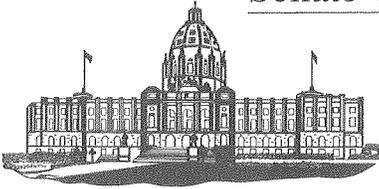


Senate Counsel & Research

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## Short Subjects

TITLE: Exxon Oil Overcharge Funds                      DATE: August 1, 1986  
AUTHOR: Frank Fly, Legislative Analyst              PHONE: 296-5956  
          Allison Wolf, Senate Counsel                      296-4396

This paper is divided into six parts as follows:

- I. Exxon Pricing Violations
- II. Restitution
- III. Use of Funds by the States
- IV. Modification and Clarification of Court Order
- V. Recommendations for Use of Exxon Funds in Minnesota
- VI. Other Oil Overcharge Cases

### I. Exxon Pricing Violations

On March 25, 1983, the U.S. District Court for the District of Columbia ordered the Exxon Corporation to pay \$2.1 billion in restitution for excessive and illegal charges on crude oil. United States v. Exxon Corporation, 561 F.Supp. 816 (D.D.C. 1983). The decision was upheld on July 1, 1985, after an appeal by Exxon. On January 27, 1986, the U.S. Supreme Court left standing the appeals court's decision by denying a petition from Exxon for review of the case.

The district court decision was in response to a suit filed by the U.S. Department of Energy (DOE) charging Exxon with violations of price controls established under the Emergency Petroleum Allocation Act. The department charged that the company had committed the violations between January 1, 1975, and January 28, 1981, when the price controls were lifted.

Under the Emergency Petroleum Allocation Act, DOE specified maximum prices which could be charged for domestic oil products. The price controls established lower maximum prices for oil from old wells, and higher maximum prices for oil from new wells, which use more expensive extraction methods.

The court found Exxon guilty of selling old oil from its field in Hawkins, Texas, as new oil at the higher maximum prices. The court ruled that Exxon had overcharged its customers by \$895.5 million between 1975 and 1981. Exxon was ordered to

refund the amount of the overcharge plus the interest accrued on the amount of the overcharge. The interest amounted to about \$1.2 billion, for a total of \$2.1 billion.

## II. Restitution

In some cases involving similar violations of price regulations, companies have been ordered to first pay any individual consumers who could establish that they were injured, and then to distribute any remaining funds in a manner providing indirect restitution to injured consumers. In the Exxon case, however, the court determined that it would be impractical to trace the overcharges to individual consumers. The court decided instead that the entire \$2.1 billion should be used to provide indirect restitution to oil consumers.

The court ordered the Exxon funds to be disbursed in accordance with Section 155 of the Further Continuing Appropriations Act for Fiscal Year 1983. Section 155, commonly referred to as the "Warner Amendment," establishes a mechanism for the distribution of oil overcharge funds. At the time the amendment was adopted, DOE had collected about \$200 million in petroleum violation funds through settlement of various cases, but had not distributed them for lack of a clear policy on how to do so.

The Warner Amendment requires that oil overcharge monies be allocated to the various states in proportion to the volume of refined petroleum products consumed in each state between September 1, 1973, and January 28, 1981.

The amount of Exxon funds allocated to the states ranges from about \$5 million for Vermont to \$195 million for California. Minnesota's share is approximately \$36 million.

The Warner Amendment requires the funds to be transmitted to the governor of each state. The Exxon money was disbursed on March 6, 1986.

## III. Use of Funds by the States

The Warner Amendment requires the governor to use the petroleum violation funds as if such funds were received under one or more of the following five federal energy conservation programs:

1. State Energy Conservation Program (SECP). SECP is designed to promote the development and implementation of state energy conservation policies and plans that will reduce the state's projected energy consumption by at least five percent.

2. Energy Extension Service (EES). The EES program is designed to encourage consumer awareness and use of energy conservation measures.
3. Institutional Conservation Program (ICP). ICP provides matching grants to public and private nonprofit schools and hospitals for energy conservation and alternative energy projects.
4. Weatherization Program. The objective of the weatherization program is to reduce energy consumption in low-income households by providing financial assistance for insulating and increasing heating system efficiency.
5. Energy Assistance Program (EAP). EAP provides heating assistance, energy crisis assistance, and energy conservation and repair funds to low-income households.

The first three programs are administered at the state level by the Department of Energy and Economic Development (DEED); the weatherization program and EAP are administered by the Department of Jobs and Training.

The Warner Amendment also requires that the governor report to DOE within one year after the time of disbursement the energy conservation program or programs to which funds have been or will be applied.

In addition, the amendment specifies that the funds must be used to supplement, and not supplant, funds otherwise available for the programs under federal or state law. This provision is designed to insure that overcharged consumers actually receive some restitutionary benefit, over and above the benefits they would otherwise receive under existing appropriations.

#### IV. Modification and Clarification of Court Order

Minnesota joined the other states in a request to the court for modification and clarification of the original Exxon decision. In a Memorandum and Order issued June 10, 1986, Judge Thomas Flannery responded to the states' petition.

##### Twenty Percent Match Not Required

The court waived a 20 percent matching requirement that ordinarily applies to two of the Warner Amendment programs-- the State Energy Conservation Program and the Energy Extension Service. As a result, Minnesota need not match the Exxon funds in order to use them for those two programs.

## Restriction on Capital Expenditures

The states were not successful in obtaining relief from certain DOE rules that prohibit spending SECP or EES funds to purchase energy conservation equipment or materials. The court indicated that exceptions could be made by DOE through rulemaking. DOE is not expected to issue new rules governing the Warner Amendment programs. Instead, states may apply to the DOE's Office of Hearing and Appeals for relief from particular regulatory restrictions, such as the restriction on capital expenditures. Considerable delay in releasing the funds will result from seeking relief in this manner.

The restriction on purchase of equipment and materials is of considerable concern to Minnesota. Both the Governor's Task Force and the Legislative Commission on Energy recommended that substantial portions of the Exxon funds be devoted to programs based on capital expenditures. The restriction could affect both the Residential Loan program, administered by MHFA, and the Community Grants program, administered by DEED. However, the restriction on capital expenditures is not absolute. Exxon funds may be used to reduce the interest rate on loans made to purchase or install "equipment or materials for energy conservation building retrofits or weatherization." 10 CFR 420.12(a)(6).

## Administrative Expenses

The states also asked that the court allow administrative expenses to be paid from Exxon funds. The court's denial of this request will not have a dramatic impact because of the availability of other oil overcharge funds that may be used to pay administrative expenses. Although the states had withdrawn their original request to be allowed to pay attorneys fees from the Exxon funds, the judge included in his Order a strongly-worded ban on this use of the funds.

## Monitoring

The states believe pre-approval of DOE is needed only for new programs. However, DOE is taking the position that prior approval is required for all expenditures. This issue remains a source of contention between the states and DOE. Since the court ruled that DOE Ruling 1983-1 applies, it would appear that DOE should use the same monitoring procedures for the expenditure of the Exxon funds as it did for funds under the Warner Amendment.

Under the Warner Amendment procedures, to use a portion of the funds for a purpose previously approved by DOE, a state was required to file an amended application or plan, but did not need to file the application or plan before expending the funds. On the other hand, if a state determined to use a portion of the funds for a purpose not provided for in its prior application or plan, the state was required to file an

amended application or plan and needed to await formal DOE approval before it funded the new purpose.

V. Recommendations for Use of Exxon Funds in Minnesota

Governor Perpich established an advisory task force, chaired by Tony Perpich, deputy commissioner of DEED for energy, to make recommendations on how the Exxon funds should be used. The task force consisted of members of the public and private sector knowledgeable about energy matters. On May 7, the task force submitted its recommendations to the governor.

On June 12, the Legislative Commission on Energy, which has statutory authority to review and comment on Minnesota's expenditure of funds received as a result of federal petroleum pricing violations, recommended to the governor that the funds be expended in a manner somewhat different than suggested by the task force. The most significant differences were the commission's recommendations that the amount allocated for energy assistance and weatherization be reduced from \$19 million to \$6.3 million, and that the amount expended for schools and hospitals be increased from \$2.3 million to \$10 million.

The principal issue at stake was how to divide the money between funds for low-income households and funds that would be available for energy conservation purposes regardless of income level. Proponents of using the money primarily for assistance to low-income households argued that low-income energy consumers are those most in need of assistance. Advocates of using more of the funds for schools and hospitals, as well as other purposes, believed that the money should be distributed in a manner to provide restitution to a broader segment of the population, more closely reflecting the consumption of petroleum products and therefore the degree of injury incurred as a result of the overcharging.

On July 22, Governor Perpich issued his decision. On the major issue of how much money to allocate to low-income households, he took a position midway between the two advisory recommendations, allocating \$8.0 million less than proposed by the task force and \$4.7 million more than recommended by the Energy Commission. The governor also struck a compromise position on loans for energy conservation in schools, hospitals, and public buildings, awarding \$4.55 million more than recommended by the task force and \$3.35 million less than the Energy Commission suggested. The governor provided more funds for energy research and education at the University of Minnesota, and for farm audits, than was called for by either advisory body. The table below compares the allocations made by the governor with the recommendations of the two advisory groups.

ALLOCATION OF EXXON FUNDS

<u>Program</u>	<u>Task Force Proposal</u>	<u>Commission Recommendation</u>	<u>Governor's Decision</u>
1. <u>Energy Assistance</u>  (Department of Jobs and Training)  Provide financial assistance to low-income households for weatherization and energy conservation.	\$19.0 million	\$ 6.3 million	\$11.0 million
2. <u>Residential Loans</u> (MHFA)  Provide no-interest or low-interest loans for residential energy conservation.	7.5	10.0	7.5
3. <u>Community Grants</u> (DEED)  Provide funds to communities for innovative energy projects.	3.0	5.0	3.0
4. <u>Transportation Studies</u> (MnDOT, U of M)  Research, provide technical assistance, and disseminate information on new technologies for achieving greater energy efficiency in transportation.	2.5	2.75	2.75
5. <u>Schools, Hospitals, and Public Buildings</u>  Provide loans to public and private nonprofit schools and hospitals for building audits and installation of energy conservation measures.	2.3	10.0	6.85

6.	<u>Energy Research and Education</u> (U of M)	\$ 2.0	\$ 2.2	\$ 4.9
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Research, provide technical assistance, and disseminate information on indoor air quality, insulation of building foundations, optimal weatherization.

7.	<u>Farm Audits</u> (Department of Agriculture)	0.2	0.25	0.5
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Fund in-depth audits of farm energy use, including both direct energy use (e.g., gasoline, electricity) and indirect energy use (e.g., fertilizer, chemicals).

#### VI. Other Oil Overcharge Cases

Minnesota will soon receive additional oil overcharge funds as a result of the settlement of two other cases.

Minnesota will receive \$750,000 as a result of a settlement of Diamond Shamrock Refining and Marketing Company v. Standard Oil Company, et al. The settlement, approved by the court on June 9, 1986, provides for a split of the funds among certain refiners, DOE, and the states.

The Diamond Shamrock settlement agreement places few restrictions on the use of the funds. For example, the settlement clearly allows the funds to be used for administrative expenses. The entire amount could be used for administrative expenses in Exxon and other oil overcharge cases.

The settlement of the Stripper Well case is now final. In Re: The Department of Energy Stripper Well Litigation. However, there remains a remote chance that Congress will act to take control of the Stripper Well funds before they are disbursed to the states. Under the settlement terms, Minnesota will receive about \$11.5 million in 1986 and up to \$19 million over the next two to three years. There are few restrictions on the use of the Stripper Well funds. States will be allowed to spend them for administrative expenses up to statutory or regulatory limits or up to five percent where no such limits apply. Programs for which the Stripper Well funds may be spent include the following:

## Transportation

- A. General Driving Public: Fuel efficient traffic signal programs; highway traffic management programs; motor fuel and recycling programs; highway and bridge maintenance and repair; and public transportation projects.
- B. Consumers: Car care clinics; energy education for drivers training, ridesharing programs; marketing of state supported passenger rail and mass transit; and bicycle promotion program.
- C. Commercial, Industrial, Government: Vehicle fleet maintenance programs; transportations systems management assistance; remanufacturing/refitting transit buses; computerized school bus routing; alternative transportation fuel programs; and transit system refitting loan program.

## Residential

- A. Heating: Weatherization; retrofitting; tune-ups; energy audits; energy assistance; demonstration projects; data collections and dissemination; energy management services; conservation promotion programs; solar energy demonstration programs; and solar energy lending programs.
- B. Electricity: Weatherization; energy auditing; energy assistance; promotion of high-efficiency appliance; and demonstration projects.

## Commercial

- A. Industrial/Agricultural: Energy loans, energy assistance; conservation; and biomass conservation.
- B. Small Business/Government/Education: Energy accounting incentives; loans and technical assistance; energy audits; energy efficiency; and cogeneration.