



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Disposition of receipts from the sale of coal mined during emergency reclamation projects under Title IV of the Surface Mining Control and Reclamation Act of 1977.

File: B-219257

Date: September 26, 1986

DIGEST

Proceeds obtained as a result of the sale of coal, excavated in the course of Abandoned Mine Land emergency reclamation projects to extinguish coal mine fires, should be deemed "recovered moneys" and be deposited in the Abandoned Mine Reclamation Fund under 30 U.S.C. § 401(b)(4).

DECISION

This decision is in response to a request from the Acting Director, Office of Surface Mining (OSM), Department of the Interior, for our determination of the proper disposition of monies received from the sale of coal mined during emergency Federal Abandoned Mine Land (AML) projects under Title IV of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. No. 95-87, 91 Stat. 447(1977), codified at 30 U.S.C. §§ 1201-1328. In brief, we are asked to determine whether monies received in this manner may be deposited in the Abandoned Mine Reclamation Fund (the Fund) established in section 401 of the Act, 30 U.S.C. § 1231, or whether they must be deposited in the U.S. Treasury as miscellaneous receipts under 31 U.S.C. § 3302(b). Although a U.S. District Court has ordered OSM to deposit the proceeds of the sale of coal in the Fund in one case, OSM is concerned whether future cases should be handled similarly. OSM also requested our concurrence that deposit into the Fund in the case covered by the Court order conforms with statutory requirements. We conclude that recovered monies should be deposited in the Fund.

BACKGROUND

As part of its effort to encourage both the production of an adequate supply of coal for national energy needs and the protection and restoration of the environment from the adverse results of coal mining, the Congress enacted the Surface Mining Control and Reclamation Act of 1977. Act, section 102, 30 U.S.C. § 1202. In order to provide a source of funds to

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carry out the varied reclamation and restoration activities authorized by the Act, the Abandoned Mine Reclamation Fund was established in section 401(a) of the Act, 30 U.S.C. § 1231(a), to consist of funds derived from statutory reclamation fees, user charges, donations and "recovered moneys as provided for in this subchapter." Section 401(b)(4), 30 U.S.C. § 1231(b). As will be discussed below, the term "recovered moneys" is not defined in the Act or in the Department's implementing regulations.

The monies in the Fund are to be used to carry out various reclamation and restoration activities enumerated in section 401(c) of the Act, including, of relevance here,

"(1) * * * prevention, abatement and control of burning coal refuse disposal areas and burning coal in situ * * *" and
"(7) restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitutes an emergency as provided for in this title."
Act, section 401(c)(1) and (c)(7),
30 U.S.C. § 1231(c)(1) and (c)(7).

Expenditures from the Fund can be made only when and in the amount appropriated by the Congress. Act, section 401(d), 30 U.S.C. § 1231(d). Authorized expenditures from the Fund include monies spent on emergency reclamation, abatement and control efforts when carried out in compliance with section 410(a) of the Act, 30 U.S.C. § 1240(a).

In his letter, the Acting Director of OSM stated that under section 410 of the Act, "OSM has undertaken several AML emergency reclamation projects involving control and abatement of coal mine fires." During some of these efforts, OSM's contractors have necessarily excavated potentially valuable coal.

One emergency reclamation project to control a mine fire in Pennsylvania has resulted in expenditures to date of approximately \$8 million from the Fund. The Government brought suit for a declaratory judgment to allow it to sell the coal it had extracted, and to deposit the proceeds in the Fund, in an amount not to exceed the costs of fire control reclamation. (United Penn Bank filed an opposition brief, claiming an ownership interest in the coal.) United States v. United Penn Bank, Civ. No. 81-0310 (M.D. Penn. 1984). While the suit was pending, for safety reasons, OSM sold the coal and deposited the proceeds with the Court. The Court ultimately rendered judgment for the Government, released the proceeds, and ordered OSM to deposit the nearly \$2.4 million in the Fund.

DISCUSSION

In its letter, OSM asserts that the proceeds described above (and others obtained as a result of similar emergency mine fire reclamation projects) can be deposited in the Fund only if there is an applicable exception to the rule of 31 U.S.C. § 3302(b), which states:

"* * * [A]n official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable, without deduction for any charge or claim."

OSM discusses four exceptions to this requirement, provided by decisions of the Comptroller General, under which an agency may credit receipts to its own appropriation or fund. We analyzed all four exceptions noted by OSM but, since the first is dispositive of the matter, it is not necessary to discuss the remainder here.

The dispositive exception involves situations in which an agency has statutory authority to retain certain receipts. In our decision 64 Comp. Gen. 217 (1985), involving a contract clause requiring a Government contractor to credit certain income to a reserve to be used for specified purposes, we construed 31 U.S.C. § 3302(b) as follows:

"This statute requires an agency to deposit into the General Fund of the Treasury any funds it receives from sources outside of the agency unless the receipt constitutes an authorized repayment or unless the agency has statutory authority to retain the funds for credit to its own appropriations." 64 Comp. Gen. at 218-19. (Emphasis added.)

Although deposit of the proceeds at issue here would be into the Fund, and not into OSM's regular appropriations, nevertheless the decision quoted above is applicable. As noted above, although generated by fees, user charges, donations and recovered monies, the monies in the Fund can be expended only when appropriated by the Congress. Act, section 401(b) and (d).

Section 401(b) of the Act specifically provides for deposit of "recovered moneys" into the Fund.

"(b) The fund shall consist of amounts deposited in the fund, from time to time derived from --

* * * * *

"(4) recovered moneys as provided for in [Title IV]."

The term "recovered moneys" is not defined in the Act or its legislative history or in relevant AML program regulations, 30 C.F.R. Parts 870-888. AML program regulations also do not specifically include the kind of proceeds at issue here in its description of "revenue to the fund." 30 C.F.R. § 872.11. The general reclamation requirements in the regulations, however, state that reclamation projects "should be accomplished in accordance with OSM's 'Final Guidelines for Reclamation Programs and Projects * * *.'" 30 C.F.R. § 874.13.


The guidelines referred to in the regulation were published to assist states and others in interpreting and applying the AML program regulations. 45 Fed. Reg. 14810 (1980). The guidelines provide, in relevant part:

"d. Recovered Coal Disposition. -- Where the refuse pile, impoundment, or abandoned mine working contains recoverable coal, the administering agency may recover or authorize the recovery of any coal determined incidental to the reclamation activities. Any revenues received from the sale of this coal should be disposed [sic] to the Fund pursuant to Section 401 (b)(4) of the Act." 45 Fed. Reg. at 14814. (Emphasis added.)

Coal excavated as part of OSM contractors' efforts to extinguish coal mine fires appears to be coal recovered "incidental to the reclamation activities" within the context of this provision. As a result, revenues from the sale of this coal reasonably qualify as "recovered moneys," and are therefore authorized by section 401(b)(4) of the Act to be deposited in the Fund. OSM should, therefore, transfer the receipts at issue from its escrow account to the Fund.

CONCLUSION

On the basis of our analysis of the Act, its legislative history, relevant program regulations and guidelines, and the letter provided by OSM, we conclude that proceeds obtained as a result of the sale of coal recovered in the course of AML emergency reclamation projects to extinguish coal mine fires, should be deemed "recovered moneys" and be deposited in the AML Fund under 30 U.S.C. § 401(b)(4).

for 
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