

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

0999

FILE: B-183869

DATE: AUG 21 1975

97467

MATTER OF:

Authority of Chief, Corps of Engineers, to Provide
Emergency Drinking Water in non-flood situations.

DIGEST:

Authority of Chief, Corps of Engineers, to provide supplies of drinking water in emergency situations pursuant to Pub. L. No. 93-251 § 82(2) (amending 33 U.S.C. § 701n) is not limited to flood situations, even though provisions of § 701n generally apply to flood situations, since Committee Reports to Pub. L. No. 93-251 reveal that § 82(2) was enacted as a result of health threat caused by dumping of taconite tailings into Lake Superior, and not flooding.

The Department of the Army by letter of May 7, 1975, from its General Counsel, has requested a decision as to the scope of section 82(2) of the Water Resources Development Act of 1974, Pub. L. No. 93-251, March 7, 1974, 88 Stat. 34 which amended section 5 of the Flood Control Act approved August 18, 1941, as amended (33 U.S.C. § 701n), by inserting after the final sentence the following new sentence:

"The Chief of Engineers, in the exercise of his discretion, is further authorized to provide emergency supplies of clean drinking water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated drinking water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality."

Section 5 of the Act of August 18, 1941, supra, as amended, 33 U.S.C. § 701n (1970), as originally enacted, established an emergency fund for flood emergency preparation and for repair or restoration of protective structures damaged by flood or hurricane. However, it is the position of the Army that § 82(2) and the funding provisions of revised § 701n apply to drinking water emergencies in both flood and non-flood situations, despite the incorporation of § 82(2) into provisions otherwise limited to flood and hurricane situations.

The Army suggests that the broader purpose of § 82(2) is revealed in the identical language of the Committee Reports to Pub. L. No. 93-251, H.R. Rep. No. 93-541, 93rd Cong., 1st Sess. 122 (1973) and S. Rep. No. 93-615, 93rd Cong., 1st Sess 122 (1973) as follows:

"Recent experience in the Lake Superior region at Minnesota has revealed that the Department of the Army is the only Federal agency with an existing capability to provide emergency supplies of clean drinking water in a timely fashion to any locality which is confronted with a source of contaminated drinking water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality. This section further amends Section 5 of the Flood Control Act approved August 14, 1941, to authorize the Chief of Engineers to perform this emergency service on a temporary basis when necessary."

The Army states that the recent experience to which the reports refer concerned Reserve Mining Company's dumping of taconite tailings into Lake Superior, which resulted in a health threat to certain surrounding communities and in a judicial order to the Corps of Engineers to provide potable drinking water to those communities. United States v. Reserve Mining Co., 380 F. Supp. 11, 21 n.1 (D. Minn. 1974). The Army contends that since emergency situations such as existed in the Reserve Mining Co., case are not flood related, Congress could not have intended that § 82(2) be limited to flood situations.

We concur with this interpretation and agree that the provision encompasses all situations involving contaminated drinking water, whether caused by flooding or otherwise. There is nothing in the wording of the amendment which would confine the authority granted therein to flood situations. Furthermore, we can find nothing in the legislative history of Pub. L. No. 93-251 which indicates a Congressional intent to limit § 82(2) to flood situations. Indeed, the legislative history indicates that the amendment was enacted in response to a situation that clearly was not flood-or hurricane-related. Subject to the limitations otherwise contained in the provision, we believe that funds may properly be spent in providing emergency drinking water to localities confronted with contaminated water, whether or not such contamination was caused by flooding.

Acting

R. F. KELLER

Comptroller General
of the United States