their citizens, and therefore they are in the best position to select the specific programs that will most effectively provide restitution to their citizens.*" A statewide energy and transportation plan would provide DET officials with formal criteria on which to base stripper well contracts and ensure their compliance with the state's energy efforts as contained in state law.

According to DET personnel, the board had not formulated a statewide energy and transportation plan at the time of the July 1988 news release soliciting stripper well proposals, although the Legislature mandated such a plan during its 1980 session. DET records show that there have been at least two attempts to formulate a statewide energy and transportation plan. One was an in-house attempt in 1984 by Energy Division employees and the other was a document produced in 1987 by an outside contractor (who was funded with oil overcharge funds). Neither attempt resulted in a final statewide plan presented to the Legislature as required by state law. (On June 13, 1991, DET employees reported to PEER that division officials were revising documents associated with their previous attempts to develop a statewide plan.)

The board's failure to formulate a statewide energy and transportation plan left DET without a basis on which to develop formal criteria to evaluate July 1988 stripper well proposals in the context of the state's energy needs. Although DET had standards for the issuance of requests for proposals (see subsequent finding), the division had no specific proposal evaluation criteria which related to and ensured compliance with the stripper well court settlement. Such evaluation criteria for stripper well proposals should have flowed from the statewide energy and transportation plan and provided DET with a perspective of the state's needs and a point of reference in reviewing contract proposals and awarding stripper well funds.

The lack of a statewide energy and transportation plan and specific stripper well proposal evaluation criteria could be an explanation for the fact that DET has expended only 27% of Mississippi's available stripper well funds. (Another explanation could be that the courts did not specify a time frame for obligating and expending stripper well funds.) Appendix A, page 27, lists all contractors to which DET has awarded stripper well funds. As of March 31, 1991, the Division of Energy and Transportation had expended only \$5,940,587 of Mississippi's total stripper well funds of \$21,471,821. Of the total amount available, the division had obligated \$5,895,634 in stripper well funds to fulfill contract balances, with \$51,126 remaining unobligated

by DET. A significant portion of stripper well funds, \$9,584,474, remained unallocated by the Governor in the Department of Finance and Administration's interest-bearing stripper well overcharge clearing account in the State Treasury. Unallocated and unexpended stripper well funds do not further the purpose of the oil overcharge program to fund new or existing energy-related programs which are designed to benefit, directly or indirectly, consumers of petroleum products within the state.

In sixteen of forty-one (39%) active stripper well program contracts reviewed by PEER, the DET staff failed to require contractors to comply fully with the terms of their contracts. Of these sixteen contracts, DET made payments to eleven contractors (69%) even though they did not produce the deliverables required by their contracts.

PEER reviewed a sample of forty-one of the department's sixty-four stripper well contracts to evaluate conformity and timeliness of deliverables to contract specifications. Within these forty-one contracts, DET staff failed to require sixteen contractors (39%) to comply fully with terms of their contracts (i.e., deliverables were not produced in accordance with contract specifications). In addition, DET made contract payments to eleven of the sixteen contractors (68%) even though they did not produce the deliverables required by their contracts (see Appendix B, page 29). Incidents such as these do not contribute to the oil overcharge program's purpose of providing restitution to consumers injured by the petroleum overcharges.

DET monitoring procedures for ensuring compliance with contract requirements consist of on-site inspection of the project location, physical inspection of work products, analysis of field inspections and submittal of such analyses to division supervisors. In reviewing DET's stripper well project files, PEER found that DET staff do not consistently adhere to the division's monitoring procedures and are not uniform in their monitoring of stripper well contracts. In addition, DET does not follow a policy of requiring contractors to submit proof of compliance with their contracts prior to receiving payment. Because of these weaknesses, DET staff have paid contracts even though contract-required deliverables were not produced.

Described below is an example of payments made by DET to a contractor who did not fully comply with contract requirements.

- DET paid \$48,000 to Alpha Company in installments subsequent to the "completion" (as reported by the company, but unverified by DET staff) of each task of a three-task project. Eighteen months after its projected completion date, none of the contract's three tasks have been completely fulfilled according to DET status reports. Despite the contractor's failure to comply fully with terms of the contract, DET staff continued making payments to the contractor, which is a potential violation of MISS. CODE ANN. Section 97-11-29 (1972). In addition, the

contractor is in potential violation of MISS. CODE ANN. Section 97-7-10 (1972) for intent to defraud the state.

Contractor: Alpha Company, Pass Christian, Mississippi; owner, Jerry Hemphill.

Proposal: To develop a design and process for using reinforced concrete in place of steel for large off-shore vessels and submersible platforms. Alpha Company presented three energy-saving arguments for this proposal:

- Unlike steel, concrete does not require high temperatures for manufacture and fabrication;
- Concrete vessels have an extremely favorable weight-to-displacement ratio, and will allow proportionately larger cargoes per vessel resulting in fewer vessels for a given amount of shipped material; and,
- Concrete vessels will have a longer life and save energy by lengthening the time before replacement.

Amount of Award: \$50,000, consisting of a \$5,000 grant and a \$45,000 small business loan. Alpha was to draw \$16,000 after completion of three separate tasks, with \$2,000 upon total fulfillment of the contract.

Summary: Task One required Alpha to develop and submit designs and specifications for three off-shore vessels, along with a project engineer's review of such. Alpha only submitted sketch plans without specifications or a project engineer's review (see Appendix C, page 32). Task Two required a comparison of the design parameters to known concrete data; a computer-performed design analysis; and a written review of the design analysis by the U. S. Army Corps of Engineers. Because Alpha did not complete Task One, Task Two could not be completed as required. In addition, the Corps found Alpha's design work to be inadequate and was unable to perform its written review. Task Three required Alpha to compile cost estimates and perform market analysis to identify prime areas for use of the proposed concrete vessels. Alpha did not perform cost estimates because of its apprehension that preliminary estimates would be viewed as final costs. In

addition, Alpha noted that, according to industry periodicals, [steel] supertankers would be in great demand for the next several years.

Status: Project incomplete as of April 30, 1991

According to DET's correspondence files, DET staff knew as early as July 17, 1989, that the Alpha Company was not complying with provisions of its loan agreement as detailed in the three required tasks. Despite this knowledge, DET staff approved contract payments to Alpha Company. Exhibit 2, page 18, describes events surrounding this contract along with PEER's exceptions to each payment. DET staff attempted to conduct an on-site visit to the Alpha Company on February 13, 1990, two months after DET approved the final \$16,000 payment to Hemphill.

Payments made to Alpha Company in spite of the firm's failure to deliver services as provided under the agreement could constitute willful and fraudulent entries into financial records governing the disbursement of funds and warrants (see MISS. CODE ANN. Section 97-11-29 (1972)). (See Appendix D, page 35, for a review of applicability of criminal statutes.) Any person guilty of such willful and fraudulent entries may be guilty of embezzlement and may be committed to the Department of Corrections for not more than ten years. In addition, the owner of Alpha Company, Mr. Jerry Hemphill, possibly violated MISS. CODE ANN. Section 97-7-10 (1972) when he told DET that the Corps of Engineers could not review his design due to a fear of competing with the private sector (see Exhibit 3, page 20). In correspondence dated September 11, 1989, the Corps of Engineers actually said that Mr. Hemphill's designs lacked the specifications necessary for a review and suggested that he have a professional improve the designs before a review (see Exhibit 4, page 21).

In conducting this review, PEER determined that Larry Jennings, who is not a registered professional engineer, represented himself as a registered professional engineer to DET in a proposal submitted for the purpose of obtaining oil overcharge funds.

During the course of this review, a legislator requested PEER to verify the registration of those persons listed as registered engineers on applications for certified technical assistance analysts. DET certifies technical assistance analysts in Mississippi for the Institutional Conservation Program (ICP) which is one of five established federal programs upon which stripper well funds may be spent. Based upon DET's most recent list of Certified Energy Auditors and Technical Assistance Analysts, the division has certified EMC, Inc., an engineering management consultant firm, to perform energy audits and technical analyses. According to the Secretary of State's records, EMC, Inc., is owned by Larry Jennings. Mr. Jennings listed two registered engineers as EMC, Inc., staff engineers on his application for certification; however,

EXHIBIT 2

CHRONOLOGY OF EVENTS RELATED TO DET'S CONTRACT WITH THE ALPHA COMPANY TO DESIGN CONCRETE BOATS

DET records show that The Alpha Company developed three project tasks to be completed during the course of this project. One task was to be completed prior to each draw-down of \$16,000. DET records show that payments were made to The Alpha Company prior to the completion of the tasks. Following is a summary of events related to this contract, along with dates and PEER's comments.

PAYMENT 1

6/9/89 Jerry Hemphill, President of The Alpha Company, and Andrew Jenkins, DET Executive Director, signed the loan agreement for DET contract # 89-121-024

DET staff members Rebecca Myers, Program Manager, and Fred Heindl, Division Director, signed DET Purchase Order #1224 in the amount of \$16,000 payable to The Alpha Company

6/13/89 Andrew Jenkins signed DET Purchase Order #1224 for \$16,000 payable to The Alpha Company

Kay Sheffield, Branch Director, DET, signed Requisition for Warrant #3830 for Purchase Order #1224 for \$16,000 payable to The Alpha Company

7/17/89 Jerry Hemphill delivered three drawings minus construction specifications to DET staff

7/21/89 Alpha Company requested its second draw-down of \$16,000 from DET

PEER: DET paid The Alpha Company before Alpha completed the first deliverable (drawings and review of specifications). DET began the paperwork necessary to pay The Alpha Company the same day that the loan agreement was signed.

PAYMENT 2

8/1/89 DET staff members Rebecca Myers, Program Manager, and Fred Heindl, Division Director, signed DET Purchase Order #88 for the amount of \$16,000 payable to The Alpha Company

Andrew Jenkins signed DET Purchase Order #88 for \$16,000 payable to The Alpha Company

8/14/89 Kay Sheffield, Branch Director, DET, signed Requisition for Warrant # 830/166 for Purchase Order #830/88 for \$16,000 payable to The Alpha Company

8/17/89 Warrant for \$16,000 issued to The Alpha Company

PEER: DET again paid Alpha Company before the second deliverable (written review of plans by the U. S. Army Corps of Engineers) was produced.

SOURCE: DET Documents (Note: All information is as it appears on DET documents.)

PAYMENT 3

- 9/11/90 Kenneth L. Saucier, Chief, Concrete Technology Division, U. S. Army Corps of Engineers, informed Jerry Hemphill that the Corps could not perform the requested analysis of Alpha Company designs and suggested that Mr. Hemphill consult with a designer with experience in concrete structures.
- 10/3/89 In a letter to Andrew Jenkins, Jerry Hemphill requested The Alpha Company's final draw-down of \$16,000
- 11/16/89 Jerry Hemphill informed DET that the Corps of Engineers would be unable to work on the project and that Mississippi State would replace the Corps.
- 11/21/89 DET staff members Rebecca Myers, Program Manager, and Fred Heindl, Division Director, signed DET Purchase Order #830/000458 for the amount of \$16,000 payable to The Alpha Company
- 11/28/89 Andrew Jenkins signed DET Purchase Order #830/000458 for \$16,000 payable to The Alpha Company
- 12/1/89 Kay Sheffield, Branch Director, DET, signed Payment Voucher (formerly known as a Requisition for Warrant) #830/000700 for Purchase Order #830/000458 for \$16,000 payable to The Alpha Company
- PEER:** Task three called for Alpha Company to provide cost estimation and market analysis for use of the concrete vessels. Alpha Company never submitted these deliverables.

In a letter dated September 11, 1989, to Jerry Hemphill, the Corps of Engineers stated, "The drawings provided do not give any details about reinforcing steels, joints, etc. Therefore, no estimate of load-carrying capacity could be performed. I recommend that you consult with a structural designer/analyst with experience in concrete shell structures and obtain an adequate structural design and analysis." In a letter dated November 16, 1989, to Andrew Jenkins, Jerry Hemphill stated, "Although the Corps of Engineers had initially indicated a willingness to carry out preliminary research, they later decided that they might be criticized for competing with private firms. Therefore, I opted to accept Mississippi State's proposal for the work." This is not what the Corps said. The essence of the Corps' letter was that Alpha Company's design specifications were not sufficient to conduct a review and that Mr. Hemphill should consult with an experienced designer in the area of concrete structures.

Further, in a letter dated May 21, 1990, to Mac Holladay, Andrew Jenkins admitted that the three deliverables had not been produced, but that DET had paid Alpha Company. Andrew Jenkins stated, "Under task one the design of three off-shore vessels were delivered minus construction specifications...This agency did attempt to assist Hemphill by awarding him the final draw-down contingent on the fact that he would complete the remainder of the project...Our position is that Alpha Company has not provided this agency with Task II or Task III of the original contract of which we advanced his funds." [sic]

EXHIBIT 4

CORRESPONDENCE FROM THE ARMY CORPS OF ENGINEERS TO
ALPHA COMPANY REGARDING SKETCH PLANS



DEPARTMENT OF THE ARMY
WATERWAYS EXPERIMENT STATION, CORPS OF ENGINEERS
3909 HALLS FERRY ROAD
VICKSBURG, MISSISSIPPI 39180-6199

September 11, 1989

REPLY TO
ATTENTION OF

Structures Laboratory

Mr. Jerry Hemphill
The Alpha Company
317 E. Second Street
Pass Christian, Mississippi 39571

Dear Jerry:

As requested, Concrete Technology Division personnel have performed an informal critique of the three concrete vessel concepts (Deep Ocean Miner, Deep Ocean Driller, Surface Vessel). The drawings provided do not give any details about reinforcing steel, joints, etc. Therefore, no estimate of load-carrying capacity could be performed. I recommend that you consult with a structural designer/analyst with experience in concrete shell structures and obtain an adequate structural design and analysis. A few considerations that were noted are:

- a. Keep the number of square or flat surfaces to a minimum.
- b. Keep as many surfaces and structural interfaces as possible rounded.
- c. Permeability and thermal cracking of these concrete structures are major areas that will need attention.
- d. Constructibility of this structure will be a task well beyond the state-of-the-art and will require new techniques and innovation. From this standpoint, the surface vessel is more in line with current technology.

If you have any questions, please call Mike Hammons (601/634-2752) or Don Smith (601/634-2918).

Sincerely,

Kenneth L. Saucier
Chief, Concrete Technology Division

neither of these men listed EMC., Inc., as his place of employment on registration records with the Board of Engineers.

Although DET's procedures require technical assistance analyst applicants to submit copies of their registration with the Board of Engineers, DET procedures do not require verification of who actually performs the technical analysis. Therefore, it is possible that unregistered or unqualified individuals could receive oil overcharge funds to perform tasks which should be performed by a registered engineer.

According to DET's "Contract Status Report as of April 30, 1991," the division has awarded EMC, Inc. three contracts, with two of those funded by stripper well funds totalling \$181,119. In July 1989, Jennings submitted a joint-venture proposal with Neel-Schaffer, Inc., to obtain oil overcharge funds to conduct a project entitled *A Technical Assistance and Energy Conservation Program for Local Government*. The purpose of the project was to provide DET with "a broad range of services in the areas of electrical engineering and technical expertise regarding energy consumption and related costs for the participants chosen by MDET." DET approved EMC/Neel-Schaffer's proposal and awarded the joint-venture \$100,000 to complete the project by June 30, 1991. As of April 30, 1991, the joint-venture had received \$4,830.

The joint-venture's proposal package contains a resume' for Larry Jennings which lists his registration as "*Professional Engineer: Mississippi*." Although Jennings has a Bachelor of Science degree in electrical engineering from Mississippi State University, he is not a registered professional engineer according to records of the State Board of Registration for Professional Engineers and Land Surveyors. MISS. CODE ANN. Section 73-13-3 states: "*The term 'professional engineer' . . . shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences, and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering. . . as attested by his legal registration as a professional engineer.*" (Emphasis added.) Rule 14.01 of the Board of Professional Engineers governs the allowance of a person to present him/herself as an engineer and states the following:

The statutes of this state provide that a person must be registered to practice or offer to practice engineering or land surveying in the state. Any firm, company, partnership or corporation may engage or offer to engage in the practice of engineering or land surveying, provided one or more of the principal officers of such corporation or firm or partners of such partnership and all personnel of such corporation, partnership or firm who act in its behalf as engineers or land surveyors are registered as provided by Title 73, Chapter 13 of the Code of Mississippi 1972.

PEER concludes that in his joint-venture proposal submission, Jennings misrepresented his professional qualifications and violated Mississippi statutes and board rules and regulations. (See Appendix D, page 35, for a review of applicability of criminal statutes.) MISS. CODE ANN. Section 97-7-10 (1972) provides that any person convicted of making fraudulent statements against the state shall be punished by a fine of not more than \$10,000, imprisonment for not more than five years, or both.

CONCLUSION REGARDING OVERSIGHT OF OIL OVERCHARGE FUNDS

Oversight of the allocation of oil overcharge funds helps to insure fair allocation and efficient utilization of these funds. Thirty-three states require varying degrees of legislative oversight of oil overcharge funds. Seventeen states require no legislative oversight. In these states, which include Mississippi, the governor, an executive agency or an advisory commission retains allocation authority.

In those states with a low degree of legislative oversight of oil overcharge funds, the governor makes recommendations to the legislature on the appropriation of the funds, the legislature reviews the proposed appropriations, votes on them, and returns the plan to the governor for final approval. In those states with a high degree of legislative oversight, the governor makes recommendations to the legislature, which has final authority over the disbursement of oil overcharge monies. Much of this legislative oversight includes disbursement of funds through legislative appropriations or review of the proposed expenditures by legislative committees. For example, after South Carolina's governor approves spending proposals, the proposals are sent to the Joint Legislative Energy Committee for approval. Once the committee concurs with a proposal, that proposal is sent to DOE. The South Carolina Joint Legislative Appropriations Review Committee makes final appropriations following DOE approval of the proposal. (Although separation of powers provisions of the Mississippi Constitution would not permit the Legislature to perform the administrative functions of approving specific projects, the Legislature could provide for closer scrutiny of the contract awards procedures through the appropriations process.)

Historically, the Mississippi Legislature's involvement in the state's share of oil overcharge funds has been limited to the appropriation of those total funds. The Legislature historically has not mandated funding for specific energy-related projects. As previously discussed in this report, the Department of Finance and Administration receives the state's share of oil overcharge funds and allocates them to specific state agencies based on the Governor's instructions. Executive agencies which receive oil overcharge fund allocations from DFA then include such allocations on their annual budget requests to the Legislature. During each session, the Legislature routinely provides expenditure authority for the disbursement of oil overcharge fund allocations through appropriation bills. In summary, the Legislature's involvement is limited to appropriating oil overcharge allocations made to specific agencies by DFA rather than approving specific energy-related projects and contractors.

The current process described above has at least one significant public policy implication. Although the stripper well court order states that *"state governments are familiar with the particular energy needs of their citizens, and therefore they are in the best position to select the specific programs that will most effectively provide restitution to the citizens,"*

Mississippi's process does not provide for a statewide perspective regarding the disbursement of oil overcharge funds. For example, some state agencies which have statutory responsibilities in the areas of energy and transportation, such as the Mississippi State Highway Department and Public Service Commission, are not provided formal opportunities to contribute ideas or insight as to how oil overcharge funds could be disbursed to provide restitutionary benefit. In addition, the Legislature, which represents the total interests of the state, is limited to appropriation actions based on allocation decisions previously made by the Governor.

RECOMMENDATIONS

1. The Division of Energy and Transportation should adhere to its own standard operating procedures in soliciting and selecting proposals in its administration and management of oil overcharge funds.
2. The Division of Energy and Transportation should prepare, implement and submit to the Legislature the Mississippi Energy and Transportation Plan as mandated by MISS. CODE ANN. (1972) Section 57-39-9. In addition, the Legislature should require the Division of Energy and Transportation to compile a report and submit it annually to the Legislature which details the disbursement and utilization of oil overcharge funds. In particular, the report should address the effectiveness of all contracts funded by oil overcharge funds.
3. The Division of Energy and Transportation should adopt a policy requiring contractors to submit proof of compliance with their contract(s) prior to receiving payments. In addition, the division should not enter into contracts with persons who have not fulfilled all obligations of previous contracts with the division.
4. The Executive Director of the PEER Committee should forward a copy of this report to the Department of Audit and Attorney General's Office for investigation and prosecution of DET employees for potential violation of MISS. CODE ANN. Section 97-11-29 (1972) by approving expenditures for which there were no deliverables.
5. The Executive Director of the PEER Committee should forward a copy of this report to the Department of Audit and Attorney General's Office for investigation and potential prosecution of Larry Jennings and Jerry Hemphill for violation of MISS. CODE ANN. Section 97-7-10 (1972) by making fraudulent representations.
6. The Executive Director of the PEER Committee should forward a copy of this report to the Board of Engineers for its review and investigation.
7. The Legislature should consider establishing an expert contract review committee within the Division of Energy and Transportation to review proposals and approve all oil overcharge-funded contracts (see Appendix E, page 39, for draft legislation.) This committee could be composed of three voting members: an appointee of the Executive Director of the Highway Department, the Executive Director of the Department of Economic and Community Development, and the Executive Director of the Department of Environmental Quality. These agencies manage programs which are germane to the purpose of the restitutionary nature of oil overcharge funds. The Lieutenant Governor and Speaker of the House could each appoint a legislator to serve in an advisory, non-voting capacity to the committee.

APPENDIX A

STRIPPER WELL CONTRACTS ENTERED INTO BY THE DIVISION OF
ENERGY AND TRANSPORTATION (1986-April 30, 1991)

Contractor	Contract	Amount	Expenditures	Contract Dates	Project
Alcorn State University	91-030-058	\$75,000	\$0	3/18/91-3/18/92	Cooperative Extension Services
Allen & Hoshall	89-108-326	424,730	388,099	12/19/88-3/29/91	State Energy Management Plan
American Home Industries	91-005-229	3,000	3,000	11/1/90-3/31/91	Engineering Feasibility (V. Igich)
Attorney General's Office*	89-004-225	43,920	43,763	7/1/88-6/30/89	Full-time Legal Services
Attorney General's Office*	89-145-160	55,628	55,628	7/1/89-6/30/90	Legal Services
Brunini, Grantham, Grower*	89-143-146	10,000	9,546	3/1/89-6/30/90	Legal Services (Master Lease Plan)
Buck Sullivan Repair Shop, Inc.*	89-130-048	191,000	204,091	3/1/89-3/31/90	Repair of DET Vehicles
Bureau of Capitol Facilities	STP-89101	250,000	90,175	3/1/89-8/30/91	Phase I: 3 ECM's
C & J Garage	89-136-089	191,000	279,449	4/15/89-12/30/89	Repair of DET Vehicles
City of Crystal Springs	89-126-031	40,000	0	2/15/89-12/31/91	Solar Pumping System
Columbus/Greenville Railway	89-106-301	503,800	503,800	12/2/88-5/2/89	Switchyard Relocation
Community Development Foundation	91-001-180	18,000	5,600	7/1/90-6/30/91	Transportation Study
Deas, Eldridge & Assoc.*	89-117-354	107,936	107,936	2/2/89-3/31/89	Valley State TA
Dixieland Ford, Inc.*	89-128-048	141,000	66,457	5/10/89-12/30/89	Repair of DET Vehicles
Energy Management Consultants	89-133-066	161,169	145,052	6/10/89-5/13/91	Affordable Housing Model
Energy Management Consultants*	89-138-101	19,950	19,950	5/1/89-3/31/90	Piney Woods School TA
Evenson-Dodge Inc.	89-146-163	9,500	9,500	1/1/89-12/31/90	Financial Consultant
Fowler's Garage*	89-135-089	69,000	79,139	4/15/89-12/30/90	Repair of DET Vehicles
Gulf Coast Community Action Agency	90-080-149	49,993	52,310	6/1/90-12/31/91	Weatherization
Gulf Coast Motors*	89-127-045	96,000	25,468	3/1/89-3/31/90	Repair of DET Vehicles
Hinds Community College*	88-144-173	24,050	18,764	6/15/88-7/31/88	Inventory of Vehicles
J. D.'s One Stop*	89-129-048	99,000	94,655	3/1/89-12/30/89	Repair of DET Vehicles
Jackson State University	89-140-111	145,000	105,586	4/17/89-9/15/89	Energy Symposium/State Energy Plan
Jackson State University*	89-149-177	65,000	65,000	6/30/89-9/30/90	GIS Project
Jerry's Auto Service Center*	89-131-048	71,000	42,378	3/1/89-3/31/90	Repair of DET Vehicles
Jones Junior College	90-072-073	14,728	0	3/1/90-3/1/91	Carpool/Mass Transit for Adult Ed.
Lobel, Novins, Lamont & Flug*	88-110-348	10,000	10,000	10/14/87-6/30/89	PVE Legal Services in D.C.
MAFES	88-127-074	100,000	100,000	1/1/88-12/31/90	Greenhouse Project
Mississippi Power and Light	91-024-289	63,500	0	No Date Given	Weatherization
Mississippi Rural Water Association	90-075-075	150,000	51,303	4/2/90-10/31/90	Technical Assistance

* Closed Projects

SOURCE: DET Documents and Contracts (Note: All data is presented as it appears on DET documents.)

APPENDIX A (continued)

Contractor	Contract	Amount	Expenditures	Contract Dates	Project
MS Soil & Water Conservation	88-121-015	170,000	169,985	2/10/88-6/30/91	"Operation Fuel"
MS Technology Transfer Office*	89-009-245	124,200	124,200	9/1/88-6/30/89	Fishing Techniques
MSU, Cooperative Extension Service	89-002-187	\$1,000,000	\$654,756	6/1/88-6/30/92	Geographic Info System II
MSU, Forest Products Lab	88-126-074	100,000	100,000	1/1/88-11/30/89	Wood Residue Kilns
MSU, Petroleum Engineering Dpt.	90-074-075	150,102	0	4/2/90-6/30/92	Enhanced Oil - CO2 Technique
Multi-County Community Service Agency	90-076-085	14,936	6,300	3/1/90-6/30/91	Corn Burning Stoves
Municipal Energy Agency	89-124-030	75,000	66,612	2/2/89-5/31/91	Electricity Supplies Study
Municipal Gas Authority of MS	89-115-348	200,000	133,047	1/1/89-1/1/92	Natural Gas for Municipalities
NE Mississippi Community College	89-151-195	63,000	61,517	7/1/89-6/30/90	Local Support Services
NE Mississippi Community College	89-006-235	70,000	60,895	7/1/88-6/30/89	Local Support Services
NE Mississippi Community College*	88-142-173	13,500	9,300	6/15/88-7/31/88	Inventory of Vehicles
NE Mississippi Community College	91-028-313	600,000	0	11/90-12/30/93	Energy Savings Project
Neel-Schaffer, Inc.	89-147-163	145,000	142,060	6/30/89-6/30/90	Energy Recovery Study
Neel-Schaffer, Inc.	88-145-180	220,042	168,890	6/15/88-3/31/91	State Government Motor Pool
Pearl River Comm. College*	88-143-173	13,500	9,022	6/15/88-7/31/88	Inventory of Vehicles
Purdy Enterprises	89-113-343	120,000	84,500	4/17/89-10/30/90	Energy Literacy Curriculum
South MS Planning and Development	89-152-195	119,500	105,288	7/1/89-6/30/91	Local Support Services
South MS Planning and Development	89-007-235	66,000	55,904	3/1/88-6/30/89	Local Support Services
Southeast Mississippi Resource	89-148-177	100,000	832	6/20/89-12/31/91	Dry Fire Hydrants
Southeast Mississippi Resource	90-070-047	9,611	0	2/15/90-2/15/91	Sewage Treatment-AMTS
Sunflower/Humphreys Progress	89-142-135	24,770	20,440	6/26/89-6/30/90	Weatherization (Ceiling Fans)
The Alpha Company	89-121-024	50,000	48,000	6/13/89-6/13/92	Small Business Loan/Concrete Barge
Thermo King of Jackson*	89-139-103	28,000	15,456	5/10/90-3/31/90(sic)	Repair of DET Vehicles
Univ. of MS, Continuing Education*	89-003-208	200,000	200,000	7/1/88-6/30/89	DECAT Workshops
University of Southern Mississippi	89-001-187	104,525	74,000	6/15/88-2/23/89	Computerized Vehicle Software
University of Southern Mississippi	90-067-011	35,564	25,121	2/1/90-12/30/90	Pulverized Coal (Phase II)
University of Southern Mississippi	90-069-038	59,940	0	4/1/90-6/30/91	Apparel Industry Robotics
University of Southern Mississippi	88-130-074	68,040	67,457	3/1/88-9/30/90	Pulverized Coal (Phase I)
USM's Robotics Center*	88-141-161	9,500	8,771	4/1/88-12/31/88	Feasibility Study for CHATA
Vickery Chevrolet-Oldsmobile*	89-141-123	29,000	9,062	5/22/89-12/30/89	Repair of DET Vehicles
Watkins, Ludlam & Stennis*	89-144-146	16,300	16,036	3/1/89-3/1/90	Legal Services (Master Lease Plan)
	TOTAL	\$7,688,234	\$5,309,267		

APPENDIX B

SIXTEEN DET CONTRACTS WHICH DID NOT COMPLY WITH CONTRACT SPECIFICATIONS

CONTRACT	CONTRACTOR	AMOUNT	EXPENDITURES
89-121-024	Alpha Company	\$50,000	\$48,000
<i>Contractor did not fulfill any of three contract tasks (See page -- of report.)</i>			
89-126-031	City of Crystal Springs	40,000	0
<i>Contract called for Crystal Springs to provide engineering analysis of industry to identify solar technology, provide engineering design for solar irrigation photovoltaic system and to secure equipment prior to November 30, 1989. As of April 30, 1991, no action had been taken on this contract.</i>			
90-080-149	Gulf Coast Community Action Agency	49,993	52,310
<i>Contract was to begin on June 1, 1990. DET did not sign the contract until June 21, 1990. Dates of deliverables were not adjusted to reflect this; thus, first deliverable was not completed by the deadline. In addition, DET has paid the contractor \$2,317 in excess of the awarded amount.</i>			
89-140-111	Jackson State University	145,000	105,586
<i>Contract called for JSU to complete eleven tasks, including to gather energy data, assist DET in conducting a symposium on the energy needs of Mississippi and assist DET in fulfilling its statutory obligation of preparing and implementing the State Energy and Transportation Plan. Tasks 7-11, which encompassed preparing demand and supply forecast models and preparing a financial plan for implementation of the State Energy Plan, should have been completed by August 1989. These tasks were not completed as of August 1990.</i>			
90-072-073	Jones Junior College	14,728	0
<i>Contract called for Jones Junior College to provide mass transit for low-income and displaced homemakers enrolled in adult education programs. Task 3 of the contract called for Jones Junior College to insure that each carpool driver was properly insured and licensed in accordance with state laws. Proposed drivers were unable to obtain liability insurance. The contract expired on March 1, 1991, without the tasks being fulfilled.</i>			

SOURCE: DET Documents and Contracts

APPENDIX B (Continued)

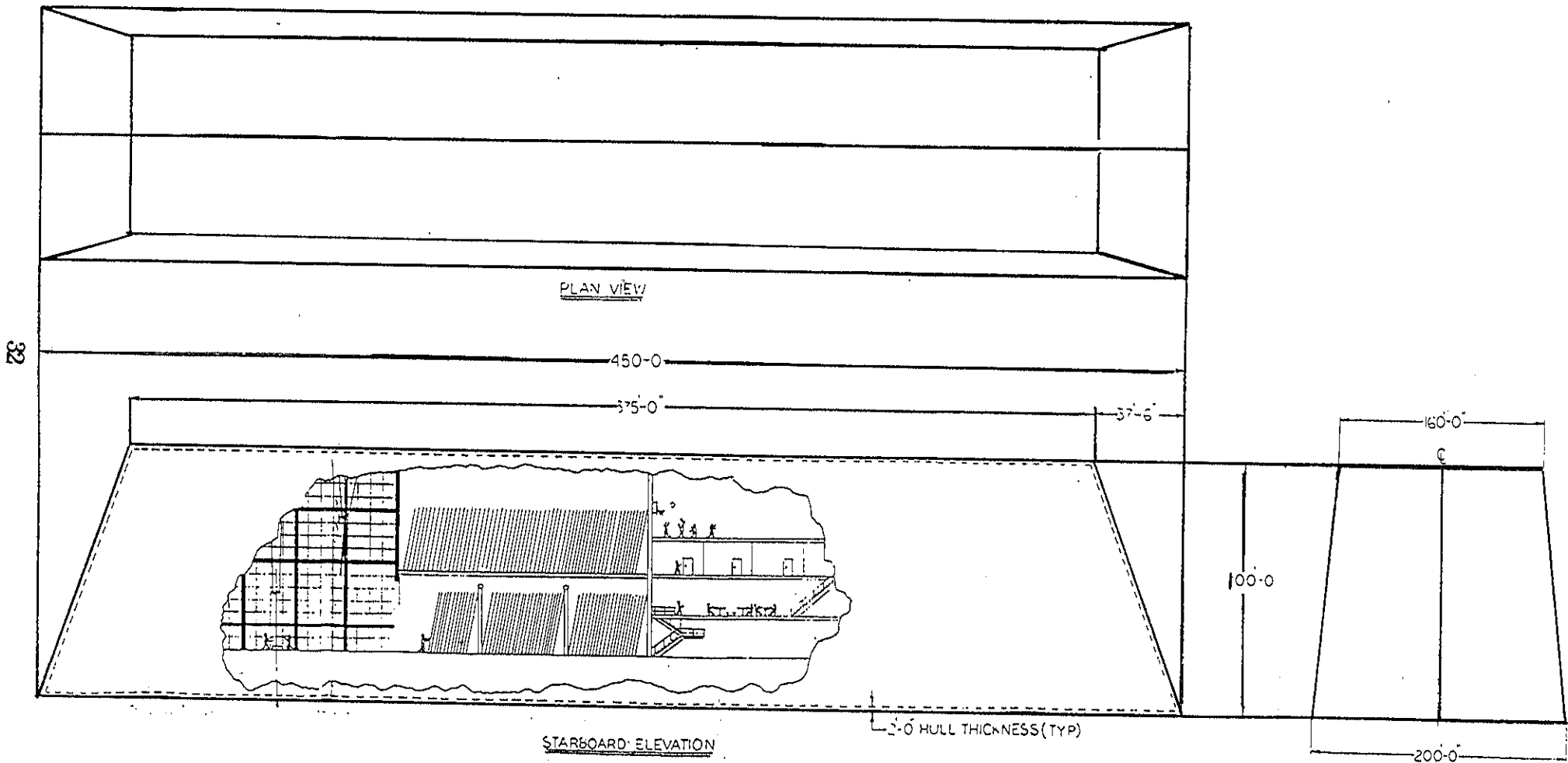
CONTRACT	CONTRACTOR	AMOUNT	EXPENDITURES
89-153-207	Mississippi Action for Community Education (MACE)	124,900	35,458
	<i>Contract called for MACE to provide technical and financial assistance to small farmers in an effort to improve farming methods. Contract called for Task 2, demonstration project illustrating energy-efficient farm practices, to be completed by June 29, 1990. The task was not completed as of August 1, 1990. Work was reportedly held up due to MACE's involvement in the Delta Blues Festival.</i>		
88-126-074	MSU, Forest Products Lab	100,000	100,000
	<i>Contract called for contractor to identify location, size and type of furniture plants in Mississippi; assess the quantity and type of wood residue produced as a by-product of each plant; and, determine the potential for furniture plant utilization of wood residue-fired dry kilns and the expected energy savings. Contractor only provided names and addresses of furniture plants in Mississippi; assessed the quantity and type of wood residue at only a sample of plants, not all plants; and, provided a computer program to compute potential energy savings from the kiln after data was entered.</i>		
88-145-180	Neel Schaffer, Inc.	220,042	168,890
	<i>Contract called for a study of the state motorpool. The contract was extended without the deliverable due dates altered in accordance with such modifications.</i>		
89-151-195	Northeast Mississippi Community College	68,000	61,517
	<i>Contract called for contractor to provide local support services to DET and to develop an energy "utility usage" resource file for use by DET staff. This file was not delivered.</i>		
89-152-195	South MS Planning & Development District	119,500	105,288
	<i>Contract called for contractor to provide local support services to DET and to develop an energy "utility usage" resource file for use by DET staff. This file was not delivered.</i>		
89-148-177	Southeast MS Resource Conservation & Development Area	100,000	832
	<i>Contract called for four tasks to be completed, the first of which was the purchase and installation of 100 dry fire hydrants in Harrison County by June 30, 1990. As of August 1, 1990, this task had not been completed.</i>		

APPENDIX B (Continued)

CONTRACT	CONTRACTOR	AMOUNT	EXPENDITURES
90-070-047	Southeast MS Resource Conservation & Development Area	9,611	0
	<i>Contract called for contractor to disseminate information on alternative methods for sewage treatment for small communities. Contract expired on February 15, 1991, without any of the deliverables produced.</i>		
89-142-135	Sunflower/Humphreys Counties Progress, Inc.	24,770	20,440
	<i>Contract called for contractor to install ceiling fans in previously weatherized homes. The contractor did not submit a final report to E & T by June 30, 1990, as required.</i>		
88-130-074	University of Southern Mississippi	68,040	67,457
	<i>Contract called for the contractor to design a furnace for burning pulverized coal, to evaluate the burned coal as to gases produced and to publish and disseminate the information by September 30, 1990. USM did not produce any of these three deliverables due to a broken part on the furnace.</i>		
90-067-011	University of Southern Mississippi	35,564	25,121
	<i>Contract called for USM to buy a power supply for the part which had halted the first project (88-130-074), assess and identify low temperature combustion techniques to reduce the production of acid rain and characterize mineralogical components of coal deposits. The university has not characterized the mineralogical components of the coal deposits.</i>		
90-069-038	University of Southern Mississippi (Automation and Robotics Applications Center)	59,940	0
	<i>Contract called for the contractor to define any problems which may exist in the apparel industry and to propose solutions which would improve the competitive position of the industry in Mississippi with industries elsewhere. The contract called for USM to identify by May 31, 1990, problems in the apparel industry which could be addressed through group action or state local support. The contract called for USM to identify and compile by July 30, 1990, a list of manufacturers and to evaluate equipment of at least seven operating facilities. These tasks remained uncompleted as of August 1, 1990.</i>		

APPENDIX C

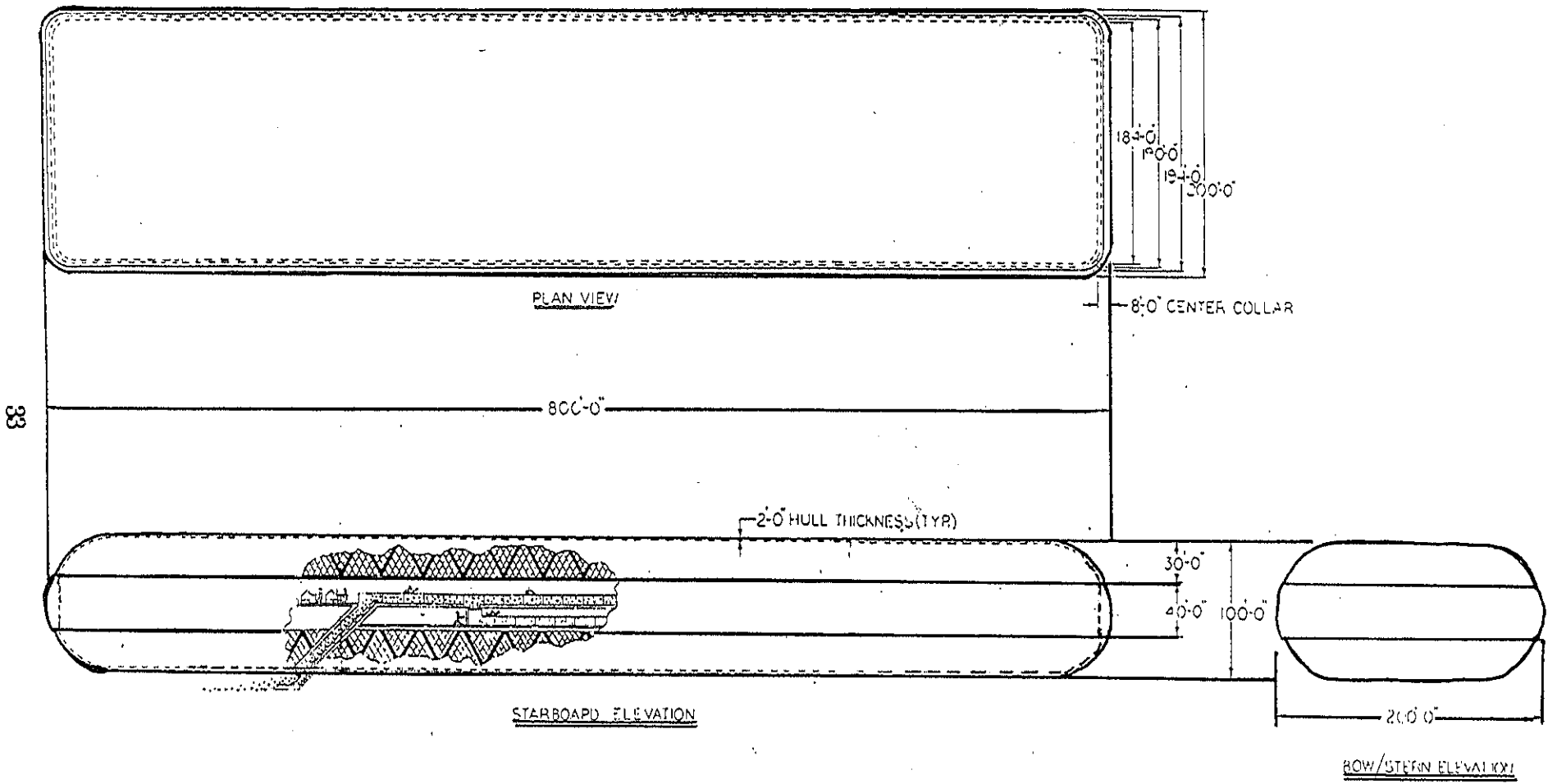
SKETCH PLANS SUBMITTED BY THE ALPHA COMPANY TO THE
ARMY CORPS OF ENGINEERS FOR REVIEW



SOURCE: DET Files

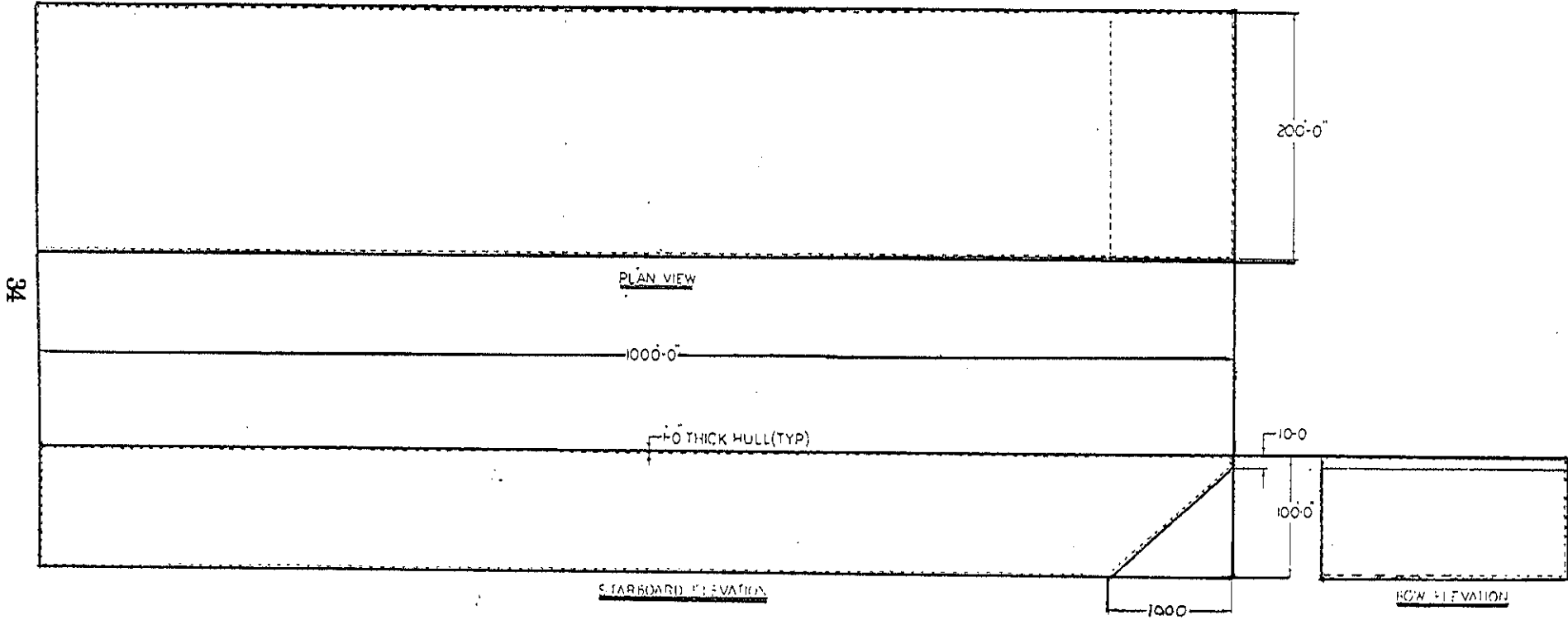
JERRY HEMPHILL / THE ALPHA COMPANY 317 E. SECOND ST. • PASS CHRISTIAN MS 395 1-601-452-7183		
SCALE: 1" = 40'-0"	APPROVED BY	DRAWN BY: J.K.A.
DATE: 7-14-89		
DEEP OCEAN DRILLER		
SH. 1 OF 1	DRAWING NUMBER D-7989	

APPENDIX C (continued)



JERRY HEMPHILL / THE ALPHA COMPANY 317E SECOND ST • PASS CHRISTIAN MS 39371 1-601-452-7183		
SCALE: 1/2" = 20'-0" DATE: 7-14-89	APPROVED BY:	DRAWN BY: JKASK
DEEP OCEAN MINER		
SHEET 1 OF 1		DRAWING NUMBER D-79893

APPENDIX C (continued)



JERRY HEMPHILL / THE ALPHA COMPANY 317 E. SECOND ST • PASS CHRISTIAN MS. 39571 1-601-452-7183		
SCALE: 1/2" = 20'-0" DATE: 7-12-89	APPROVED BY:	DRAWN BY: JKASK
SURFACE VESSEL		
SH. 1 OF 1	DRAWING NUMBER D-79891	

APPENDIX D

REVIEW OF APPLICABILITY OF CRIMINAL STATUTES WHICH MAY APPLY TO FINDINGS IN PEER'S REVIEW OF THE STATE'S OIL OVERCHARGE PROGRAM

PEER reviewed provisions of MISS. CODE ANN. (1972) to determine whether persons employed by the Division of Energy and Transportation (DET) and certain contracting parties are potentially liable for criminal prosecution for acts committed in the administration of certain loans and grants. Below is the analysis of certain transactions and relevant CODE provisions.

The Agreement With Alpha Corporation

On June 9, 1989, Andrew Jenkins, Director of the Mississippi Department of Energy and Transportation, now a part of the Department of Economic and Community Development, and Jerry Hemphill, d/b/a/ Alpha Corporation, entered into a loan agreement. The agreement provided Alpha Corporation a loan of \$45,000 and a grant of \$5,000 for development of concrete boats for oil exploration. The term of the loan agreement was three years with a lump-sum payment of \$63,865 due on June 9, 1992.

Section 7.02 of the agreement provides for amendments of the loan which may be made with the consent of both parties. On August 1, 1989 (approximately two months after consummation of the loan agreement), Hemphill submitted to DET a list of project tasks Alpha Corporation planned to accomplish, which Andrew Jenkins acknowledged by signing. The task list provided the conditions under which payments would be made by DET and further provided what actions must be accomplished by the borrower prior to subsequent payments under the loan. Correspondence between parties shows that the parties contemplated being bound by the schedule of deliverables which established duties and responsibilities relative to future payments. A letter dated May 25, 1990, used as justification by DET officials to withhold a final payment of \$2000 under the loan agreement, further evidences that the schedule of deliverables was considered a part of the contract governing duties of the parties. In this letter, DET, through Andrew Jenkins, stated to the loan recipient Hemphill that he had not met any of the contractual provisions describing deliverables to be provided to DET under the loan agreement. This letter documents that Andrew Jenkins, DET's Executive Director, was aware that no deliverables provided for under the agreement had been produced.

Records of Energy and Transportation show that analysts of that agency were aware that certain deliverables provided for under tasks I, II, and III under the agreement had not been tendered as provided for under the agreement. Written evidence of this knowledge is dated from May 21,

1990, after the final payment of \$16,000 to Hemphill. Further, as early as November 16, 1989, the U.S. Army Corps of Engineers provided DET with a letter showing that the work of Hemphill was inadequate for review. Corps review of Hemphill's technical drawings was a precondition to additional payments under the loan agreement.

**Possible Criminal Responsibility Under
MISS. CODE ANN. 97-11-29**

MISS. CODE ANN. Section 97-11-29 (1972) provides:

The state treasurer, auditor of public accounts, assessors and collectors of taxes, and all other state and county officers, and officers of cities, towns and villages, shall make and keep in their offices, subject to inspection at all times, an accurate entry of each and every sum of public money, securities, stocks, or other public money whatever, by them received, transferred, or disbursed; and if any of said officers, either municipal, county or state, or a clerk, agent or employee of such officers, shall willfully and fraudulently make any false entry therein or make any certificate or endorsement of any warrant on the treasury that the same is genuine, when the same is in fact not a genuine warrant, or shall loan any portion of the public moneys, securities, stocks, or other public property intrusted to him, for any purpose whatever, or shall, by willful act or omission of duty whatever, defraud, or attempt to defraud, the state, or any county, city, town or village, of any moneys, security, or property, he shall, on conviction thereof, be guilty of embezzlement, and fined not less than double the amount or value of the money, security, stock or other property so embezzled, or committed to the department of corrections for not more than ten (10) years, or both.

This section has been applied to cases in which officers have attempted to defraud governmental entities by submitting claims for payment when such officer knew that the claim was not valid, see Heard v. State, 171 So. 775 (Miss, 1937).

In Heard, the defendant, a county supervisor, had attempted to defraud Hinds County by submitting claims for gravel which the supervisor knew were not correct. In upholding the conviction of the supervisor, the Mississippi Supreme Court stated that the act of submitting the false claims to the Board of Supervisors for payments was in and of itself sufficient to prove an intent to defraud the county, as courts presume that a person intends the "necessary or natural and probable consequences of his voluntary acts." No evidence to the contrary was offered by the appellant.

Recently, the Mississippi Supreme Court held in Schilling v. State, 473 So. 2d. 975 (Miss, 1985), that a chancery clerk's payment with county funds, rather than chancery court funds, of the employer and employee share of court personnel's retirement constituted a fraud against the county. This case cited Heard on the above-noted proposition that a person intends the consequences of his voluntary acts absent evidence to the contrary.

In neither Heard nor Schilling was it necessary to prove that a defendant converted public funds to his own use. Under MISS. CODE ANN. Section 97-11-29 (1972), conversion to the defendant's use is not an element of the offense.

In the matter PEER has reviewed, the continued advance of funds to a loan recipient when the services to be rendered precedent to further disbursement of funds were never rendered could constitute a fraud against the state if the the approving officer of DET were aware that the conditions precedent to the further issuance of funds had not been met. While it is true that the agreement between Hemphill and the Department of Energy and Transportation is a loan which is not to be repaid until June 1992, the continued advance of funds to Hemphill when the state was not obligated to do so constitutes an injury to the state, as it deprived the state of the opportunity to use the funds advanced on projects which might have been more beneficial to the interests of the people of the state and the purposes of the oil overcharge program.

Violations of MISS. CODE ANN. 97-7-10 (1972)

MISS. CODE ANN. Section 97-7-10 (1972) provides:

(1) Whoever, with intent to defraud the state or any department, agency, office, board, commission, county, municipality or other subdivision of state or local government, knowingly and willfully falsifies, conceals or covers up by trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(2) This section shall not prohibit the prosecution under any other criminal statute of the state.

This section could possibly be used to prosecute Jerry Hemphill if the state could prove that he induced the loan through the provision of a list of

deliverables, or any other writing or statement which was false or otherwise fictitious or fraudulent.

Other Matters

PEER determined that in another contract made by Energy and Transportation, one Larry Jennings submitted a grant proposal in which he held himself out to be a registered professional engineer. A registered engineer in the state of Mississippi must be registered with the State Board of Registration for Professional Engineers and Land Surveyors created under MISS. CODE ANN. Section 73-13-5 (1972). At the time the contract was executed, Mr. Jennings was not a registered engineer.

Such actions could give rise to prosecution of Andrew Jennings under MISS. CODE ANN. Section 97-7-10 (1972), discussed above, if the misrepresentation made by Jennings was material to his receiving the work for which his proposal was submitted.

APPENDIX E

PROPOSED LEGISLATION DEFINING THE COMPOSITION OF A
CONTRACTS REVIEW COMMITTEE WITHIN DET

MISSISSIPPI LEGISLATURE

REGULAR SESSION, 1992

BY:

TO:

BILL

AN ACT TO AMEND SECTION 57-39-9, MISSISSIPPI CODE OF 1972, TO CREATE A CONTRACTS REVIEW COMMITTEE TO APPROVE EXPENDITURES OF FEDERAL OIL OVERCHARGE REFUND MONIES; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT TO CONVENE MEETINGS OF THE COMMITTEE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 57-39-9, Mississippi Code of 1972, is amended as follows:

§ 57-39-9. Powers and duties of Executive Director.

The powers and duties of the Executive Director of the Department of Economic and Community Development that relate to energy and transportation shall include, but not be limited to, the following:

- (a) To prepare the Mississippi Energy and Transportation Plan as hereinafter set forth.
- (b) To prepare implementation programs in accordance with the requirements of the plan.
- (c) Upon request, to accept, receive and receipt for federal monies and other monies, either public or private, for and in behalf of this state. Upon request of any political subdivision of the state, to accept, receive and receipt for any designated purpose, federal monies and other monies, either public or private, for and in behalf of any such political subdivision.
- (d) To confer with or to hold joint hearings with any agency of the United States in connection with any matter arising under this chapter, or relating to the sound development of energy and transportation systems.
- (e) To avail itself of the cooperation, services, records and facilities of agencies of the United States as fully as may be practicable in the administration and enforcement of this chapter.
- (f) To furnish to the agencies of the United States its cooperation, services, records and facilities, insofar as may be practicable, and when such action is not in conflict with the laws of the State of Mississippi.

APPENDIX E (Continued)

- (g) To avail itself of the cooperation, services, records and facilities of other agencies of the state and such agencies are authorized and directed to cooperate and make available their facilities and services, insofar as may be practicable.
- (h) To perform such acts, make, promulgate and amend such reasonable general or special rules, regulations and procedures as it shall deem necessary to carry out the provisions of this chapter and to perform its duties hereunder. No rules, regulations or procedures prescribed by the department shall be inconsistent with, or contrary to, any acts of the Congress of the United States or any regulations promulgated pursuant thereto, or to this chapter or any other statutes of the State of Mississippi.
- (i) To enter into contracts, grants and cooperative agreements with any federal or state agency, department or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, provided the agreements do not have a financial cost in excess of the amounts appropriated for such purposes by the Legislature.

~~SOURCES: Laws 1980, ch. 548, § 5; 1980, ch. 544, § 55, eff. from and after July 1, 1980.~~

(j) To convene meetings of a Contracts Review Committee, which shall review and approve all contracts for disbursement of "Federal Oil Overcharge Refund Monies" prior to their execution by the Department. The Committee shall be comprised of three (3) members, one each appointed by Executive Director of the Highway Department, the Executive Director of the Department of Economic and Community Development and the Executive Director of the Department of Environmental Quality. All members of the Committee shall receive a per diem and reimbursement of actual expenses incurred in carrying out their duties required herein.

The lieutenant governor may designate one (1) senator and the speaker of the house of representatives may designate one (1) representative to attend any meeting of the Contracts Review Committee. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designees are unable to attend such meetings of the board. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, such legislators shall receive per diem and

APPENDIX E (Continued)

expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the legislature is not in session; however, no per diem and expenses for attending meetings of the committee will be paid while the legislature is in session. No per diem or expenses will be paid except for attending meetings of the board without prior approval of the proper committee in their respective houses.

SECTION 2. This act shall take effect and be in force from and after July 1, 1992.

SHORT TITLE: OVERSIGHT FOR FEDERAL OIL OVERCHARGE REFUND MONIES

AGENCY RESPONSE



STATE OF MISSISSIPPI
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

RAY MABUS
GOVERNOR

August 12, 1991

Mr. John W. Turcotte
Executive Director
PEER Committee
Professional Building
222 North President Street
Jackson, Mississippi 39201



Dear John:

My staff and I were permitted to review the report of the Performance Evaluation and Expenditure Review Committee staff with respect to the administration of oil overcharge monies by the then Department of Energy and Transportation (DET). I would like to take this opportunity to respond formally to the report and express my serious concerns about certain deficiencies and problems that are contained within the report.

It is our view that the report reflects an incomplete understanding of the operations of the Department, and later the Division, of Energy and Transportation and of the requirements and direction imposed by the Settlement Agreement and the other rulings and regulations issued by the U.S. Department of Energy. The report also fails to properly consider the date of appointment of Andrew Jenkins as Director of the Department of Energy and Transportation and to recognize the steps taken by Mr. Jenkins to establish a process and institute procedures by which oil overcharge monies should be spent. Thus, it appears that Mr. Jenkins is unfairly held accountable for the state of operations at the then Department of Energy and Transportation when he arrived.

The report should more clearly state that until July 1, 1989, the Department of Energy and Transportation was an independent state agency with no relation to the Department of Economic and Community Development (DECD). On July 1, 1989, pursuant to governmental reorganization, effected in the 1989 legislative session, the Department of Energy and Transportation was merged into DECD and became a division thereof. This statement is important because the bulk of the assertions pertain to matters prior to July 1, 1989.

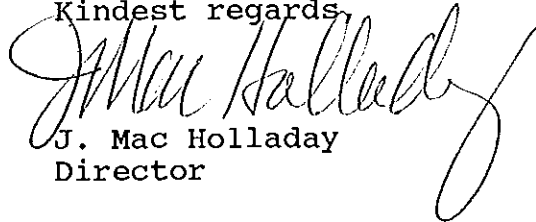
-2-

Mr. John W. Turcotte
August 12, 1991

Additionally, I want to explain the extensive and detailed attachments to this response. Because certain assertions are repeated throughout the report, the Associate Director of the Energy and Transportation Division, Andrew Jenkins, and I believed it important to address each point. This is done to ensure that no improper inference be drawn as a result of an unchallenged statement. This approach is taken with respect to the overview, the findings, and the recommendations. It is my view that the report can only be properly considered in light of our response.

I appreciate this opportunity to respond, and I will be available to you should you require additional information.

Kindest regards,

A handwritten signature in cursive script, appearing to read "J Mac Holladay".

J. Mac Holladay
Director

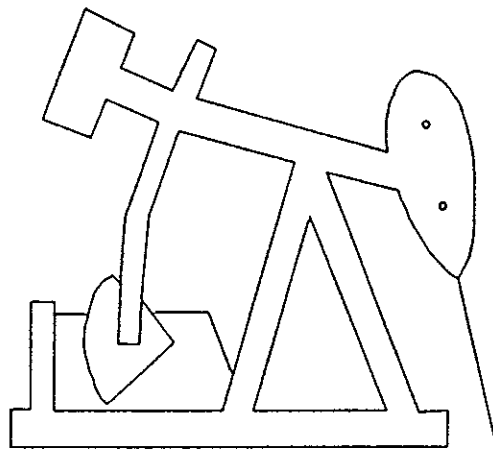
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Enclosures

REPORT

“ENERGY & TRANSPORTATION DIVISION’S RESPONSE TO PEER’S REVIEW OF THE OIL-OVERCHARGE PROGRAM”

July 25, 1991



Mississippi Department of Economic
& Community Development
Energy & Transportation Division
510 George Street, Suite 101
Jackson, Mississippi 39202

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INTRODUCTION

This report is prepared in response to our review of a draft report compiled by PEER Staff between January, 1990 and June, 1991. In January, 1990, the Associate Director for the Mississippi Department of Economic and Community Development, Energy and Transportation Division was visited by PEER staff, who advised that they were requested by a Legislator to review the Agency's oil-overcharge program. It was stated that the Legislator had expressed concern over the State's administration and awarding of grants and contracts to individuals or firms for energy conservation assistance utilizing oil-overcharge program funds.

It is hereby noted at the onset that Mr. Andrew Jenkins assumed the position of Executive Director of the former Department of Energy and Transportation on February 29, 1988 and that as a result of the "Mississippi Executive Reorganization Act of 1989" that agency became a Division of the Department of Economic and Community Development on July 1, 1989. There have been numerous innovative improvements and accomplishments realized by the organization since February of 1988, such as:

- (1) Creation of an Internal Oversight Bureau;
- (2) Twenty-five percent (25%) reduction in number of personnel;
- (3) Thirty-seven percent (37%) reduction in contractual services;
- (4) Seventy-three percent (73%) reduction in travel;
- (5) Establishment of Standard Operating Procedures;
- (6) Development of an Employee Handbook;
- (7) Development of a Federal Program Procedures Manual;
- (8) Streamlining of the required U.S. Department of Energy Annual Plans for which we were highly commended;
- (9) Received a national award from the National Association of State Energy Officials for Excellence in Planning and Policy;
- (10) Recovered \$150,000 in oil-overcharge funds from a project which did not use the funds in accordance with the grant agreement; and
- (11) Most importantly, the development of a professional staff which provides a higher level of service in an efficient and timely manner.

DET's response will state the facts involved with PEER's Finding and reference any documentation utilized to support those facts. DET's response will reflect the development of DET from a state agency that was wrought with employees who were unaccountable and contractors who were less than forthcoming in their desire to include all sectors of the business and private community in the utilization of the state's PVE funds. DET's response will contain only the facts that are encompassed in its' records. DET's response will utilize the following format. First, DET will state the facts utilized by PEER in formulating its findings. DET will then state all facts and reference supplied documents which will be used to address, explain and refute PEER's findings.

The PEER's findings emphasized four (4) areas of concern. DET has addressed each of the findings in a very detailed manner. First, PEER concluded that DET did not adhere to its own standard operating procedures in July, 1988, when the agency issued a news release and a legal notice notifying the public of the availability of oil-overcharge funds for projects within the State.

This finding is totally incorrect. Andrew Jenkins became the Executive Director of the former Department of Energy and Transportation on February 29, 1988 and as a result of the "Mississippi Executive Reorganization Act of 1989" that agency became a Division of the Department of Economic and Community Development on July 1, 1989. Prior to February, 1988, the agency did not have standard operating procedures regarding the solicitation/evaluation of RFPs'. Each program manager within the agency created an individual RFP for every project they managed. There were no established departmental guidelines by which RFPs' were developed. Thus the department had a wide assortment of RFPs' in it's records.

DET officials, through an extensive evaluation of its operations, developed and implemented what is now known as "DET's Standard Operating Procedures for Request for Proposals" on August 5, 1988. These procedures were the subject of favorable comments by PEER, and it was noted they were based on sound reasoning. However, PEER throughout this report continually makes reference to instances when these procedures were not followed. What is not noted by PEER is the instances in question pre-date when the procedures were established.

DET has developed comprehensive procedures which adequately address all facets of the funding process. DET now has procedures which start from the moment the agency receives federal funds until the agency receives a final product from a grantee. DET has procedures for issuance of a RFP, evaluation of a proposal, funding of a project, monitoring of a project, and the successful conclusion and final accounting of a project.

Second, PEER concludes that DET has failed to comply with a Legislative mandate issued in 1980 requiring the preparation by the Board of Energy and Transportation of a statewide energy and transportation plan. Miss. Code Ann. Section 57-39-9 (1972). DET cannot address the noncompliance by any parties prior to February, 1988. However, DET is now completing a State Energy Plan that has already received a national award from DOE for the process utilized in the development of the Plan. The final version of the Plan will be available September 30, 1991. A chronology of the steps to prepare the Plan is included in DET's response to PEER's report.

It should be noted for the record that the Energy and Transportation Board developed a statewide Transportation Plan in March 1983.

PEER in it's report asserts that the absence of the statewide energy plan left DET without a basis on which to solicit/evaluate and award PVE funds to prospective grantee. This is simply incorrect. All action taken by DET relative to PVE funds were based upon directives provided to the states by the United States District Court's Stripper Well Settlement agreement, United States Department of Energy's Office of Hearing Appeals Decisions, DOE's regulations regarding allowable expenditures for Stripper Well funds and DOE's guidance relative to other congressionally mandated state energy programs. These requirements form the only legal basis and provide the only criteria by which PVE funds can be expended. All actions taken by DET have received close scrutiny by DOE and the federal courts, and annual reports on the expenditure of all PVE funds are provided to the Courts and DOE. Mississippi has been praised for its innovative action regarding PVE funds.

Third, PEER claims to have found contractual violation on sixteen (16) of DET's active Stripper Well funded contracts. PEER concluded that DET was lacking in its' enforcement of contractual requirements. In Exhibit 2 of the text of DET's response to this report, DET has provided a detailed review of the sixteen (16) contracts in questions. In a significant number of these

contracts there was no material violation of the terms of the contract by the contractors in question.

PEER devoted several pages of its' report to the review of a loan agreement between DET and the Alpha Company. PEER improperly concludes that DET gave the company money without receiving anything in return. DET executed a \$50,000.00 loan agreement with the Alpha Company. There are absolutely no grant funds involved with this project. DET is fully secured on this loan through a lien on the owner's personal and business assets. The Alpha Company has never received a grant from DET. The Alpha Company has presented deliverables to DET, which are not up to the high standards established by DET for its contractors. However, the loan agreement with the Alpha Company is still active and negotiations are still taking place between the parties. The loan is not in default and does not become due until 1992. The State is legally protected and will use all means at its' disposal to collect the loan should the need arise.

Fourth, PEER concluded that a contractor possibly violated state law when he falsely claimed to be a registered professional engineer, and DET did not exercise proper oversight on the contract. The contract in question was a joint-venture that contained the resumes of seven (7) other registered engineers whose credentials were not questioned. The fact that the contract actually had seven (7) engineers as opposed to eight (8) engineers had no material bearing on the awarding of the contract, and absolutely no impact on the quality of the product received under the contract. The improper identification on the proposal was an inadvertent error on the part of the individual responsible for printing the document. DET used its standard operating procedure to rate the joint-venture proposal as a whole.

BACKGROUND

It all began in 1973 when, through a series of statutes and executive branch actions, Federal "petroleum price and allocation regulations" were put in place. In general, those regulations were directed toward the equitable allocation and pricing of oil, oil products, and natural gas. The regulations were quite complex, and in subsequent years the U. S. Department of Energy (DOE) determined through its audit processes that consumers of oil and oil products were being overcharged by many of the oil companies. Court action was initiated by the DOE to recover those overcharges.

The first major case to be settled was in the Fall of 1981 when the Standard Oil Company of California (Chevron), in the Chevron Consent Order, acknowledged that overcharges had been made and agreed to make restitution. The Court recognized that it was not feasible to provide a refund to each individual consumer; instead, some of the funds would be provided to the states, which could spend those funds for projects that would benefit the overcharged consumers. This method of "indirect restitution", initiated in the Chevron Consent Order, became a model for all future oil overcharge settlements. The amount funds received by each state was based on the estimated volume of the product sold within each state during the period of price and allocation controls. Two of the largest cases were U.S. vs. Exxon Corporation and the In Re: Department of Energy Stripper Well Exemption Litigation.

The Stripper Well Settlement Agreement permits the funds to be spent, within limits, on a wide range of programs as long as the goal is increased energy efficiency.

ENERGY AND TRANSPORTATION DIVISION'S
RESPONSE TO
PEER'S REVIEW OF THE OIL OVERCHARGE PROGRAM

OVERVIEW

ITEM 1 Statement by PEER's Staff:

PVE funds are allocated by the Governor to the Department of Human Services, Division of Community Services; Department of Wildlife, Fisheries and Parks; Department of Environmental Quality; or the Department of Economic and Community Development, Division of Energy and Transportation (DET).

Response:

DET develops a plan for the expenditure of the oil overcharge funds. This plan is developed through a process which includes the review of successful cost-effective projects from all the states; the inclusion of the four (4) Federal Mandated Programs developed to address specific energy saving opportunities; and programs identified by our staff, the general public and other state agencies. This plan of expenditure, after review by the Governor, is submitted to DOE for approval. Upon approval of the state's expenditure plan, the Governor allocates funds to the appropriate state agency to administer the funds per the individual programs that have been approved by DOE.

ITEM 2 Statement by PEER's Staff:

A July 1988 DET news release and legal notice (which served as DET's request for proposal) did not adhere to the division's own standard operating procedures for soliciting and selecting proposals for disbursement of Stripper Well funds. (As of January 1, 1991, DET had issued only one request for proposals to be funded with Stripper Well monies.)

Response:

There were no standard operating procedures governing the solicitation and evaluation of Request for Proposals in place when Mr. Jenkins assumed the DET Directorship on February 29, 1988. While the Division worked diligently to correct this situation no procedures were developed

prior to the July, 1988 solicitation. The DET standard operating procedures on Request for Proposals (which are favorably commented on by PEER's staff in their preliminary report) were developed and implemented by DET Executive Director Andrew Jenkins on August 5, 1988. Prior to Andrew Jenkins' tenure with DET, each program manager developed and implemented an individual RFP for each project. There were no uniform standard operating procedures at DET prior to August 5, 1988. (See Attachment 1). Additionally, Mr. Jenkins developed and implemented standard operating procedures for Request for Qualifications on August 5, 1988. (See Attachment 2).

Prior to January 1, 1991 DET had issued more than one request for proposals to be funded with Stripper Well monies. However, one of those Request for Proposals resulted in the receipt of over 150 proposals requesting an amount in excess of \$47,000,000. Requests for Proposals were issued when necessary as Stripper Well monies became available.

ITEM 3 Statement by PEER's Staff:

The department's failure to comply with its own standard operating procedures could have resulted in biased treatment of project proposals.

Response:

There were no standard operating procedures in effect during July, 1988 at DET. Additionally, this statement appears to be mere speculation on the part of PEER's staff with no foundation in fact. The report is absent any information which reflects that any proposal received by DET was handled in a biased manner.

The procedures used during the July 1988 time period adhered to the directives and guidance provided to the states by the United States District Court in the Stripper Well settlement agreement and United States Department of Energy's Office of Hearing and Appeals Decisions on Stripper Well funds usage. Additionally, DET was also knowledgeable of all previous directives issued from the Department of Energy (DOE) to all other states on the allowable use of PVE funds.

ITEM 4 Statement by PEER's Staff:

At the time of the July 1988 news release and legal notice, the Energy and Transportation Board had not prepared a statewide energy and transportation plan as mandated by Miss. Code Anno. Section 57-39-9 (1972).

Response:

The Energy and Transportation Board prepared a Mississippi Comprehensive Intermodal Transportation Plan/Statewide Transportation Plan in March 1983. Associate Director Andrew Jenkins, who was then employed with the Federal Highway Administration, was on the technical committee that completed the Mississippi Comprehensive Intermodal Transportation Plan/Statewide Transportation Plan. (See Attachment 3 - A copy of the Mississippi Comprehensive Intermodal Transportation Plan/Statewide Transportation Plan). For reasons unknown a Statewide Energy Plan was not prepared during the preceding eight years prior to Andrew Jenkins' tenure.

Mr. Jenkins has taken an aggressive role in his capacity as Associate Director of DET to complete the development of the Statewide Energy Plan. The Statewide Energy Plan will be delivered by September 30, 1991. (See Exhibit 1 - a chronology of the steps taken by DET to ensure the completion of the Statewide Energy Plan).

Mr. Jenkins and DET were presented a National Award For Excellence in the area of Planning and Policy for employing an innovative process in the development of the State of Mississippi Energy Plan in October, 1989 by the National Association of State Energy Officials.

ITEM 5 Statement by PEER's Staff:

Failure of the Energy and Transportation Board to formulate a statewide energy and transportation plan left the department without a basis on which to develop formal criteria to evaluate Stripper Well proposals in the context of the State's energy needs and court-ordered guidelines.

Response:

DET's criteria for evaluating proposals was based upon directives provided to the states by the United States District Court's Stripper Well settlement agreement,

EXHIBIT 1

CHRONOLOGY OF THE DEVELOPMENT OF
COMPREHENSIVE STATE ENERGY PLAN

- * *November - 1988*: Began general planning on strategies for the development of the Comprehensive State Energy Plan.
- * *April - 1989*: Jackson State University, in cooperation with Dr. James Perkins was selected as the prime contractor for the initial phases of the Plan development (Symposium, data collection, development and presentation of findings).
- * *April 1989 - May 1989*: All activities related to the Plan centered around planning for the Energy Futures Symposium.
- * *May 21 - 24, 1989*: The first Energy Futures Symposium was held in Jackson, Mississippi, attended by 113 nationally recognized energy experts from throughout the continent.
- * *May 1989 - September 1989*: Transcripts of the Proceedings of the Symposium were edited, printed, and bound for publication.
- * *June 1989 - August 1989*: Staff of the Energy Planning and Development Branch visited with electrical utilities to discuss and develop strategies for the State Energy Plan.
- * *July 1989*: The Energy and Transportation held a industry specific Symposium with the Oil and Gas producers in the State of Mississippi, to identify industry specific considerations in the development of the Energy Plan.
- * *August 1989*: Participated in the initial Energy Emergency Planning Seminar in Biloxi, Mississippi, to begin to gain knowledge on how to develop the Energy Emergency aspects of the Comprehensive State Energy Plan.
- * *August 1989*: A third Symposium (industry specific) was held with the electric utilities in the state, which emphasized energy emergency planning concerns for the electrical utilities.
- * *September 1989*: A formal presentation of the findings and recommendations of the participants at all of the Symposium were given to the members of the Energy Plan Advisory Council for their advice and consent.

EXHIBIT 1, Continued

- * *October 1989 - November 1989:* The draft of the transcripts of the Energy Futures Symposium were forwarded to national energy experts for editorial review.
- * *November 1989:* Began search for the needed services of an organization with expertise in energy forecasting.
- * Discussions were held with the University Research Consortium to determine whether there was sufficient expertise in the state to perform the necessary forecasting tasks.
- * *December 1989 - January 1990:* Formal solicitations for proposals was prepared and an advertisement for bids was let by the contractor.
- * *April 1990:* The University of Southern Mississippi was selected to perform the forecasting and historical data compilation phase of the contract. Contract negotiations between Jackson State University and the University of Southern Mississippi.
- * *May 7 - 9, 1990:* Staff received second training session from the Department of Energy in New Orleans, on the proper steps required to design and implement a state Energy Emergency Plan.
- * *May 1990 - September 1990:* The subcontractor conducted the data compilation and forecasting tasks and the identification of information related to alternative energy resources.
- * *July 1990:* Final draft of Alternative Fuel (Biomass) Utilization Study completed for implementation in the Energy Plan.
- * *August 1990 - November 1990:* Evaluation of the draft products was conducted by Division staff and the contractor.
- * *July 1990 - October 1990:* Division staff began networking with numerous energy installations in the state, to increase staff knowledge concerning energy production processes. These site visits were also a component of the Energy Emergency Planning efforts, which had been heightened as a result of the Persian Gulf crisis in August, 1990.
- * *December 1990:* Determination made that a contractor with extensive expertise in the energy field was needed to perform the actual compilation of the Comprehensive State Energy Plan.

EXHIBIT 1, Continued

- * *January 1991 - April 1991:* Designed, developed, implemented and evaluated, energy costs/usage data base to maintain energy demand/supply data statewide.
- * *February 1991 - May 1991:* Designed, developed, and implemented an **Emergency Set-Aside** aspect of the Energy Emergency Plan component to the Comprehensive State Energy Plan.
- * *March 1991 - May 1991:* Developed digital data of all major utility lines (electrical, gas, oil) located within the state to be included in the Emergency Energy Plan.
- * *January 1991 - June 1991:* A subcontractor with a well established energy background was sought by the contractor as a replacement. Negotiations ensued between the contractor and Dr. Frank Cotton, Jr., Chairman Emeritus of the Department of Industrial Engineering at Mississippi State University. A subcontract for the services of Dr. Cotton was consummated in early June, 1991.
- * *June 1991 - August 1991:* The first draft of the Comprehensive State Energy Plan will be delivered for internal review by the Division staff.
- * *September 30, 1991:* The final draft of the first edition of the Comprehensive State Energy Plan to be delivered.

Department of Energy's Office of Hearing Appeals Decisions, DOE's regulations regarding allowable expenditures for Stripper Well funds and DOE's guidance relative to other congressionally mandated state energy programs. These requirements formed the only legal basis and provided the only criteria by which the funds could be expended.

ITEM 6 Statement by PEER's Staff:

PEER's staff reviewed Stripper Well program contracts and determined that DET has not ensured that all contractors strictly complied with the requirements of their contracts (i.e., deliverables were not produced in accordance with contract specifications). In some contracts, DET made payments to contractors although deliverable were not provided.

Response:

Attachment 5 addresses the issues noted by the PEER's staff regarding sixteen (16) DET contracts in Appendix B of the PEER report. We have reviewed PEER's concerns in this area and do not find material violation of contract terms in a significant number of the contracts which were reviewed. While DECD does not concur with all conclusions in this area it is acknowledged that improvements needed to be made relative to contract administration. Upon his approval, Associate Director Andrew Jenkins' determined that DET lacked a formal procedure to ensure that contracts were being fulfilled. Corrective measures were initiated to address this matter. Shortly after DET became a part of the DECD, a Program Oversight Bureau was created. This Bureau provides systematic scrutiny of all contracts at DET. It reviews all contracts with DET and makes recommendations for correcting any and all deficiencies identified. (See Attachment 4 - The Contract Monitoring Review Procedures for the Program Oversight Bureau).

Exhibit 2 addresses the contractual issues of payments to contractors without receipt of deliverables noted by the PEER's staff regarding sixteen DET contracts in the Appendix of the PEER's staff report.

Prior to Associate Director Andrew Jenkins' tenure with DET, the department lacked a formal procedure to ensure that contracts were being fulfilled. There was little internal accountability. As part of the reorganization of DET, Andrew Jenkins developed and implemented a Program Oversight Bureau. The Program

EXHIBIT 2

PEER'S APPENDIX B
DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE TO
PEER EVALUATION OF SIXTEEN CONTRACTS WHICH DID NOT COMPLY WITH
CONTRACT SPECIFICATIONS

The contracts reviewed by PEER did contain some deficiencies. These deficiencies are being addressed by the Program Oversight Bureau, and are being corrected. The most prevalent problem noted by PEER was the expiration of contract times prior to the expenditure of all funds and the acceptance of the final products. The time required to perform a new or innovative task cannot be precisely estimated when the task has never been performed; therefore, contract modifications are usually necessary as the work progresses. DET has fully addressed this problem. The Program Oversight Bureau has been reviewing and correcting all of DET's contracts since the inception of the Bureau in 1990.

CONTRACT	CONTRACTOR	AMOUNT	EXPENDITURES
89-121-024	ALPHA COMPANY	\$50,000	\$48,000

PEER'S STATEMENT:

Contractor did not fulfill any of three tasks (See page..of report)

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

This statement is incorrect. The Alpha Company does not have a contract with DET. The Alpha Company has a loan agreement #89-001 with DET. (See Exhibit 4 for a chronology of events regarding this loan).

89-126-031	CITY OF CRYSTAL SPRINGS	\$40,000	0
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PEER'S STATEMENT:

Contract called for Crystal Springs to provide engineering analysis of industry to identify solar technology, provide engineering design for solar irrigation photovoltaic system and to secure equipment prior to November 30, 1989. As of April 30, 1991 no action had been taken on this contract.

EXHIBIT 2, Continued

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Contract Modification was executed 10/19/90 extending Period of Performance to 12/31/91.

Progress of solar irrigation system project was delayed due to local government change-over and the entry of a new city administration and Director who were not familiar with the project. The project has now been initiated.

90-080-149 GULF COAST COMMUNITY ACTION AGENCY \$49,993 \$52,310

PEER'S STATEMENT:

Contract was to begin on June 1, 1990. DET did not sign the contract until June 21, 1990. Dates of deliverables were not adjusted to reflect this; thus, first deliverable was not completed by deadline. In addition, DET has paid the contractor \$2,317 in excess of the awarded amount.

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

This is an incorrect statement. A complete review of financial records reflects that there is actually a contract balance of \$1,990.49 as July, 1991. There has not been an overpayment on this contract.

89-140-111 JACKSON STATE UNIVERSITY \$145,000 \$105,586

PEER'S STATEMENT:

Contract called for JSU to complete eleven tasks, including to gather energy data, assist DET in conducting a symposium on the energy needs of Mississippi and assist DET in fulfilling its statutory obligation of preparing and implementing the State Energy Plan. Tasks 7-11, which encompassed preparing demand and supply forecast models and preparing a financial plan for implementation of the State Energy Plan, should have been completed by August 1989. These tasks were not completed as of August 1990.

EXHIBIT 2, Continued

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Contract modification signed by all parties June 4, 1991 extending the period of performance for task 8-11 until September 30, 1991. Task 7 has been completed. The development of this plan is a comprehensive process, and not an event, and we feel that the product is important to all of Mississippi and the desire for input exceeded our initial anticipation. As stated earlier, it was not possible at the beginning of the contract period to estimate the time needed to obtain the necessary input from all of the effected sectors in order to develop a comprehensive State Energy Plan. The delay in order to produce a quality product outweighs any desire to meet a self-imposed deadline.

90-072-073

JONES JUNIOR COLLEGE

\$14,728 0

PEER'S STATEMENT:

Contract called for Jones Junior College to provide mass transit for low-income and displaced homemakers enrolled in adult education programs. Task 3 of the contract called for Jones Junior College to insure that each carpool driver was properly insured and licensed in accordance with state laws. Proposed drivers were unable to obtain liability insurance. The contract expired on March 1, 1991, without the tasks being fulfilled.

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Contractor requested a contract modification until May 31, 1992 per a letter in the file dated April 17, 1991. Documents were prepared and mailed to contractor on June 27, 1991. Contractor is now reviewing contract. Letter in DET file dated May 23, 1991 stated that a high number of applicants recruited could produce no automobile liability insurance, and that the initial funding was received in March which is near the end of the semester. The target group will be out of school with their children during summer break and will return in the fall when elementary schools open. This has resulted in a lapse of several months before clients would be traveling and in need of carpools. Recipients of this contract are

EXHIBIT 2, Continued

at the heart of the Stripper Well Court Settlement and we believe it imperative that this group be afforded all conceivable opportunities to participate in this restitutionary effort.

89-153-207

Mississippi Action for Community Education
(MACE) \$124,900 \$35,458

PEER'S STATEMENT:

Contract called for MACE to provide technical and financial assistance to small farmers in an effort to demonstrate energy efficient farming methods. Contract called for Task 2, demonstration project illustrating energy-efficient farm practices, to be completed by June 29, 1990. The task was not completed as of August 1, 1990. Work was reportedly held up due to MACE's involvement in the Delta Blues Festival.

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Task 1 and Task 2

On March 20, 1991, the Energy and Transportation Program Oversight Bureau's on-site visit documented evidence of contractor having completed Task 2 of the contract. Contractor provided a list of farmers relevant to Task 2 and Task 3 on July 17, 1991.

Contractor has requested contract modification due to delays in being able to locate and evaluate eligible applicants. It should also be noted that the contractor is a non-profit corporation which generated a majority of its operating budget and required matching funds from activities associated with the annual Blues Festival. DET feels that the delay is insignificant, however, we agree that the contract should be extended to reflect the delay in completing the task.

88-126-074

MSU, FOREST PRODUCTS LAB 100,000 100,000

PEER'S STATEMENT:

Contract called for contractor to identify location, size and type of furniture plants in Mississippi; assess the

EXHIBIT 2, Continued

quantity and type of wood residue produced as a by-product of each plant; and, determine the potential for furniture plant utilization of wood residue-fired dry kilns and the expected energy savings. Contractor only provided names and addresses of furniture plants in Mississippi; assessed the quantity and type of wood residue at only a sample of plants, not all plants; and, provided a computer program to compute potential energy savings from the kiln after data was entered.

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Contractor fulfilled all the terms of the contract except for the provision of the information on the size of furniture plants in Mississippi. Contractor was not required to provide this information because the Mississippi Department of Economic and Community Development publishes the Mississippi Manufacturers' Directory which contains this information. It would have been repetitive for the Contracts to provide this document to DET.

88-145-180

NEEL SCHAFFER, INC.

\$220,042

\$168,890

PEER'S STATEMENT:

Contract called for a study of a state motorpool. The contract was extended without the deliverable due dates altered in accordance with such modifications.

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Task schedule completion date was inadvertently not changed to reflect the new modification date. However, it's inconceivable that anyone would not conclude that the overall contract modification did not extend the deliverable due dates consistent with entire contract extensions. The subject report has been received and distributed to all legislators at a cost considerably less than the original budgeted amount.

EXHIBIT 2, Continued

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Contract was modified to extend the date of performance to December 31, 1991, and was signed by parties on October 10, 1990. This is a construction project and contractor stated that the weather was a deterrent factor in the completion of this task. According to the contractor, Glen Powell, construction has been set back due to excessive rain during the construction period.

90-070-047

SOUTHEAST MS RESOURCE CONSERVATION & DEVELOPMENT AREA
\$9,611 0

PEER'S STATEMENT:

Contract called for contractor to disseminate information on alternative methods for sewage treatment for small communities. Contract expired on February 15, 1991, without any of the deliverables produced.

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Contract was modified to extend the date of completion to December 31, 1991, and was signed by parties on February 12, 1991. Modification amended the schedule delivery dates of Tasks I, II, III, and IV. The completion of the project is directly dependent upon an environmental occurrence of an operational marshland in a sited area in Mississippi. The unusually heavy rains during the year have prevented the development of the designated marshland site in Mississippi.

89-142-135

SUNFLOWER-HUMPHRIES COUNTIES PROGRESS, INC.
\$24,770 \$20,440

PEER'S STATEMENT:

Contract called for contractor to install ceiling fans in previously weatherized homes. The contractor did not submit a final report to E & T by June 30, 1990, as required.

EXHIBIT 2, Continued

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

DET Oversight Bureau had an on-site visit to Sunflower-Humphreys County on March 14, 1991 to inspect and observe the operation and installation of the ceiling fans. All financial records were reviewed and in compliance. A final report was submitted on March 14, 1991. Contractor submitted a Ceiling Fan Project Monitoring and Evaluation Report. The contract does not require information beyond that.

88-130-074	UNIVERSITY OF SOUTHERN MISSISSIPPI (USM)	\$68,040	\$67,457
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PEER'S STATEMENT:

Contract called for the contractor to design a furnace for burning pulverized coal, to evaluate the burned coal as to gases produced and to publish and disseminate the information by September 30, 1990. USM did not produce any of these three deliverables due to a broken part on the furnace.

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Task 2 and 3 could not be completed because of the broken part, and the Agency subsequently entered into a new contract to purchase a replacement part which then allowed them to complete Task 2 and 3 of the original contract.

90-067-011	UNIVERSITY OF SOUTHERN MISSISSIPPI (USM)	\$35,564	\$25,121
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PEER'S STATEMENT:

Contract called for USM to buy a power supply for the part which had halted the first project (88-130-074), assess and identify low temperature combustion techniques to reduce the production of acid rain and characterize mineralogical components of coal deposits. The university has not characterized the mineralogical components of the coal deposits.

EXHIBIT 2, Continued

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Contract was modified to extend the date of completion to March 31, 1991. All requirements of the contract have been satisfied. Contractor provided DET with the report on June 21, 1991, characterizing the mineralogical components of the coal deposits.

90-069-038

UNIVERSITY OF SOUTHERN MISSISSIPPI (AUTOMATION AND
ROBOTICS APPLICATIONS CENTER) \$59,940 0

PEER'S STATEMENT:

Contract called for the contractor to define any problems which may exist in the apparel industry and to propose solutions which would improve the competitive position of the industry in Mississippi with industries elsewhere. The contract called for USM to identify by May 31, 1990, problems in the apparel industry which could be addressed through group action or state local support. The contract called for USM to identify and compile by July 30, 1990, a list of manufacturers and to evaluate equipment of a least seven operating facilities. These tasks remained uncompleted as of August 1, 1990.

DIVISION OF ENERGY AND TRANSPORTATION'S RESPONSE:

Contract modification was entered into by all parties on July 19, 1991. Modification extended task c, g, h, and i in the contract until December 31, 1991.

Oversight Bureau became operational in December, 1990. This Bureau provides independent scrutiny of all contracts at DET. This Bureau has been reviewing all contracts with DET and making recommendations for any and all deficiencies identified. (See Attachment 4 - Contract Monitoring Review Procedures for the Program Oversight Bureau).

ITEM 7 Statement by PEER's Staff:

Five executive departments administer oil overcharge funds in Mississippi. One of these five submit proposals to the Governor for distribution of the funds held in a DFA interest bearing clearing account. After reviewing these proposals, the Governor may or may not allocate funds from the account to the agencies.

Response:

Oil overcharge funds are received in the state on a sporadic basis. As monies are made available by the federal court, they are disbursed to the states. Once monies are received in the states, a plan must be developed detailing the monies proposed usage. This plan is submitted to DOE for approval. DET, as the Governor's designee, develops the state's oil overcharge funds expenditure plan. This plan is submitted to the Governor's office for concurrence. Once the Governor's office concurs with the plan, it is submitted, by the Governor's designated representative, to DOE for approval.

ITEM 8 Statement by PEER's Staff:

Since state government reorganization, officials within the Department of Economic and Community Development, Energy and Transportation Division approve oil overcharge contracts.

Response:

Since state government reorganization, the Executive Director of the Department of Economic and Community Development, must approve all oil overcharge contracts.

ITEM 9 Statement by PEER's Staff:

Unlike personal services contracts, oil overcharge contracts are not subject to the State Personnel Board's (SPB) review and approval/disapproval.

Response:

DECD is unaware of any state agency submitting non-personal service contracts to SPB for approval. It should be noted that DET submits all personal services contracts to SPB for their approval/disapproval regardless of the source of funding.

FINDINGS

ITEM 10 Statement by PEER's Staff:

DET's July 1988 news release and legal notice did not adhere to division's standard operating procedures for soliciting/selecting proposals for disbursement of stripper well funds.

Response:

In July, 1988, the standard operating procedure which PEER continually refer to throughout this report was not in existence. DET did not have a standard operating procedure which could have been adhered to during the soliciting/selecting of proposals for disbursement of stripper well funds. Prior to the standard operating procedures, each program manager desiring to request proposals or services, developed a different request for each project. The standard operating procedures that PEER continually refer to in this report was developed and implemented by Andrew Jenkins on August 5, 1988. The process used in July, 1988 was based upon requirements and criteria set out in the United States District Court's settlement agreement, United States Department of Energy Office of Hearing and Appeals Decisions, DOE's regulations regarding allowable expenditures for Oil Overcharge Funds, and DOE's guidance relative to other state energy programs.

ITEM 11 Statement by PEER's Staff:

As of January 1, 1991 DET had issued only one Stripper Well Request for Proposal.

Response:

DET had issued more than one RFP for Stripper Well funds prior to January 1, 1991; however, it should be

noted that one of the RFP's issued resulted in the receipt of more than 150 proposals requesting funds in an amount which exceeded \$47,000,000. Request for Proposals were issued as necessary, as Stripper Well monies became available.

ITEM 12 Statement by PEER's Staff:

DET issued a news release and legal notice requesting energy-related projects and proposals funded by oil overcharge funds in July 1988.

Response:

DET issued a lengthy news release on July 21, 1988 (See Attachment 5 - 1988 news release) informing the public about the receipt of oil overcharge monies and the state's goals for the funds.

DET issued a Request for Proposals through a legal notice titled "MDET REQUEST PROPOSALS" that appeared in over 20 newspapers throughout the state of Mississippi during the last two weeks of July 1988. This legal notice was a RFP. This RFP was an official request for proposals for PVE funds. This legal notice appeared in all major newspapers of the state, as well as local bi-weekly and weekly newspapers. (See Attachment 6 - Documents which show the disbursement of funds by the state for publication of the RFP, copies of the legal notice as well as verification of publication documents which are contained in agency records).

ITEM 13 Statement by PEER's Staff:

1. DET used brief news release to notify public of monies.
2. Document did not have the character of a formal "solicitation document".
3. DET had no guarantee as to how information would be disseminated to the general public by print and audiovisual media.

Response:

1. DET published a legal notice titled "MDET REQUEST PROPOSALS" in over 20 newspapers statewide. In addition a news release about the availability of PVE funds was provided

to the media for dissemination. (See Attachment 5 - 1988 news release). This legal notice was an RFP.

2. DET's legal notice titled "MDET REQUEST PROPOSALS" has all the characteristics of a formal "solicitation document". (See Attachment 6 - 1988 Oil Overcharge RFP).
3. DET contracted the Mississippi Press Service and its network outlets to disseminate this legal notice to the appropriate media sources for statewide distribution, thereby assuring broad and even coverage. The Mississippi Press Service was contractually obligated to disseminate the information and did so. (See Attachment 6 - 1988 Oil Overcharge RFP).

ITEM 14 Statement by PEER's Staff:

The 1988 news release and legal notice had no detailed description of projects and scope of work for which DET was soliciting proposals.

Response:

DET was not seeking any one specific project or group of projects. DET determined, based upon its review of a variety of successful projects in other states, that a narrowly defined scope would not allow the diversity of participation by the various categories of consumers who were intended beneficiaries of the Stripper Well settlement agreement.

The July 1988 news release gave examples of the type of projects that had received oil overcharge funding in previous years.

The July 1988 news release and RFP were structured in broad terms to encourage the public and private sectors to develop and present new and innovative proposals for funding with the state's Stripper Well monies. There was no way for the staff of DET to predict or project the wide array of proposals that were received.

The wide variety of proposals received included a cost-share proposal with the Mississippi Power Company and the state of Mississippi to install ground source heat pumps for low to moderate families; a proposal on Resource Recovery to evaluate the energy benefit of municipalities burning its' solid waste to generate electricity; and a project from Multi-County Community

Action Agency demonstrating the feasibility of burning corn, a renewable resource, in stoves and heaters located in the homes of low-income families.

ITEM 15 Statement by PEER's Staff:

At the time of the 1988 news release, the DOE had not determined that DET's three broad categories were consistent with the court settlement.

Response:

Why this statement is technically correct, it is misleading given the information in the agency's records.

In February, 1988, Mississippi's Plan was approved by DOE. This plan consisted of specific projects that could be directly associated with the three categories that were mentioned in the July, 1988, news release. (See Attachment 7 - February, 1988 letter from DOE approving the Mississippi Plan which consisted of a listing of specific programs).

DET only modified the existing approved Mississippi Plan which primarily re-categorized already approved project categories. (See Attachment 8 - DET's request to reallocate and realign Mississippi's Stripper Well Plan to be consistent with the overall vision set for the state by the new administration).

Additionally, DET utilized all previous directives to the state from DOE regarding acceptable plan components.

The three categories were fully approved by DOE on January 2, 1990 and March 29, 1990.

ITEM 16 Statement by PEER's Staff:

Evaluation criteria listed in the 1988 new release and legal notice were in "broad" terms and did not include the specific evaluation factors listed in the department standard operating procedures, and deprived department employees of the necessary guidance to be used in evaluating all contract proposals according to standard criteria designed to comply with the intent of the program.

Response:

The 1988 news release and RFP contained evaluation factors based on directives provided to the states by the

United States District Court's Stripper Well Settlement Agreement, United States Department of Energy Office of Hearing and Appeals Decisions, DOE's regulations regarding allowable expenditures for Oil Overcharge Funds and DOE's guidance relative to other state energy programs.

The proposals were reviewed in terms of the energy savings to be realized, types of restitutionary benefits, the size of the population receiving the benefit, time periods for project development, and justifications of need for the projects. This criteria directly addresses the restoration of lost benefit to the citizens of the state of Mississippi which is the purpose of the Federal Court Order in the settlement agreement.

ITEM 17 Statement by PEER's Staff:

1988 news release was not developed by a selection committee as required by DET's standard operating procedures.

Response:

There were no DET standard operating procedures which provides for a selection committee in existence during July 1988. The selection committee requirement under DET's standard operating procedures did not come into existence until August 5, 1988. (See Attachment 1 - DET Standard Operating Procedures).

ITEM 18 Statement by PEER's Staff:

PEER staff questions whether these three categories of projects fulfill the purpose of the oil overcharge program of providing restitution to those consumers overcharged by oil companies during federal pricing regulation.

Response:

The United States District Court in the Stripper Well settlement agreement put in place measures and requirements to ensure that any and all oil overcharge monies spent by any state is explicitly and conclusively used to provide restitution to those consumers overcharged by oil companies during federal pricing regulations. As evident by DET's

records, Mississippi's three categories of programs are in complete compliance with all federal court requirements as evidenced by DOE approval.

ITEM 19 Statement by PEER's Staff:

Andrew Jenkins, Executive Director of DET, selected proposals to receive stripper well funds and determined their level of funding based solely on his discretion.

Response:

This statement is incorrect. Prior to state government reorganization in 1989 the Energy and Transportation Board determined the recipients of Stripper Well funds. The Energy and Transportation Board had approved all projects funded by DET pursuant to the July 1988 funding process prior to state government reorganization. However, many of the Board approved projects had not been implemented at the time of reorganization. All projects implemented after reorganization were approved by the Executive Director of the Department of Economic and Community Development.

After state government reorganization in July 1989, the Executive Director of the Department of Economic and Community Development approved the recipients of Stripper Well funds.

ITEM 20 Statement by PEER's Staff:

DET's failure to comply with its own standard operating procedures could have resulted in biased treatment of project proposals. The department had no basis on which to develop formal criteria to evaluate stripper well proposals in the context of the state's energy needs and court-ordered guidelines without a state energy and transportation plan.

Response:

DET's criteria for evaluating proposals resulting from the July 1988 RFP and news release was based upon directives provided to the states by the United States District Court's Stripper Well settlement agreement, United States Department of Energy Office of Hearing and Appeals Decisions, DOE's directives regarding allowable

expenditures for Oil Overcharge Funds, DOE's guidance relative to other state energy programs, and DOE's regulations governing the congressionally mandated Federal Energy Conservation Programs which is the only legal basis for determining eligibility for funding.

ITEM 21 Statement by PEER's Staff:

A significant portion of Stripper Well funds, \$9,504,474, remain unallocated by the Governor in the DFA interest bearing clearing account.

Response:

There is only a \$1,835,475.60 balance of unallocated Stripper Well Funds which are invested and earning interest until such time that cost effective programs have been identified which provides the required restitutionary benefits to the citizens of this state.

ITEM 22 Statement by PEER's Staff:

In sixteen of forty-one (39%) active Stripper Well program contracts reviewed by PEER, the DET staff failed to require contractors to fully comply with the terms of their contracts. Of these sixteen contracts, DET made payment to eleven contractors (69%) even though they did not produce the deliverables required by their contracts. Deliverables were not produced in accordance with contract specifications.

Response:

DET has examined the sixteen contracts reviewed by PEER's staff during this investigation. In a significant number of these contracts there were no material violation of the terms of the contract by the contractors in question. DET has provided a detailed report on these contracts in Exhibit 2.

Exhibit's 3 and 4 are detailed examinations and explanations of the course of events as they occurred in the Alpha Company/Jerry Hemphill loan agreement transaction with DET). Jerry Hemphill presented what he considered final deliverables to DET. The deliverables were not up to the expected standard of DET.

EXHIBIT 3

PEER's Statement:

PEER reviewed DET's records on payments made by the agency to the Alpha Company. The Alpha Company is owned by Jerry Hemphill. PEER made the following statements:

- (1) Alpha Company only submitted sketch plans without specifications or a project engineer's review.
- (2) DET paid Alpha Company in three installments with none of the contract's three tasks having been performed.
- (3) DET is guilty of 97-11-29 (1972) Miss. Code Ann. because they gave state funds without receiving deliverables.
- (4) Andrew Jenkins paid Alpha Company knowing that it was in violation of the signed contract.

DET's Response to PEER's Statement:

These statements are incorrect and a totally inaccurate characterization of the course of events.

August 25, 1988 - The Alpha Company/Jerry Hemphill submitted a proposal for a grant through the Petroleum Violation Funds Program. (See Attachment 21).

November 18, 1988 - Jerry Hemphill requested that his proposal be considered for a small business loan application.

January 11, 1989 - Mississippi Energy and Transportation Board approves the Alpha Company for a \$45,000.00 loan and a \$5,000.00 grant.

June 9, 1989 - The Alpha Company and DET sign a loan agreement for \$50,000.00. Jerry Hemphill decided that he did not wish to obtain a grant from DET. Thus DET and the Alpha Company entered into a loan agreement for the sum of \$50,000.00. Under the terms of the loan agreement the state is fully secured for \$50,000.00. (See Attachment 22). The Alpha Company did not receive a grant from DET.

EXHIBIT 3, Continued

June 13, 1989 - The Alpha Company received a \$16,000.00 disbursement on its loan agreement.

July 17, 1989 - The Alpha Company delivers three drawing for three off-shore vessel configurated to Fred Heindl at DET. The drawing are on 2' x 3' blueprint paper.

July 21, 1989 - The Alpha Company faxed the specifications for the three off-shore vessel configurated that were delivered to Fred Heindl on July 17, 1989. (See Attachment 11).

August 1, 1989 - The Alpha Company submitted Project Tasks Agreement to DET for implementation with the June 9, 1989 loan agreement. (See Attachment 12).

The Project Tasks Agreement further defined the deliverables associated with the loan agreement. The Project Task Agreement does not require that the performance of each of the task must proceed a loan installment disbursement. In fact, the structure of the Project Task Agreement is such that it would indicate that there would be a disbursement of funds followed by a performance of certain tasks. (See Attachment 12). It must be understood that the loan recipient required funds in advance in order to perform the tasks. If the recipient had adequate company's funds, it would not have needed the loan.

August 17, 1989 - The Alpha Company received a \$16,000.00 disbursement on its loan agreement.

October 3, 1989 - Jerry Hemphill submitted a letter to Andrew Jenkins requesting the third disbursement on his loan agreement. Jerry Hemphill submits the following documents with his payment request: a letter from the Army Corps of Engineers containing comments on the information provided them by the Alpha Company; a letter from the Department of Civil Engineering; a document containing numerical information on three-concrete vessels, and photocopies of several periodicals on concrete vessels. (See Attachment 13).

EXHIBIT 3, Continued

Andrew Jenkins ask for verification from the contract manager, Fred Heindl, as to whether or not Jerry Hemphill was in compliance with the terms of his contract. Fred Heindl told Andrew Jenkins that the Jerry Hemphill was in compliance under the terms of the contract and eligible for the third disbursement of \$16,000.00 based upon the documents submitted by Jerry Hemphill with his October 3, 1989 letter. (See Attachment 14).

Andrew Jenkins refused to grant the third disbursement of \$16,000.00 until Jerry Hemphill provided the agency with an agreement from an engineer or agency to complete the structural analysis. (See Attachment 14).

November 16, 1989 - Jerry Hemphill submitted a letter and proposal from Mississippi State University titled "Underwater Concrete Habitat and Facilities for Offshore Oil Exploration and Recovery." Jerry Hemphill contacted Andrew Jenkins and informed that he need the \$16,000.00 to engage Mississippi State. (See Attachment 15).

Andrew Jenkins allowed the third disbursement of funds to enable the project to go forward.

On May 7, 1990 - Jerry Hemphill submitted a final report and requested his final \$2,000.00 disbursement. (See Attachment 19).

May 24, 1990 - Andrew Jenkins wrote a memorandum to J. Mac Holladay stating in essence that it is his opinion the Alpha Company had not satisfactorily completed Task II and Task III under the original agreement. (See Attachment 16).

May 25, 1990 - Andrew Jenkins wrote a letter to Jerry Hemphill stating what he considered to be noncompliance on the part of Jerry Hemphill on this agreement with DET. (See Attachment 17).

May 29, 1990 - Jerry Hemphill and, the project engineer Jack Brandau response to Andrew Jenkins' letter of May 25, 1990. It was Jerry Hemphill and Jack Brandau position that the documents they had submitted on July 17, 1989, July 21, 1989, October 3, 1989, November 16, 1989 and the final report fulfilled the contractual requirements. (See Attachment 18).

EXHIBIT 3, Continued

It is DET's position that the documents presented by Jerry Hemphill are deficient and have withheld \$2,000.00 until DET grant approval of all deliverables. DET's action is consistent with the terms of the Project Tasks document. (See Attachment 17). DET has contacted the Attorney General's office for assistance on the Jerry Hemphill contract. (See Attachment 20).

EXHIBIT 4

PEER'S APPENDIX
REVIEW OF APPLICABILITY OF CRIMINAL STATUTES WHICH MAY
APPLY TO FINDINGS IN PEER'S REVIEW OF THE STATE'S
OIL OVERCHARGE PROGRAM

PEER properly states the law herein, but inaccurately states the fact.

1. PEER's Statement:

On June 9, 1989, Andrew Jenkins and the Alpha Company signed a loan agreement "for the development of concrete boats for oil exploration."

DET's Response to PEER's Statement:

This an incorrect statement.

The Alpha Company was to investigate the use of reinforced concrete in the construction of very large off-shore and submersible platforms. The Alpha project was not to develop an actual concrete structure.

2. PEER's Statement:

Andrew Jenkins' letter of May 25, 1990 to Jerry Hemphill documents that he was aware that no deliverables provided for under the agreement had been produced.

DET's Response to PEER's Statement:

This an incorrect statement.

Andrew Jenkins' letter of May 25, 21990 to Jerry Hemphill documents that he did not consider the documents delivered on July 17, 1989, July 21, 1989, October 3, 1989, November 16, 1989 and the final report to be sufficient to meet the requirements of the contract. (See Attachments 11 through 19).

Although the deliverables provided by Jerry Hemphill did not meet the expected standards set by DET; Jerry Hemphill argued that these documents met the requirements of the contract. The Project Tasks agreement provides for the withholding of \$2,000.00 of the loan until DET has approved all deliverables. DET has determined that these documents are insufficient. It is Jerry Hemphill's position that he has fully complied with all terms of the loan agreement. (See Attachment 18). Payments were made according to the Project Tasks agreement. In order

EXHIBIT 4, Continued

for Jerry Hemphill to obtain the final \$2,000.00 of his loan agreement he must modify his submitted documents to obtain DET's approval.

3. PEER's Statement:

PEER concludes that the continued advance of funds to a loan recipient when the services to be rendered precedent to further disbursement of funds were never rendered could constitute a fraud against the State if the approving officer of DET was aware that the condition precedent to the further issuance of funds had not been met.

DET's Response to PEER's Statement:

The disbursement of funds by the DET officer were correct as far as he was aware:

- i. Jerry Hemphill received \$16,000.00 on June 13, 1989.

Task I

- ii. Jerry Hemphill presented three drawing and specifications on July 17, 1989 and July 21, 1989.
- iii. Jack Brandau, was the project engineer and was involved in the processing of the information.

- i. Jerry Hemphill received \$16,000.00 on August 17, 1989.

Task II

- ii. On October 3, 1989, Jerry Hemphill submitted a letter from the Army Corps of Engineer containing statements on the information provided them by the Alpha Company; a letter from Mississippi State University Department of Civil Engineering; a numerical computer printout on three concrete ships and photocopies of several periodical on concrete vessels.
- iii. On October 10, 1989, Fred Heindl, contract manager informed Andrew Jenkins that Jerry Hemphill was in compliance with his contract and eligible for a

EXHIBIT 4, Continued

third disbursement of \$16,000.00. Andrew Jenkins required Jerry Hemphill to submit an agreement from an engineer or agency to DET to complete the structural analysis started by the Army Corp of Engineers.

- iv. On November 16, 1989 Jerry Hemphill submitted a letter wherein he stated that a attached proposal was a signed agreement with Mississippi State University to perform the necessary analysis on the concrete boat project.
- v. On November 16, 1989, Jerry Hemphill received a \$16,000.00 disbursement on his loan agreement.
- vi. On May 7, 1990, Jerry Hemphill submitted a final report and request the \$2,000.00 remaining on his loan agreement.
- vii. In May 1990, Jerry Hemphill contacted DET for the remaining \$2,000.00 on his loan agreement.
- viii. On May 25, 1990, Andrew Jenkins informed Jerry Hemphill that the documents presented to DET had not received final approval and the \$2,000.00 remaining on his loan agreement was being withheld until he came into compliance.
- ix. On May 29, 1990, Jerry Hemphill and the project engineer, Jack Brandau informed DET that they were of the opinion that the contract had been fulfilled.
- x. DET has officially informed Jerry Hemphill of their intentions to take legal action if an amicable settlement can not be reached by the parties. (See Attachment 20).

The Alpha Company received a loan for \$50,000.00 from DET on June 9, 1989. The Alpha Company did not receive a grant of any kind. DET is fully secured under it's loan agreement through a lien on the personal and business assets of Jerry Hemphill, the owner of the Alpha Company. The loan is not due for repayment until June, 1992.

The implication that the \$50,000 has been squandered without recourse is grossly misleading. As stated above, the agreement with Alpha Company was a fully secured loan with repayment required. Thus to use the term "embezzlement" in this context is most irresponsible and objectionable. Its use also betrays a lack of understanding of the fundamental terms of the agreement. The issue is simply a contractual one, whether Alpha Company performed under the terms of the loan agreement. DET does not believe the deliverables provided fully conformed to the requirements and therefore withheld the final installment as permitted under the agreement.

ITEM 23 Statement by PEER's Staff:

In a letter dated May 21, 1990, Andrew Jenkins admitted that the three deliverables had not been produced, but that DET had paid Alpha Company.

Response:

The letter of May 21, 1991 by Andrew Jenkins regarding the contractual violation of the Alpha Company was a matter of differing opinion as illustrated by the May 26, 1991 memorandum from the contractor's project engineer. DET has been vigorously pursuing the Alpha Company regarding this contract.

However, it must be noted that this project consist of a \$50,000.00 loan. The state is protected by a lien on the contractor's personal and business assets.

ITEM 24 Statement by PEER's Staff:

DET's procedures do not require verification of who actually performs the technical analysis on projects that are contracted out by the agency.

Response:

DET's qualifies a firm, not an individual, to performs technical analyses. A firm must have all necessary qualified personnel on staff, or under contract, to become certified to perform technical analyses for the agency. All technical analyses performed for the Institutional Conservation Program require the signature of a registered engineer.

ITEM 25 Statement by PEER's Staff:

PEER concludes that in Larry Jennings joint-venture proposal submission, he misrepresented his professional qualifications and violated Mississippi Statutes and Board of Professional Engineer's rules and regulations.

Response:

The actual proposal document in the joint-venture was prepared by the staff at Neel-Schaffer, Inc. of Jackson. It is our understanding that it was an inadvertent error by the document's preparer that Larry Jennings was listed as a registered professional engineer. (See Attachment 9)

DET would note for the record that the joint-venture proposal contained the resumes of seven (7) registered engineers, all of whom are registered in Mississippi, as well as other technical staff. (See Exhibit 5).

The joint-venture proposal was evaluated in accordance with the Division's standard operating procedures, and was selected based upon its overall score, and not the number of registered engineers.

ITEM 26 Statement by PEER's Staff:

Legislature involvement is limited to appropriating oil overcharge allocations made to specific agencies by DFA rather than approving specific energy-related projects and contractors.

Response:

During the most recent Plan development and approval DET received vital input and directives from the Chairman of the Senate Conservation and Water Resource Committee and the Chairman of the House

EXHIBIT 5

PEER'S APPENDIX
OTHER MATTERS

1. PEER's Statement:

Larry Jennings has violated Miss. Code Ann. 97-7-10 (1972), if the misrepresentation made by Jennings was material to his receiving the work for which his proposal was submitted.

DET's Response to PEER's Statement:

DET evaluated the joint-venture proposal of Larry Jennings and Neel-Schaffer in accordance with its standard operating procedure and was viewed as a cumulative product. The proposal contained the resumes of seven (7) other engineers; all of whom are licensed in the state of Mississippi. The fact that Larry Jennings was registered in Mississippi or not, had an insignificant effect on the cumulative points awarded the joint-venture proposal.

Environmental Conservation Water Resource Committee
in the preparation of the state Programs for
Expenditure of Oil Overcharge Funds. (See Attachment
10).

ITEM 27 Statement by PEER's Staff:

Mississippi's process does not provide for a statewide perspective regarding the disbursement of oil overcharge funds.

Response:

DET is a division of the Department of Economic and Community Development which is a state agency. The jurisdiction of the division and the department is thus necessarily statewide. Every program and initiative undertaken by DET is conceived, considered and developed with a view toward addressing the needs of the state as a whole.

A review of DET's oil overcharge contracts reveals the extent to which these funds have been distributed throughout the state. Exhibit 6 is a sampling of some of the oil overcharge projects from every region of the state.

**DIVISION OF ENERGY AND TRANSPORTATION RESPONSE TO
PEER'S RECOMMENDATIONS**

1. PEER's Recommendation:

The Division of Energy and Transportation should adhere to its own standard operating procedures in soliciting and selecting proposals in its administration and management of oil overcharge funds.

DET's Response to PEER's Recommendation:

DET is in full agreement with this recommendation and has completely and fully complied with its standard operating procedures in all solicitations since the implementation of the standard operating procedures on August 5, 1988. This information is easily verified within the agency's records.

2. PEER's Recommendation:

The Division of Energy and Transportation should prepare implement and submit to the Legislature the Mississippi Energy and Transportation Plan as mandated by Miss. Code Anno. (1972) Section 57-39-9. In addition, the Legislature should require DET to compile a report and submit it annually to the legislature which details the disbursement and utilization of oil overcharge funds. In particular, the report should address the effectiveness of all contracts funded by oil overcharge funds.

DET's Response to PEER's Recommendation:

The Statewide Transportation Plan was completed in March, 1983. The Statewide Energy Plan will be completed by September 30, 1991. The Statewide Energy Plan will be presented to the Legislature at their earliest convenience after September 30, 1991.

DET presently provides a detail annual report to DOE and the Federal Court during the month of September on oil overcharge funds. This report addresses all the concerns raised by PEER in this recommendation and it is certainly available to the Legislature.

3. PEER's Recommendation:

The Division of Energy and Transportation should adopt a policy requiring contractors to submit proof of compliance with their contracts(s) prior to receiving payments. In addition, the division should not enter into contracts with persons who have not fulfilled all obligations of previous contracts with the division.

DET's Response to PEER's Recommendation:

DET's current policies requires contractual compliance on the part of contractor. DET's implementation of the Program Oversight Bureau in December, 1990 will ensure that all contracts are properly adhered to by all parties. During the time of the PEER review the Program Oversight Bureau was in the process of reviewing all contracts to bring them in compliance.

It is DET's position that if a contractor is fully complying with all the terms of his contract he should not be prevented from seeking additional contracts with the agency provided he has the necessary ability to provide the services sought.

4. PEER's Recommendation:

The Executive Director of the PEER Committee should forward a copy of this report to the Department of Audit and Attorney General's Office for investigation and prosecution of DET employee for potential violation of Miss. Code Ann. Section 97-11-29 (1972) by approving expenditures for which there were no deliverables.

DET's Response to PEER's Recommendation:

DET strongly objects to the implication that there is anything further to investigate by the Department of Audit or Attorney General's Office. It has been shown beyond a doubt that DET has a secured loan with the Alpha Company which does not due and payable until June, 1992. The use of the terms "fraud and embezzlement" in relationship to the actions taken by DET employees regarding the Alpha Contract is clearly unfounded and highly prejudicial. This matter is nothing more than a contractual dispute between parties regarding a differing of interpretation on contract terms.

5. PEER's Recommendation:

The Executive Director of the PEER Committee should forward a copy of this report to the Department of Audit and Attorney General's Office for investigation and potential prosecution of Larry Jennings and Jerry Hemphill for violation of Miss. Code Ann. Section 97-7-10 (1972) by making fraudulent representations.

DET's Response to PEER's Recommendation:

DET has no objection to this recommendation. DET has sought the Attorney General's Office assistance on the Jerry Hemphill contract. DET is assured that the Larry Jennings misrepresentation was due to a clerical error. Additionally, the

Larry Jennings misrepresentation issue did not have a material bearing on his joint-venture contract with Neel-Schaffer, Inc.

6. PEER's Recommendation:

The Executive Director of the PEER Committee should forward a copy of this report to the Board of Engineers for its review and investigation.

DET's Response to PEER's Recommendation:

DET has no objection to this recommendation. However, DET does feel that this recommendation is unfounded given the information provided to PEER.

7. PEER's Recommendations:

The Legislature should consider approving an expert review committee within the Division of Energy and Transportation to review proposals and approve all Oil Overcharge funded contracts entered into by the Division of Energy and Transportation.

DET's Response to PEER's Recommendation:

DET feels that there are appropriate and adequate procedures in place to ensure compliance with all applicable laws, regulations, Federal Directives and Federal Court Orders.

EXHIBIT 6

OIL OVERCHARGE PROJECTS THROUGHOUT MISSISSIPPI

DET's Stripper Well Funds have been used to provide restitutionary benefits to all the people of the state. The projects listed below are a small sample of the diverse projects funded throughout the state.

1. GIS project - Provides technical assistance to county governments in energy planning and economic development through computer technology. This project has statewide application. Projects are on line in Madison, Pike, Washington, Alcorn and Harrison counties.
2. Fleet Management Study - Provides for the development of a central motor pool of motor vehicles used by agencies, departments and institutions of State government. The study has been completed and is being disseminated.
3. Transportation Management Software - Provides a comprehensive transportation management software package for use by school districts and transportation systems in Mississippi. This project has statewide application. Project is being developed at the University of Southern Mississippi.
4. Solid Waste To Energy Study - Provides for a study to determine the feasibility of using solid waste from municipalities to produce energy for industry and electrical distribution. This project has statewide application.
5. State Petroleum Recovery - Provides for the analyzing and generating of data on Mississippi's oil reservoirs recovery enhancement through carbon dioxide injection in oil deposits. This is an economic development project with statewide application.
6. Artificial Marshlands Sewage Treatment - Provides for educational video and presentation on alternate forms of sewage treatment. This is an educational project with statewide application.
7. Energy Literacy Project - Provides for the utilization of computer software in all public schools on energy efficiency. This is an educational project with statewide application.

8. Mississippi Energy Conservation - Provides "seed money" for the Mississippi Energy Conservation Society to become self-supporting. The Mississippi Energy Conservation Society provides energy education and technology applications to industries, public schools, hospitals, utility companies, consultants, government and commercial businesses on the implementation and growth of energy programs. This is an educational program with statewide application.
9. Corn Burning Stoves - Provides for the installation of a newly designed corn burning stove in a six county area for low income residents located in Clarke, Jasper, Kemper, Lauderdale, Newton and Wayne counties. This is a quality of life project with statewide application.
10. Home Weatherization - Provides home weatherization to persons previously denied improvement through Weatherization Assistance Program. This is a quality of life project located in Harrison County.
11. Fan Installation - Provides for the installation of 200 three-speed reversible fans in the homes of the elderly and handicapped persons to help reduce utility bills. This is a Quality of life project located in Sunflower and Humphreys counties.
12. Freight Line Development - Provides for a comprehensive transportation study on 33 truck lines serving northeast Mississippi. This is a project with a regional application.
13. Seafood Industry Water Conservation - Provides for a study on methods in which coastal portable groundwater can be conserved through reducing the withdrawal rate by the seafood industry in Harrison and Jackson counties. This is a quality of life project with regional application.

**ATTACHMENTS REFERRED TO IN THE DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT, DIVISION OF ENERGY AND
TRANSPORTATION'S RESPONSE ARE ON FILE IN PEER OFFICES
FOR REVIEW DURING REGULAR WORKING HOURS**

**Joint Committee on Performance Evaluation
and Expenditure Review
Mississippi Legislature
222 North President Street
Jackson, Mississippi**

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- *Indicates project manager*
 - *Indicates staff with primary assignment to this project*
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