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DECISION



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

FILE: B-201385

DATE: May 29, 1981

MATTER OF: Refiners Marketing Company - Refund of Overpayment of Fine

DIGEST: Company assessed \$1,500 fine for oil spill pursuant to 33 U.S.C. § 1321(b) (1976 and Supp. III 1979) by Hearing Officer of the Coast Guard. While awaiting decision of appeal to Commandant, company paid \$1,500 fine which was deposited in a "pollution fund" established by 33 U.S.C. § 1321(k) (Supp. III 1979). Commandant reduced fine \$300 to \$1,200. \$300 may be taken from Fund to repay company pursuant to rule set forth in 17 Comp. Gen. 859 (1938) and other cases since it may be considered as erroneously credited to the Fund.

The Chief of the Claims and Litigation Division of the United States Coast Guard has requested an advance decision from our Office with regard to the proper procedure in refunding \$300 to the Refiners Marketing Company (Refiners). Refiners was fined \$1,500 under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251 et seq. (1976 and Supp. III 1979), specifically 33 U.S.C. § 1321(b)(3), after a hearing before a Hearing Officer of the Coast Guard. See 33 C.F.R. § 1.07-20 et seq. Refiners appealed the decision of the Hearing Officer to the Commandant of the Coast Guard. See 33 C.F.R. § 1.07-70 et seq. While awaiting a decision on its appeal, Refiners paid the \$1,500 assessment. Having timely appealed this decision, this payment was not then required. 33 C.F.R. § 1.07-85(c). The Commandant, who has the power to remit, mitigate or suspend all or part of an assessment, reduced the fine to \$1,200. See 33 C.F.R. § 1.07-75(b).

Refiners has requested a \$300 refund. The Coast Guard, while recognizing that Refiners should be reimbursed the \$300, is uncertain as to the proper procedure for a refund. Refiners' \$1,500 check was deposited into the fund established under 33 U.S.C. § 1321(k) (Fund). The Fund is made up of any fines collected under 33 U.S.C. § 1321 (Oil and hazardous substance liability), and of funds appropriated to the Fund. The Fund is to be expended for specified purposes such as removing hazardous substances from waters, 33 U.S.C. § 1321(c), dealing with maritime disasters posing serious water pollution threats, 33 U.S.C. § 1321(d), and reimbursing owners or operators for the cost of removal of hazardous substances under certain circumstances, 33 U.S.C. § 1321(i). As the Coast Guard notes, none of the stated purposes for the Fund deals with remission of monies erroneously

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placed into the Fund. The Coast Guard is of the opinion that 33 U.S.C. § 1321(k) and 31 U.S.C. § 628 (providing that appropriated funds are to be spent only for the purposes mandated by Congress) preclude reimbursement of the \$300 from the Fund. It suggests that we forward Refiners' request to Congress as a meritorious claim for an appropriation under 31 U.S.C. § 236.

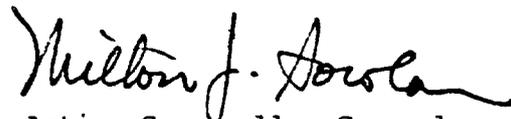
The amount Refiners finally owed, and thus the amount that became part of the Fund, was not ascertained until Refiners had exhausted the administrative appeal process. When the Hearing Officer assessed the \$1,500 penalty, Refiners was not required to pay at that time, provided it appealed the decision to the Commandant within 30 days, which it did. See 33 C.F.R. § 1.07-85(c). The Commandant had the power to "remit, mitigate or suspend the assessment in whole or in part." 33 C.F.R. § 1.07-75. Refiners has not further contested the Commandant's ruling, but is simply seeking a return of the \$300.

The general rule for the refund of monies erroneously received and deposited into a fund such as this one (as distinguished from monies deposited into the miscellaneous receipts account of the Treasury) was stated in 17 Comp. Gen. 859, 860 (1938) as follows:

"When the amount subject to refund can be traced as having been erroneously credited to an appropriation account the refund claim is chargeable to said appropriation whether it be lapsed or current, reimbursable or nonreimbursable.* * *"

See also 55 Comp. Gen. 625, 627 (1976); 29 id. 78 (1949); and 19 id. 788 (1940).

This rule is not applicable to monies which were properly deposited into the fund in the first instance. See B-164766, June 1, 1979. Refiners paid the original assessment before it had to, i.e., before the Commandant finally disposed of the matter. We have no objection to treating Refiners' \$300 overpayment as having been prematurely received and deposited. Accordingly, since it may be considered as having been erroneously credited to the Fund, the Coast Guard may refund the \$300 to Refiners from the Fund in accordance with the above discussed decisions.



Acting Comptroller General
of the United States