



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Corps of Engineers--Prompt Payment Act
Interest Penalties--Appropriations

File: B-248150

Date: August 17, 1993

DIGEST

U.S. Army Corps of Engineers Disbursing Officer may not use the Corps' "General Expenses" appropriation to pay Prompt Payment Act interest penalties incurred while executing civil works programs since the act requires that the penalty be paid out of the appropriation available to carry out the program.

DECISION

A Disbursing Officer, U.S. Army Engineer Division, Ohio River Corps of Engineers, has requested an advance decision, pursuant to 31 U.S.C. § 3529, on whether he can obligate and disburse Prompt Payment Act interest penalties incurred by the Corps of Engineers (Corps) District offices from the Corps' "General Expenses" appropriation. For the reasons stated below, we conclude that the "General Expenses" appropriation is not available for this purpose. The Prompt Payment Act requires that the penalty be paid from the appropriation enacted to carry out the program that incurred the penalty. The "General Expenses" appropriation finances the activities of the Corps' Headquarters and Division offices; it is not available to carry out the works programs for which the interest penalties are incurred.

BACKGROUND

The U.S. Army Corps of Engineers manages and executes engineering, construction, real estate and other civil works programs for the Army and Air Force. The Corps is organized into three distinct components, each having its own responsibilities. At the first and broadest level are the District offices, which carry out the civil works programs authorized in the Corps' appropriations act. The second level of the Corps consists of the Division offices which provide executive direction to the District offices that are assigned to each Division. Primarily, the duties of the Division offices entail relaying the policy established at Headquarters to the District offices and monitoring the

Districts for compliance. At the highest level, Headquarters, the Office of the Chief of Engineers establishes policy.

The civil works programs are authorized as line items within the Corps' appropriations. The District offices are responsible for all aspects of the works programs and must perform the necessary administrative functions to ensure completion of the programs. They use contractors to assist in the execution of these works programs and make payments to the contractors from the appropriations earmarked to fund these programs.

The District offices do not receive separate appropriations to cover administrative and overhead expenses but cover such expenses out of the funds appropriated for the works programs. Administrative expenses attributable to a specific civil works program are paid directly from the program's line-item appropriation. Administrative expenses which cannot be attributed to a specific works program, such as office rental and administrative personnel costs, are paid through a revolving fund established by the District offices; each program contributes an amount to replenish the revolving fund. Headquarters and the Division offices receive their funding from the "General Expenses" appropriation.

A Corps Disbursing Officer has asked whether he can use the Corps' "General Expenses" appropriation to pay Prompt Payment Act interest penalties. Prior to April 1990, the policy of the Corps was to pay the interest penalties out of the revolving fund established to pay the overhead and administrative expenses of the District offices. However, the Corps discontinued that practice when the Army established a policy to specifically exclude revolving funds as a source for the payment of interest penalties. Army Regulation 37-1, Policy Message No. 90-08. The Army regulation provides that interest penalties should be paid from "current operating funds of the activity responsible for the late payment," and notes that "operating funds . . . can be operation and maintenance . . . or any other account funding the administration of the activity except revolving funds." By memorandum of December 9, 1991, the Chief of Engineers announced that the Corps would pay the interest penalties out of the "General Expenses" appropriation.

DISCUSSION

The Prompt Payment Act provides that:

"[t]he head of an agency shall pay a penalty . . . out of amounts made available to carry out the

program for which the penalty is incurred."
31 U.S.C. § 3902(f).

The purpose of the act is to encourage agencies to make timely payments to contractors by penalizing the appropriation that is involved in the late payment. The House committee report accompanying the original legislation stated that the intent of the interest penalty provision was to "highlight, in order to eliminate, inefficient management operations within specific programs." H.R. Rep. No. 461, 97th Cong., 2d Sess. 9 (1982). To accomplish this, "the Act requires that such penalties must be paid from the funds appropriated for the program under which the penalty originated." Id.

The Corps' Senior Counsel for Military Programs concluded in a memorandum dated June 19, 1991, that the "General Expenses" appropriation is available to pay interest penalties incurred at the District offices. This conclusion is based primarily on the view that the Divisions and Headquarters, whose administrative costs are payable from the "General Expenses" appropriation, can be considered responsible for late payments, even if their actions are not the cause of the payment being late, because of their duty to provide general oversight of the District offices. The memorandum notes that the appropriation, "Operation and Maintenance, Army," is available to fund penalties incurred on military operations and maintenance contracts, and that the "General Expenses" appropriation is the civil appropriation equivalent.

The language of the Prompt Payment Act and its legislative history explicitly state that an interest penalty incurred by a particular program should be paid out of the appropriation which funds that particular program. Because each of the civil works programs is funded and administered under its own separate appropriation, the proper source for payment of the penalties at issue here are those appropriations. In this regard, the "General Expenses" appropriation is not the equivalent of the "Operation and Maintenance, Army" appropriation that funds both contracts and oversight and management of contractual activities. It is not enough to establish that Headquarters and the Division offices have general oversight authority over the District offices; the Corps must establish that the appropriation used to pay the interest penalty is the one provided to carry out the activities of the works program which incurred the penalty.

Accordingly, we find no authority for the Corps to use the "General Expenses" appropriation to pay Prompt Payment Act

interest penalties when the program which incurred the penalty is funded and administered under another appropriation.

Milton J. Aorolan

Acting Comptroller General
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