

U.S. DEPARTMENT OF ENERGY



OFFICE OF HEARINGS & APPEALS

FY 2009
ANNUAL REPORT

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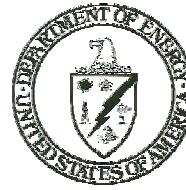
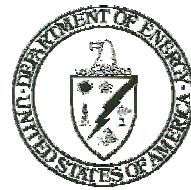


TABLE OF CONTENTS

MESSAGE FROM THE DIRECTOR.....	1
INTRODUCTION.....	3
I. AREAS OF JURISDICTION.....	5
A. Personnel Security	5
B. Contractor Employee Protection Program	8
C. Freedom of Information and Privacy Acts	11
D. Exception and Special Redress	12
E. Energy Efficiency and Conservation Block Grant Program	14
F. Alternative Fuel Transportation Program	14
G. Elk Hills Oil Field (formerly Naval Petroleum Reserve No. 1).....	15
II. WORKING WITH OTHERS	15
III. SERVING OUR COMMUNITY	16
IV. INFORMATION MANAGEMENT	16
V. GENERAL INFORMATION	16
APPENDIX	17

MESSAGE FROM THE DIRECTOR...



I am pleased to report on the FY 2009 operations of the Office of Hearings and Appeals (OHA).

OHA's mission is to conduct fair and efficient hearings, and to issue decisions of the Department of Energy (DOE) with respect to any adjudicative proceedings which the Secretary may delegate. OHA's jurisdiction is broad and varied. It has included matters affecting the oil industry, consumers, appliance manufacturers, nuclear licensees, governmental entities, the public in general, and DOE and DOE contractor employees. Each area of jurisdiction supports one or more of DOE's Strategic Themes.

Here are highlights for the past year:

Personnel security hearings. Under DOE's personnel security program, OHA conducts administrative hearings concerning individuals' eligibility for access to classified information or special nuclear material. In FY 2009, we lowered the average time for processing a case by 16 percent (from 151 days to 126 days), and eliminated all older cases (those over 180 days old) from our end-of-year inventory.

Whistleblower cases. Under the DOE Contractor Employee Protection Program, OHA conducts investigations and hearings, and considers appeals concerning whistleblower claims filed by DOE contractor employees. In FY 2009, we remained committed to eliminating our inventory of older cases. By the end of the year, OHA had resolved all cases older than 180 days. In addition, average case-processing time fell by over 40 percent (from 168 days to 100 days) compared to FY 2008.

Freedom of Information Act (FOIA) and Privacy Act Appeals. OHA considers appeals of agency denials of requests for information. In FY 2009, we continued to provide more timely decisions, further reducing our average case-processing time by 38 percent (from 34 days to 21 days) compared to FY 2008.

Exceptions. OHA considers requests for relief from certain regulatory requirements, primarily Energy Information Administration (EIA) reporting requirements and the DOE appliance efficiency standards. We dramatically improved our average processing time of these cases as well in FY 2009.

Energy Efficiency and Conservation Block Grant (EECBG) Program Appeals. In FY 2009, OHA considered 38 Appeals of eligibility determinations under this new appeals program and completed work on all of these cases within 60 days of their receipt.

Alternative Fuel Transportation Program Appeals. Near the end of FY 2009, OHA received the first of two recent Appeals filed under this program, which mandates the acquisition of alternative fuel vehicles by State governments and certain alternative fuel providers.

I am particularly proud of OHA's efforts during FY 2009 in continuing our outreach to and collaboration with our client and stakeholder offices, as well as other federal agencies. Examples include OHA staff serving as a three-member appeals panel on a U.S. Nuclear Regulatory Commission Personnel Security case, our participation in the Department's Employee Concerns Improvement Initiative, and the continuation of our Brown Bag Lunch Series, featuring distinguished guests from within and outside the agency.

We note that over the last two years, OHA has reduced the average case processing time by over 56%. During FY 2009, OHA adjudicated a total of 262 cases, decreasing to three our inventory of cases over 180 days old, a 28-year low. In reaching this milestone, OHA conducted more hearings than the year before (122 hearings compared to 116). Throughout this report we have highlighted examples of decisions issued by OHA during FY 2009. We hope you find them informative.

As we begin FY 2010, we are committed to continued improvement and to meeting any new Departmental needs for adjudicative services. To achieve improvements and be well-positioned to accept new responsibilities, we continue to comprehensively review our operations to identify opportunities for increased efficiency and productivity.

We hope that this report is informative. If you have any comments or suggestions for future improvements, please write or email us.

Sincerely,

Poli A. Marmolejos

INTRODUCTION

The Office of Hearings and Appeals is the centralized adjudicative forum for the Department of Energy. The Secretary of Energy has delegated to the OHA Director the authority to act for him in many different areas. The Director's decision typically serves as a final agency action.

During its over 30-year history, OHA has had broad-ranging subject matter jurisdiction. Originally OHA's primary function was to consider exceptions and other petitions related to the economic oil regulations, as well as Freedom of Information Act (FOIA) and Privacy Act appeals. From that point onward, OHA's jurisdiction has evolved to meet the needs of DOE's programs.

Over the last decade, OHA has heard appeals from a variety of DOE determinations, including those related to reimbursement claims for environmental clean-up costs, physician panel reviews of DOE worker occupational illness claims, and payment-equal-to-taxes claims under the Nuclear Waste Policy Act of 1982. OHA has also conducted personnel security and whistleblower proceedings, and considered exceptions from the Energy Information Administration (EIA) reporting requirements and from the appliance efficiency standards. In FY 2006, OHA was granted new jurisdiction to hear contractor appeals of civil penalties imposed for violations of DOE's new worker safety and health rule.

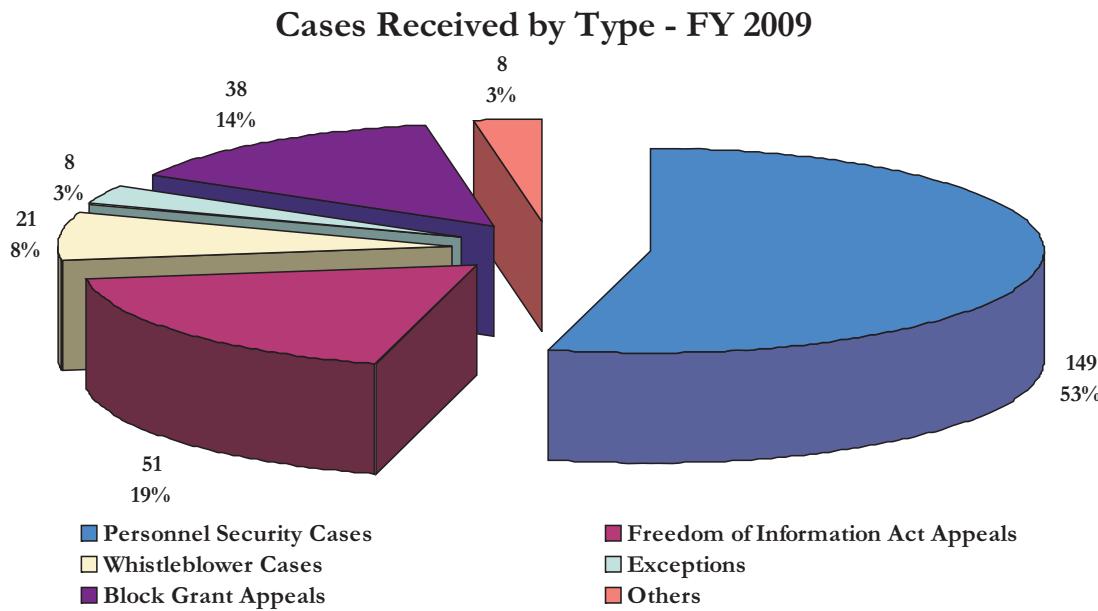
In FY 2009, OHA continued to conduct personnel security and whistleblower proceedings, consider FOIA and Privacy Act Appeals and rule on exception requests. In the past year, we also issued decisions on appeals filed under the DOE's Energy Efficiency and Conservation Block Grant Program and considered appeals involving the Department's Alternative Fuel Transportation Program, and the Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1.

The procedures that OHA uses vary, depending on the type of case involved. OHA procedures are flexible and easily adaptable to new situations, allowing OHA to minimize "start-up" times and to produce high-quality work in new areas. To further this goal of flexibility and adaptability, OHA encourages the use of alternative dispute resolution techniques when they can benefit the parties. OHA's general procedures and those used for specific proceedings can be found on our web site at www.oha.doe.gov under "Regulations."

In the end, OHA decisions do more than resolve disputes. They also serve to inform affected parties and the public about the Department's programs. The decisions reflect the balancing of important and varied interests, including those of the public, the Department, state and local governments, and individual litigants.

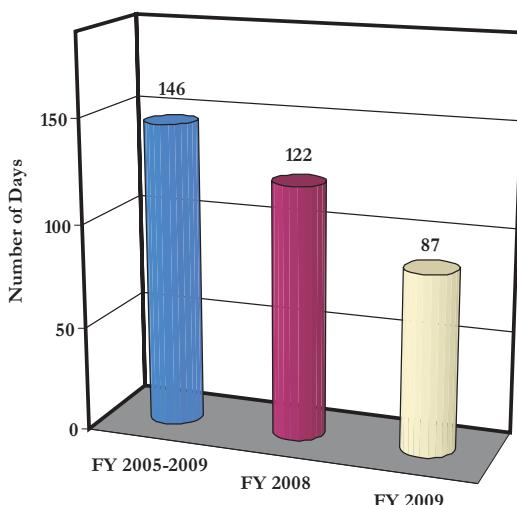
OVERVIEW OF OHA WORKLOAD

The majority of cases received in FY 2009 consisted of personnel security hearings, followed by FOIA and Privacy Act appeals, Energy Efficiency and Conservation Block Grant appeals, whistleblower cases (investigations, hearings, and appeals), exception applications and others. The following chart shows the volume of cases, by type (full data at Appendix, Table 1).

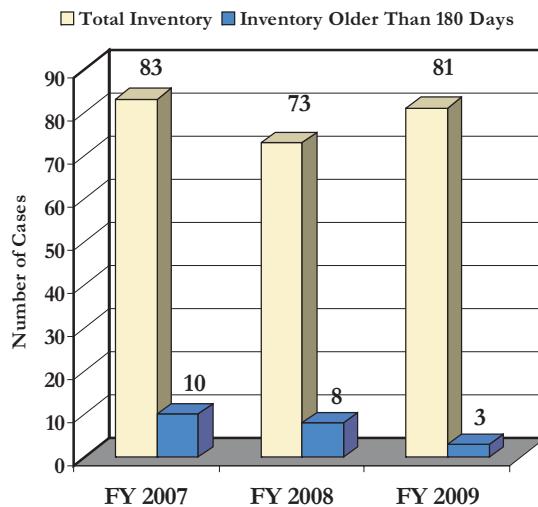


The chart on the left below shows the average case-processing time for cases closed in FY 2009, FY 2008, and over the period FY 2005-2009 (full data at Appendix, Table 2). Though we received more cases in FY 2009, our average case-processing time decreased by nearly 30 percent in FY 2009 over FY 2008 and was 40 percent below our five-year average. Over the last two years, the average case-processing time has been reduced by over 56%. In addition, our inventory of older cases continues to decline (full data at Appendix, Table 3). We attribute these results to a continued emphasis on timeliness.

Average Case Processing Time



End of Year Case Inventory



I. AREAS OF JURISDICTION

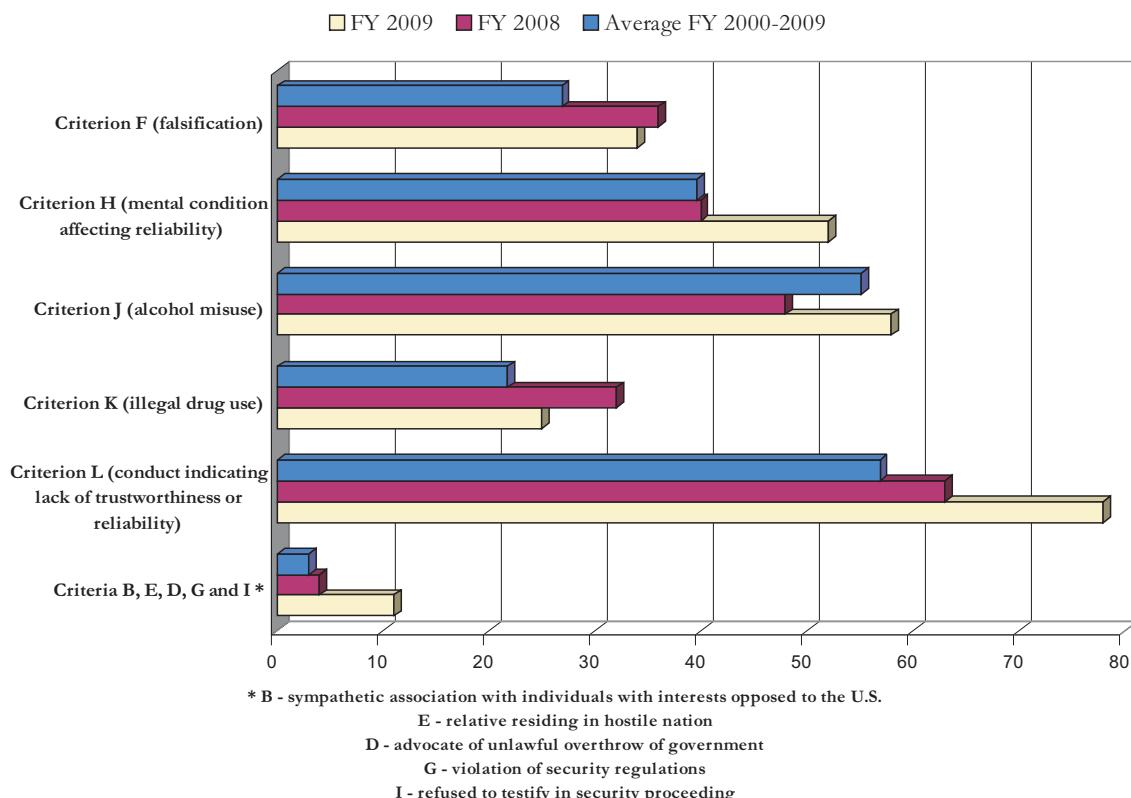
A. PERSONNEL SECURITY

In FY 2009, 53 percent of cases received by OHA concerned an employee's (federal or contractor) eligibility for a DOE security clearance. OHA also conducts hearings involving eligibility for the human reliability program, a security and safety reliability program for individuals who may have access to certain material, nuclear devices, or facilities. The governing regulations are set forth at 10 C.F.R. Parts 710 and 712, respectively. OHA's web site contains a "Question and Answer" sheet to assist individuals in understanding the personnel security hearing process.

Personnel security hearings typically involve concerns about excessive alcohol use, substance abuse, mental illness, financial irresponsibility, or conduct raising doubt about an individual's honesty and reliability. Evidence and testimony may include expert medical opinion. The OHA Hearing Officer assigned to the case analyzes the evidence and renders a decision, which may be appealed to an Appeal Panel within the DOE.

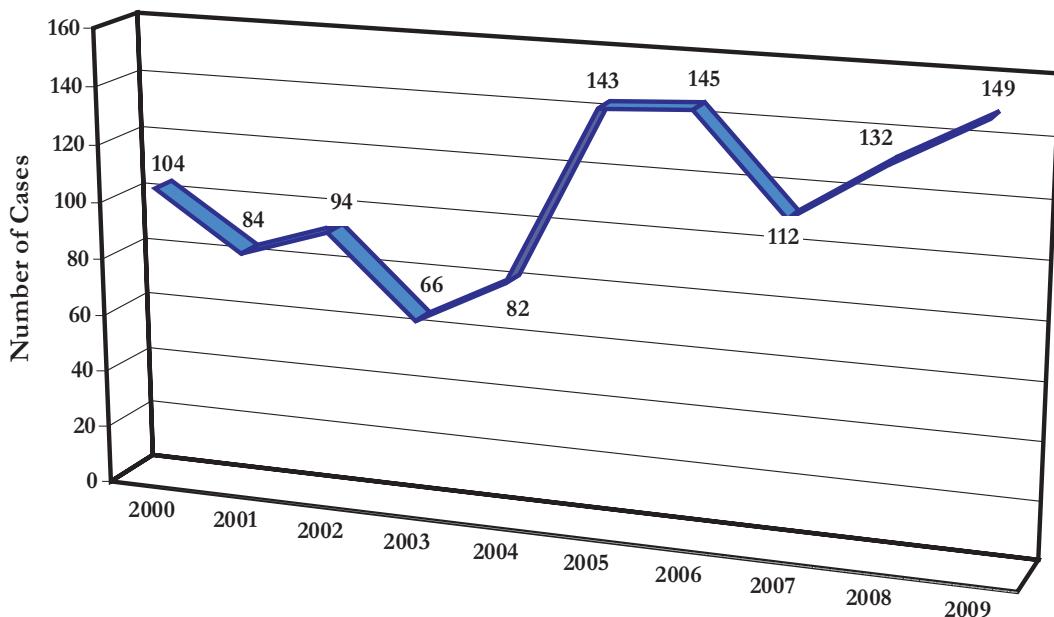
The following chart (full data at Appendix, Table 4) shows the number of cases in which various types of concerns - also referred to as criteria - were raised. Some cases involve multiple criteria. For example, a case may involve a concern about excessive alcohol use (Criterion J) and related or different concerns about honesty and trustworthiness (Criterion L). As the chart shows, the criteria cited have been relatively constant, though there was a relative increase in FY 2009 in the area of mental conditions affecting reliability (Criterion H) and honesty and trustworthiness (Criterion L) concerns.

Criteria Invoked in Personnel Security Cases



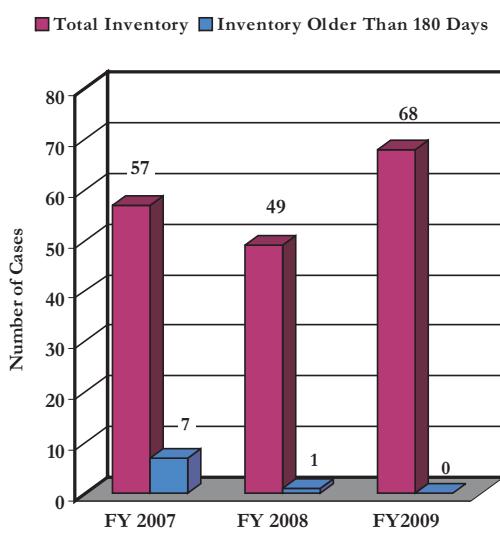
The following chart (full data at Appendix, Table 5) shows the number of personnel security cases received during each of the last ten years. OHA received more cases in FY 2009 than in any of the last ten years, and over 33 percent more cases than we received in FY 2007.

**Personnel Security Cases Received
FY 2000-2009**

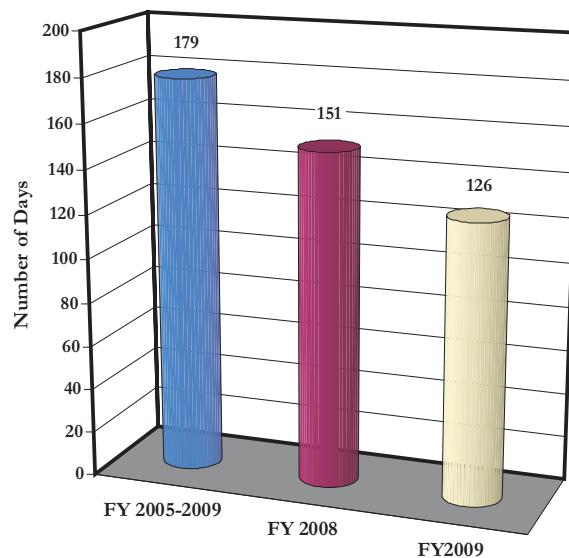


Despite the increased caseload in FY 2009, we continued both to reduce our inventory of older cases and to process cases in a more timely manner. As shown in the first chart below, while we saw a significant increase in our FY 2009 end-of-year inventory, none of the cases in our inventory was over 180 days old. The second chart shows our continuing reduction in case-processing time, 16 percent below our FY 2008, and nearly 30 percent below our average for FY 2005-2009 (full data at Appendix, Tables 6 and 7).

**Personnel Security Cases
End-of-Year Inventory**



**Personnel Security Cases
Average Case Processing Time**



In FY 2009, continuing our tradition of collaboration with other federal agencies, OHA provided adjudicative services in the area of personnel security to the U.S. Nuclear Regulatory Commission (NRC). The Chief of OHA's Personnel Security and Appeals Division served on an NRC Personnel Security Review Panel, as chair of the panel, along with the Chief of OHA's Employee Protection and Exceptions Division and one of our office's Senior Attorney-Examiners. The panel reviewed the determination of a Hearing Examiner regarding the eligibility of an individual for a security clearance under Executive Order 12968, the federal Adjudicative Guidelines, and NRC regulations.

Conducting personnel security hearings usually requires OHA Hearing Officers to travel to remote locations across the country. However, we now have an alternative means of holding hearings, thanks to our new video teleconferencing facility, pictured at right. While not appropriate for use in all cases, having this option available allows for significant cost savings to the taxpayer, in both the time and expense associated with travel, reduces OHA's carbon footprint, and provides greater flexibility in scheduling hearings.



PERSONNEL SECURITY CASE DECISION SUMMARY

Case No. TSO-0599 - Personnel Security Hearing

On October 17, 2008, an OHA Hearing Officer issued a Decision regarding the eligibility of an individual for a DOE security clearance. The Hearing Officer determined that the DOE should not grant the individual an access authorization.

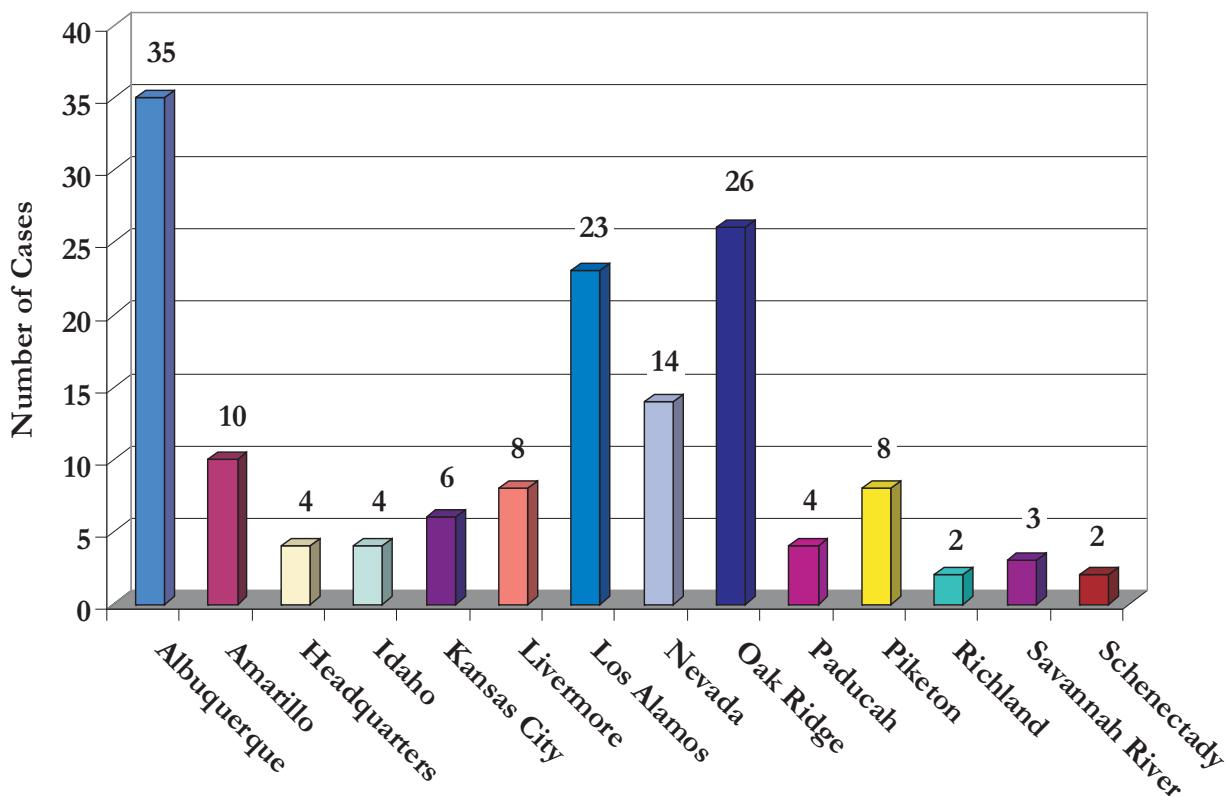
The individual held a DOE security clearance until 2005, when his employment was terminated by his DOE contractor employer. When the individual began working for another DOE contractor and required a clearance, the DOE Local Security Office (LSO) learned that his previous employer had issued three Security Infractions to the individual. The LSO ultimately informed the individual that there was information creating a substantial doubt concerning his eligibility for access authorization, alleging that, in his capacity as a manager, the individual fostered or tolerated a work environment in which his subordinates felt free to ignore DOE's explicit direction as to classification of information.

The individual was informed that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns raised by the derogatory information. A Hearing Officer appointed by the OHA Director subsequently held a two-day hearing at which she took nearly 19 hours of testimony. In her decision, the OHA Hearing Officer found that there was factual support for all three of the Security Infractions issued to the individual. In evaluating whether the individual had mitigated the security concerns before her, the Hearing Officer considered that he held a DOE security clearance for 40 years with, by his own report, only one security infraction prior to 2005. However, the Hearing Officer found that the infractions at issue were not isolated incidents, but were part of a pattern of the individual not acting proactively to protect classified information and matter. The Hearing Officer concluded that she could not recommend granting a security clearance to someone who refused to acknowledge responsibility for his past actions or to commit affirmatively to future actions that are commensurate with safeguarding classified information.

The full text of this decision can be found at <http://www.oha.doe.gov/cases/security/ts00599.pdf>.

Location of Personnel Security Cases Received in FY 2009

(full data at Appendix, Table 8)



B. CONTRACTOR EMPLOYEE PROTECTION PROGRAM

OHA investigates complaints, conducts hearings, and considers appeals under DOE's Contractor Employee Protection Program. The program provides an avenue of relief for DOE contractor employees who suffer reprisal as the result of making protected disclosures or engaging in other types of protected activity. The governing regulations are set forth at 10 C.F.R. Part 708. OHA's web site (www.oha.doe.gov) contains two "Question and Answer" sheets to assist DOE field personnel and contractor employees in understanding the process for considering contractor employee reprisal complaints.

The main issues in these cases are whether an employee engaged in protected activity and, if so, whether the contractor would have taken an adverse action against the employee in the absence of the employee's involvement in that activity. During the investigation, an OHA Investigator conducts interviews, examines documentary evidence, and issues a report. Following the issuance of the Report of Investigation, an OHA Hearing Officer is assigned to the case. The Hearing Officer rules on pre-hearing motions, conducts the hearing, and issues an initial agency decision, which may be appealed to the OHA Director. The OHA Director also hears appeals from dismissals of complaints. His decisions in both types of appeal serve to increase understanding of the program's purpose and implementation. A finding of reprisal for certain types of disclosures may result in civil penalties pursuant to the DOE enforcement programs under the Price-Anderson Act and the DOE Worker Safety and Health Rule (10 C.F.R. Part 851).

The DOE Contractor Employee Protection Program is part of a larger DOE program - the DOE Employee Concerns Program (ECP). The latter is managed by the Office of Civil Rights and Diversity, an office within the DOE's Office of Economic Impact and Diversity.

During FY 2009, OHA received 21 whistleblower cases and, as with our other areas of jurisdiction, we continued to focus on timeliness in the processing of these cases. We are pleased with the results of those efforts in FY 2009, shown in the charts on the following page, both in the more than 40 percent reduction in case-processing time over FY 2008, and in the elimination of our inventory of cases over 180 days old. Also shown are the locations of whistleblower cases received in FY 2009 (full data at Appendix, Tables 9, 10, and 11).

CONTRACTOR EMPLOYEE PROTECTION CASE DECISION SUMMARY

Case No. TBH-0073 - Jonathan K. Strausbaugh
Case No. TBH-0075 - Richard L. Rieckenberg

On December 9, 2008, an OHA Hearing Officer issued an Initial Agency Decision regarding whistleblower complaints filed by Jonathan K. Strausbaugh and Richard L. Rieckenberg. The Complainants, whose employment had been terminated by KSL Services, Inc. (KSL), alleged retaliation by KSL after they disclosed safety, health, and environmental concerns during a maintenance project at the TA-3 steam system at the Los Alamos National Laboratory.

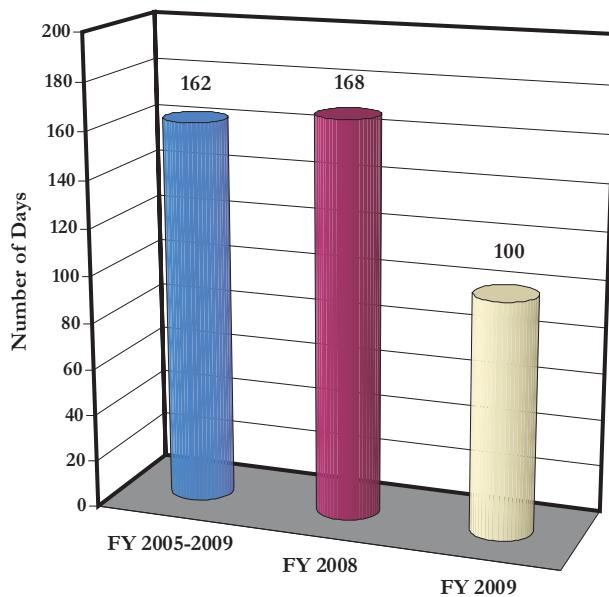
The Hearing Officer found that the disclosures, concerning the discovery of suspected uncontrolled asbestos in TA-3 steam system manholes, were of a protected nature and made proximate in time to the Complainants' termination of employment. The Hearing Officer also found that KSL had not shown by clear and convincing evidence that it would have taken the same action with respect to the Complainants in the absence of their protected activity.

As is common in Part 708 hearing cases, the Hearing Officer determined that it would be more efficient if the proceeding were bifurcated into liability and damages phases, such that the issue of damages would only need to be considered after a finding of KSL's liability. Having found for the Complainants in the liability phase, the Hearing Officer ordered the Complainants to submit a calculation of their damages, including claims for back pay and attorney fees, and ordered KSL to respond to that calculation.

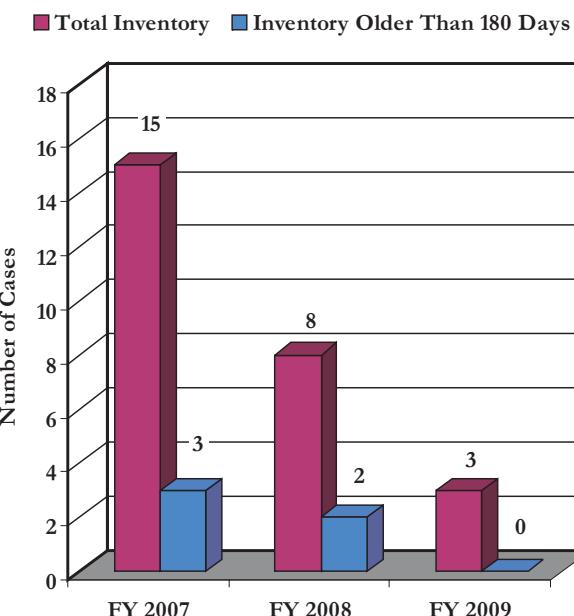
After the Hearing Officer issued his Decision and Order regarding the liability issue, the parties informed the Hearing Officer that they had reached a settlement agreement with regard to both cases. Thus, at the request of the parties, the Hearing Officer dismissed the cases with prejudice.

The full text of this decision can be found at <http://www.oha.doe.gov/cases/wbistle/tbh0073.pdf>.

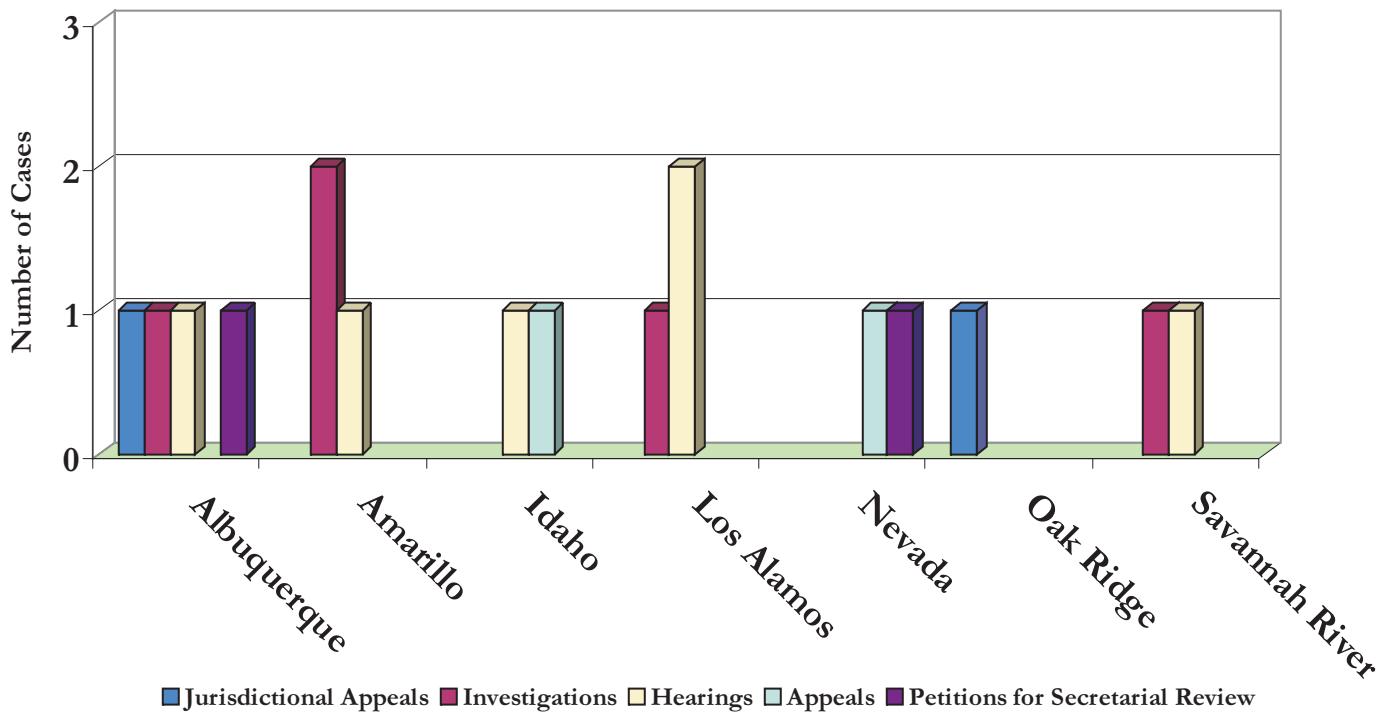
**Whistleblower Cases
Average Case Processing Time**



**Whistleblower Cases
End-of-Year Inventory**



Location of Whistleblower Cases Received in FY 2009



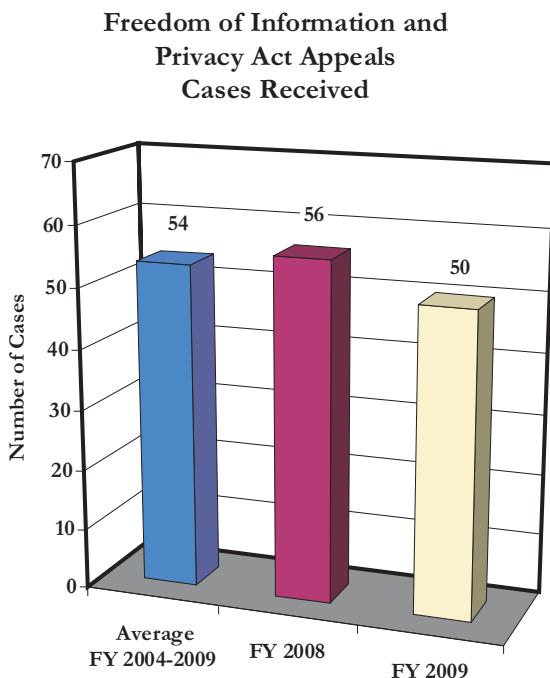
C. FREEDOM OF INFORMATION AND PRIVACY ACTS

OHA considers appeals of agency determinations under the Freedom of Information Act (FOIA) and Privacy Act. The governing regulations are set forth at 10 C.F.R. Parts 1004 and 1008, respectively.

These appeals arise from determinations across the DOE complex and involve diverse subject matter areas. OHA facilitates communication between the requester and the agency, which in some cases permits the resolution of the issues without adjudication. OHA works closely with the DOE's FOIA and Privacy Act offices, and participates in complex-wide training.

OHA continues to receive a number of FOIA and Privacy Act appeals by DOE workers seeking exposure and medical records to support compensation claims under the Energy Employees Occupational Illness Compensation Program Act. The Department of Labor administers that program.

As shown in the chart below, during FY 2009 we received 50 FOIA and Privacy Act Appeals, slightly less than the number received in FY 2008, though not far below our average over the last five years (full data at Appendix, Table 12).



FREEDOM OF INFORMATION AND PRIVACY ACTS CASE DECISION SUMMARY

Case No. TFA-0315 - Paul Linkes

On June 24, 2009, the OHA Director issued a Decision on an Appeal that Paul Linkes filed in response to determinations issued to him by the DOE's Oak Ridge Operations Office (Oak Ridge). This determination was in response to a FOIA request Mr. Linkes filed for access to the medical, personnel, radiation exposure, and beryllium records for Ashley Dalton Linkes, now deceased, who worked at the K-25 and Y-12 facilities in Oak Ridge, Tennessee.

Oak Ridge had provided Mr. Linkes portions of medical files, payroll records, employment and personnel security records, and a work history report for Ashley Linkes. In his Appeal, Mr. Linkes challenged the adequacy of the search for documents performed by Oak Ridge.

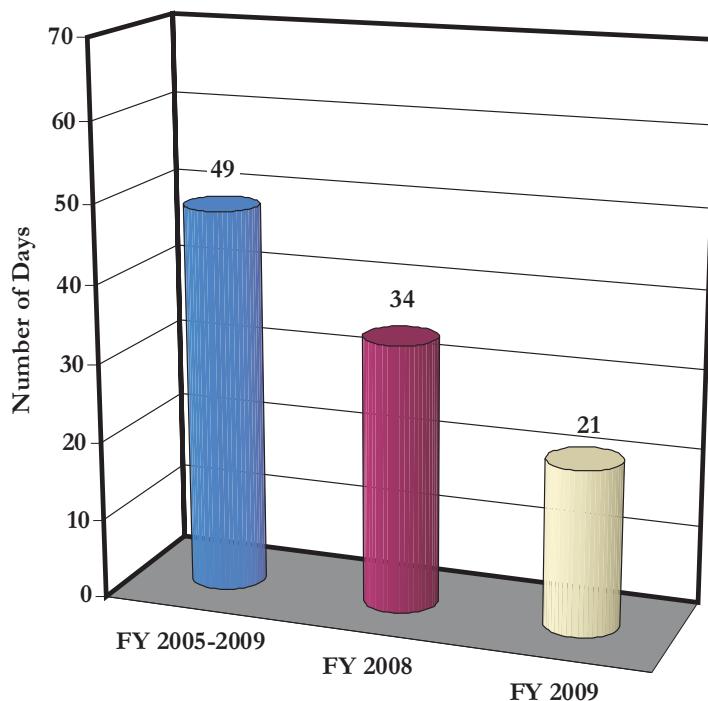
In considering Mr. Linkes's Appeal, OHA contacted Oak Ridge to obtain information regarding its search for documents. Oak Ridge's search extended to the K-25 site, the Oak Ridge National Laboratory, the DOE Records Holding Area, and to Oak Ridge Associated Universities, which maintains centralized records on thousands of individuals who may have been participants in various epidemiology research projects. The searches were performed using paper and electronic indices, electronic finding aids, and electronic document storage systems for actual records in electronic form. Oak Ridge also referred the request to the NNSA Service Center for a search of the Y-12 site.

OHA concluded that Oak Ridge's searches were reasonably calculated to uncover the records sought by Mr. Linkes, and therefore denied his Appeal.

The full text of this decision can be found at <http://www.oha.doe.gov/cases/foia/tfa0315.pdf>.

Our average processing time for FOIA and Privacy Act appeal cases dropped significantly in FY 2009, both in comparison to FY 2008 (a decrease of more than 38 percent) and the average processing time during the FY 2005-2009 period (a decrease of more than 57 percent) (full data at Appendix, Table 13).

Freedom of Information and Privacy Act Appeals Average Case Processing Time



D. EXCEPTIONS AND SPECIAL REDRESS

OHA considers requests for exceptions from certain DOE regulations and orders. Most requests concern the Energy Information Administration (EIA) reporting requirements and the DOE appliance efficiency regulations.

The exception process is a regulatory relief valve. An exception is granted where the application of a rule or order would constitute a gross inequity, serious hardship, or unfair distribution of regulatory burdens. OHA may grant an exception, for example, if applying a rule to a specific firm would be inconsistent with the overall purpose of a program or would impose a burden on the firm that would be grossly disproportionate to the burden imposed on other firms by the rule. In all cases, OHA consults with the affected DOE office.

Over the last ten years, receipts of EIA cases have fluctuated, with the high points likely related to EIA announcements of a new reporting sample. Similarly, appliance efficiency cases tend to increase as the deadline for compliance with a new standard approaches. In FY 2009, OHA closed 6 EIA exception cases and 1 appliance efficiency case. At the end of FY 2009, OHA had no exception cases in its inventory older than 30 days.

EXCEPTIONS AND SPECIAL REDRESS CASE DECISION SUMMARY

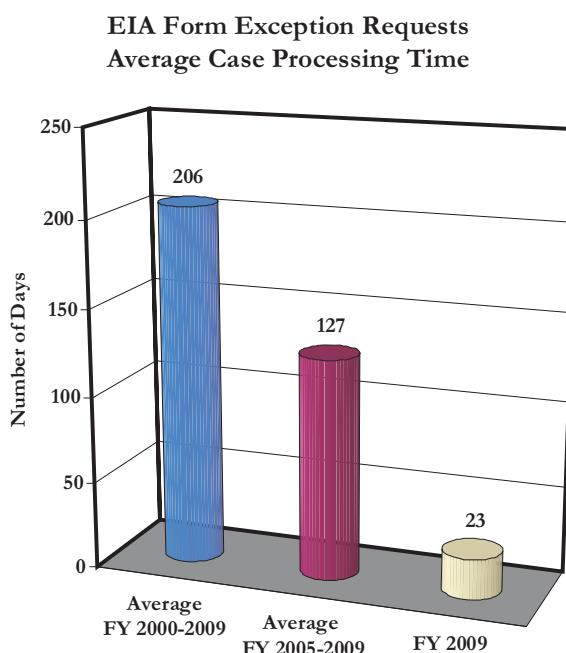
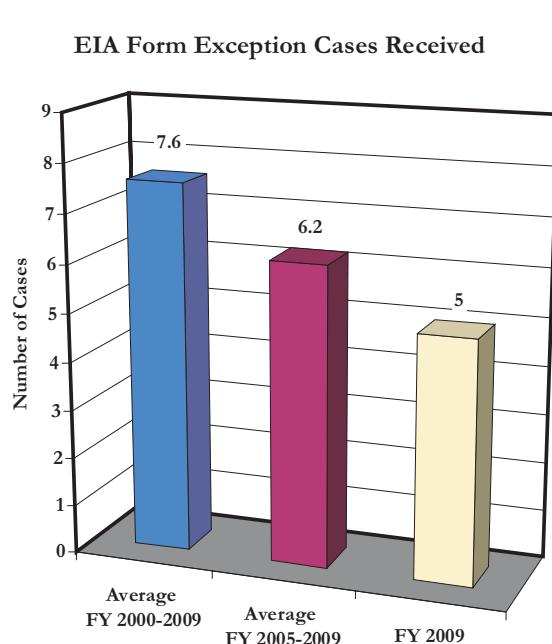
Case No. TEE-0056 - Electrolux Home Products, Inc.

On December 1, 2008, OHA issued a Decision on an Application for Exception filed by Electrolux Home Products, Inc. (Electrolux). The firm requested relief from the Refrigerator Efficiency Standards applicable to an automatic defrost refrigerator-freezer, with bottom-mounted freezer and through-the-door ice service, a new product that Electrolux planned to introduce into the nationwide marketplace. Because through-the-door ice service was not offered with bottom-mounted freezers at the time the Refrigerator Efficiency Standards were promulgated, there was no energy efficiency standard established for this particular product. Instead, the product would be required to meet the standard set for refrigerator-freezers with bottom-mounted freezer, without through-the-door ice service. Electrolux contended that its new product would be unable to meet that standard due to the energy loss inherent in adding the through-the-door ice service feature.

OHA noted that the case presented was virtually indistinguishable from one in which it granted exception relief from the Refrigerator Efficiency Standards to Maytag Corporation, which sought to market the same type of refrigerator. Accordingly, OHA granted Electrolux's Application for Exception, establishing a modified energy consumption standard for its product, until such time as DOE promulgates a new standard for this particular product, or modifies the current applicable standard.

The full text of this decision can be found at <http://www.oha.doe.gov/cases/ee/tee0056.pdf>.

Despite inevitable fluctuations in the number of EIA form exception cases received, the first chart below shows that the number of EIA cases received in FY 2009 was not significantly less than the average number of cases received annually during the last five and ten fiscal years. The second chart shows a dramatic improvement in the FY 2009 average case-processing time for EIA cases, compared with both the five- and ten-fiscal-year average (full data at Appendix, Tables 14 and 15).



E. ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM

The Energy Independence and Security Act of 2007 (EISA) established the Energy Efficiency and Conservation Block Grant (EECBG) Program, which provides, in part, for a direct formula grant program for States, eligible units of local government, and Indian Tribes, to implement a broad range of programs designed to reduce fossil fuel emissions, reduce total energy use and improve energy efficiency. The American Recovery and Reinvestment Act of 2009, passed by Congress in February 2009, appropriated funds to the DOE to be distributed under the ECBG Program. Recognizing that these block grants are a source of much-needed funds for state and local governments, particularly at a time of economic downturn, the Department moved quickly to announce the availability of these funds in March 2009.

In June 2009, the DOE's Office of Energy Efficiency and Renewable Energy (EERE) looked to OHA to provide a fair and expeditious process by which units of local governments found to be ineligible for grants under the program could file Appeals with OHA. The process was devised and implemented in a matter of weeks and in July and August, OHA received 38 such Appeals. We completed work on all of these cases within 60 days of their receipt and, as expected, prior to the close of FY 2009.

F. ALTERNATIVE FUEL TRANSPORTATION PROGRAM

The DOE's Alternative Fuel Transportation Program implements policies established by Congress in the Energy Policy Act of 1992, including requirements that certain alternative fuel providers and most State governments include alternative fuel vehicles (AFVs) in their light duty vehicle fleet acquisitions. The program provides that covered entities may request, from the Assistant Secretary for Energy Efficiency and Renewable Energy, exemptions from the AFV-acquisition requirements. The regulations governing the program, set forth at 10 C.F.R. Part 490, provide that Appeals from the denial of exemptions may be filed with OHA. We received two Appeals filed under this program at the end of FY 2009.

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANTS CASE DECISION SUMMARY

Case No. TGA-0026 - Northwest Regional Planning Commission

On September 4, 2009, the OHA Director issued a Decision on an Appeal filed by the Northwest Regional Planning Commission of Vermont (Northwest RPC), in which it sought a determination that it was eligible to receive block grant funding under the ECBG Program. The DOE had previously found that counties in the state of Vermont perform only limited functions, and thus were ineligible for Program funds.

In considering Northwest RPC's Appeal, OHA noted that one of the counties within the area served by Northwest RPC, Franklin County, Vermont, authorized Northwest RPC to represent the county on its behalf in the current Appeal process, and to receive and administer on its behalf any grants it may be eligible to apply for under the ECBG program.

Further, OHA found that Vermont RPCs perform many of the traditional governmental functions performed by counties, and that Northwest RPC in particular had the functional capability to administer ECBG funds on behalf of Franklin County. On this basis, OHA concluded that Franklin County, Vermont, was eligible to receive ECBG funds, and that this finding was consistent with Congress' intent to make direct funding available to all counties, such as Franklin County, that meet the requirements of the EISA, i.e., a population of greater than 200,000 or one of the ten most populous counties in the State.

The full text of this decision can be found at <http://www.oha.doe.gov/cases/EECBG/tga0026.pdf>.

G. ELK HILLS OIL FIELD (FORMERLY NAVAL PETROLEUM RESERVE NO.1)

OHA has a unique jurisdiction concerning the Elk Hills Oil Field, formerly Naval Petroleum Reserve No. 1. In the largest privatization in U.S. history, the federal government sold its share in the field to a major oil company. Prior to the sale, Chevron USA Inc. and DOE operated the field as a unit pursuant to a congressionally-approved contract. At the time of the sale, the parties had not finalized their equity interests in the unit's production; Chevron agreed to give up judicial review in exchange for an agency process that culminates with an appeal to OHA. In 2005, OHA reversed and remanded a decision concerning the Stevens Zone for a revised determination. OHA is currently considering an appeal of the revised determination.

II. WORKING WITH OTHERS

Over the years, OHA has collaborated and partnered with other DOE offices and federal agencies, and FY 2009 was no exception. For example, a senior OHA attorney participated in the DOE's Environmental Justice Development Team and assisted in development of the Department's Environmental Justice Five-Year Implementation Plan. The Plan sets forth the DOE response to Presidential Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority, Low-Income and Tribal Populations*. Also during FY 2009, three OHA attorneys participated in a panel discussion and as presenters at a conference bringing together DOE Freedom of Information and Privacy Act officials from across the nation.

In May 2009, after serving as chair of a U.S. Nuclear Regulatory Commission (NRC) Personnel Security Review Panel (see page 8), the Chief of OHA's Personnel Security and Appeals Division, in collaboration with the Deputy Director of the Department of Defense Office of Hearings and Appeals, gave a presentation to NRC attorneys and personnel security specialists on administrative review proceedings at the NRC. The Personnel Security and Appeals Division Chief also serves on a DOE intra-agency group developing ideas for streamlining the DOE's administrative review process.

During FY 2009, six OHA attorneys participated in Title IX compliance reviews conducted by the DOE's Office of Civil Rights and Diversity at North Carolina State University, the University of Central Florida, and Arizona State University. OHA has also worked with Office of Civil Rights and Diversity and DOE's Office of Health, Safety, and Security on an initiative to strengthen the Department's Employee Concerns Program (see page 9).

We have found that sharing information and ideas with other organizations benefits both sides of the conversation. Further, those with a better understanding of OHA and what we do can take advantage of the expertise, resources, and services we offer in support of DOE's mission. In this spirit, OHA continued in FY 2009 its series of occasional Brown Bag Lunches. Our distinguished guests in the past year included:

Stuart Ishimaru, Commissioner, U.S. Equal Employment Opportunity Commission
Melanie Ann Pustay, Director, Department of Justice Office of Information Policy
Stanley J. Borgia, Acting Director, DOE Office of Intelligence and Counterintelligence
Susan Kennedy Head, Program Manager, Personnel Security Department, NNSA Service Center
Evelyn M. Joy, DOE Employee Assistance Program Specialist
Cheryl D. Reese, DOE Employee Assistance Program Counselor

We look forward to continuing this series in the coming year.

III. SERVING OUR COMMUNITY

In FY 2009, OHA employees continued their long tradition of generosity to the Combined Federal Campaign, receiving a seventh President's Award for "their extraordinary support of voluntarism" through the CFC.

For the tenth year in a row, OHA attorneys supported DOE's partnership with the "Everybody Wins!" lunchtime reading program at Amidon Elementary School. As the fiscal year closed, six OHA attorneys were participating in the weekly reading program. Apart from DOE-sponsored activities, OHA staff members donate their time and skills to their communities in a variety of ways.

IV. INFORMATION MANAGEMENT

OHA makes broad use of technology to accomplish its mission. OHA maintains a website where it publishes its decisions and other information. Internally, OHA uses a case management system to record new case filings, track the status of pending cases, produce productivity and case status reports, and assist staff attorneys in the timely resolution of assigned cases.

In FY 2009, OHA continued to reduce the space devoted to records storage as part of its plan to transition to a paperless office. For FY 2010, OHA plans to increase its use of electronic filing and case record maintenance.

V. GENERAL INFORMATION

- ✍ Extensive information is available on our website at www.oha.energy.gov. The website includes information about OHA's jurisdiction, including applicable regulations, "Question and Answer" sheets, and OHA decisions.
- ✍ For copies of submissions in OHA proceedings, you may contact the Docket Room at (202) 287-1400. You may also fax your inquiries to (202) 287-1415 or e-mail them to doretha.colter@hq.doe.gov.
- ✍ For general information, you may contact the Office of the Director at (202) 287-1566 or the Docket Room at the number listed above.
- ✍ To give us feedback on this Annual Report or on any aspect of our operations, please email us at oha.feedback@hq.doe.gov. We truly value your observations and suggestions.

APPENDIX - TABLES

Table 1 - Cases Received by Type, FY 2009

Personnel Security Cases	149	54%
Freedom of Information Act Appeals	51	19%
Whistleblower Cases	21	8%
Exceptions	8	3%
Block Grant Appeals	38	14%
Others	8	3%

Table 2 - Average Case Processing Time (Days)

FY 2005-2009	146
FY 2008	122
FY 2009	87

Table 3 - End of Year Case Inventory

	Total Inventory	Cases Older Than 180 Days
FY 2007	83	10
FY 2008	73	8
FY 2009	81	3

Table 4 - Criteria Invoked in Personnel Security Cases

	Average FY 2000-2009	FY 2008	FY 2009
Criterion F (falsification)	26.9	36	34
Criterion H (mental condition affecting reliability)	39.7	40	52
Criterion J (alcohol misuse)	55.1	48	58
Criterion K (illegal drug use)	21.8	32	25
Criterion L (conduct indicating lack of trustworthiness or reliability)	56.9	63	78
Criteria B (sympathetic association with individuals with interests opposed to the U.S.), D (advocate of unlawful overthrow of government), E (relative residing in hostile nation), G (violation of security regulations), and I (refused to testify in security proceeding)		3	4
			11

Table 5 - Personnel Security Cases Received, FY 2000-2009

Fiscal Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Cases Received	104	84	94	66	82	143	145	112	132	149

Table 6 - Personnel Security Cases, End-of-Year Inventory

	FY 2007	FY 2008	FY 2009
Total Inventory	57	49	68
Inventory Older Than 180 Days	7	1	0

Table 7 - Personnel Security Cases, Average Case Processing Time (Days)

FY 2005-2009	FY 2008	FY 2009
179	151	126

Table 8 - Location of Personnel Security Cases Received in FY 2009

Schenectady	2
Savannah River	3
Richland	2
Piketon	8
Paducah	4
Oak Ridge	26
Nevada	13
Los Alamos	23
Livermore	7
Kansas City	6
Idaho	4
Headquarters	4
Amarillo	6
Albuquerque	34

Table 9 - Whistleblower Cases, Average Case Processing Time (Days)

FY 2005-2009	FY 2008	FY 2009
162.4	168	100

Table 10 - Whistleblower Cases, End-of-Year Inventory

	FY 2007	FY 2008	FY 2009
Total Inventory	15	8	3
Inventory Older Than 180 Days	3	2	0

Table 11 - Location of Whistleblower Cases Received in FY 2009

	Jurisdictional Appeals	Investigations	Hearings	Appeals	Petitions for Secretarial Review
Albuquerque	1	1	1		1
Amarillo		2	1		
Idaho			1	1	
Los Alamos		1	2		
Nevada				1	1
Oak Ridge	1				
Savannah River		1	1		

Table 12 - Freedom of Information and Privacy Act Appeals Cases Received

Fiscal Year	Average FY 2004-2009	FY 2008	FY 2009
Cases Received	53.6	56	50

Table 13 - Freedom of Information and Privacy Act Appeals, Average Case Processing Time (Days)

FY 2005-2009	FY 2008	FY 2009
58.4	34	35

Table 14 - EIA Form Exception Cases Received

Fiscal Year	Average FY 2000-2009	Average FY 2005-2009	FY 2009
Cases Received	7.6	6.2	5

Table 15 - EIA Form Exception Requests, Average Case Processing Time (Days)

Average FY 2000-2009	Average FY 2005-2009	FY 2009
205.7	126.8	23

