148941

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Availability of Receipts from Synthetic Fuels Projects for Contract Administration Expenses of the Department of Treasury, Office of Synthetic Fuels Projects

File: B-247644

Date: April 9, 1993

DIGEST

Certain moneys received by the Secretary of the Treasury, as successor to the United States Synthetic Fuels Corporation, were properly credited to the Energy Security Reserve rather than as miscellaneous receipts. These receipts are available to defray expenses incurred by Treasury in administering financial assistance contracts and carrying out the duties of the Corporation, as directed by the provisions of the Energy Security Act.

DECISION

The Assistant Secretary (Management), Department of the Treasury, asks whether certain moneys received by the Department of the Treasury as successor to the United States Synthetic Fuels Corporation from synthetic fuels projects are available for expenses incurred by Treasury in administering financial assistance contracts with these projects. For the reasons indicated below, we conclude that the Department of the Treasury may use such receipts for administrative expenses.

BACKGROUND

The United States Synthetic Fuels Corporation was established in 1980 under the Energy Security Act, Pub. L. No. 96-294, 94 Stat. 611-779 (1980), the relevant sections formerly codified at 42 U.S.C. §§ 8701-8795 (1982 ed.). The Energy Security Act authorized the Corporation to provide financial assistance to qualifying synthetic fuels projects using funds appropriated by Congress to the Energy Security Reserve, a special fund in the U.S. Treasury. Under section 195 of the Energy Security Act, funds were authorized to be appropriated without fiscal year limitation. 42 U.S.C. § 8795 (1982 ed.). The Act prohibited any new awards of financial assistance after September 30, 1992, and provided for the termination of the Corporation on September 30, 1997. 42 U.S.C. § 8791 (1982 ed.).

Subtitle J, sections 191-193 of the Energy Security Act, 42 U.S.C. §§ 8791-8793 (1982 ed.), provided that after the Corporation was terminated, any contract for financial assistance would be "administered" by the Secretary of the Treasury, and that the Secretary would succeed to all of the powers, duties, rights, and obligations of the Corporation. Subsequent legislation which accelerated the termination of the Corporation likewise provided that the Secretary of the Treasury succeed to the duties of the Chairman of the Corporation, and that the Corporation terminate in accordance with Subtitle J of the Energy Security Act. See Joint Resolution Making Further Continuing Appropriations for Fiscal Year 1986 and for Other Purposes (Continuing Resolution), Pub. L. No. 99-190, 99 Stat. 1185, 1249-1250 (1985), and Synthetic Fuels Corporation Act of 1985, Pub. L. No. 99-272, §§7401-7406, 100 Stat. 143-145 (1986).

The Continuing Resolution also rescinded the balance in the Energy Security Reserve, except for amounts already obligated by legally binding awards of financial assistance and for $10,000,000 to be used to terminate the Corporation in accordance with subtitle J of the Energy Security Act. According to the submission, the costs incurred in "shutting down" the Corporation aggregated $5,437,664. The Secretary has been using the remaining $4,562,336 to fund the expenses of the Department of the Treasury in administering the remaining financial assistance contracts.

The Assistant Secretary asks whether Treasury can now use additional moneys, which were received by the Department in performing the duties of the Corporation, for contract administration expenses. According to the submission, these receipts have been credited to the Energy Security Reserve rather than the Treasury general fund.

ANALYSIS

The "miscellaneous receipts" statute, 31 U.S.C. § 3302(b) provides that:

> "an 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."

This forms the basis of the prohibition against augmenting appropriations. When Congress makes an appropriation, it is establishing an authorized program level beyond which an agency cannot operate. Allowing an agency to exceed this level with funds derived from some other source would usurp

congressional prerogative and undercut the congressional power of the purse. However, when an agency is specifically authorized by statute to retain outside moneys it receives, the general rule of the miscellaneous receipts statute does not control. See 69 Comp. Gen. 260, 262 (1990); 62 Comp. Gen. 678, 679 (1983).

As noted above, the statute which terminated the Corporation mandated that the Secretary assume its duties in accordance with Subtitle J of the Energy Security Act. Sections 139 and 154 of the Energy Security Act, formerly codified at 42 U.S.C. §§ 8739 and 8754 (1982 ed.), respectively, contain specific directions as to how the Corporation is to apply moneys it receives, allowing it to retain and use its receipts for administrative and other purposes. Thus, when the Corporation was terminated, the Secretary of the Treasury succeeded to the statutory rights and duties provided in the Energy Security Act with respect to the disposition of moneys received from the synthetic fuels projects that had been awarded financial assistance by the Corporation.

Although the Continuing Resolution left $10,000,000 appropriated for terminating the Corporation, it did not otherwise address or restrict the operation of the Energy Security Act with regard to receipt of funds. The legislative histories of the Continuing Resolution and the Synthetic Fuels Corporation Act of 1985 do not indicate any congressional intent to restrict the Secretary regarding disposition of receipts to a greater degree than the Corporation was under the Energy Security Act. See, e.g., H.R. Conf. Rep. No. 450, 99th Cong., 1st Sess. 304-305 (1985); H.R. Conf. Rep. No. 453, 99th Cong., 1st Sess. 443-444 (1985). Indeed, by terminating the Corporation, but not repealing or eliminating the provisions regarding the disposition of receipts, the Continuing Resolution and the Synthetic Fuels Corporation Act of 1985 subject the Secretary of the Treasury to the provisions of the Energy Security Act regarding disposition of receipts. Accordingly, to the same extent receipts would have been available to the Corporation had it not been terminated, moneys received from the synthetic fuel projects are available for application against contract administration expenses incurred by Treasury.

Given our conclusion that the Secretary may retain and use receipts as provided in the Energy Security Act, we now address the disposition of receipts from two specific synthetic fuels projects, a $2,000,000 payment from the Cool Water Project and $595,449.99 received from the Forest Hill Project. According to the submission, the payments from the Cool Water Project and the Forest Hill Project "were

received by the Treasury Department in settlement of certain claims that the Treasury Department had against the two projects under the terms of the financial assistance contracts with those two projects." The Treasury proposes to use the receipts to defray its expenses in administering the financial assistance contracts.

Section 154(a) of the Energy Security Act established a hierarchy of accounts to which the Corporation was directed to credit moneys it received (other than from loan guarantee fees and borrowings from the Treasury). The first priority for application of moneys received by the Corporation was to defray administrative expenses.[1] "[T]o the extent that surplus is available thereafter," the second priority was to provide financial assistance; and third, to redeem borrowings of the Corporation from the Secretary of the Treasury. Id. Section 154(c) also provides that any moneys received in excess of the maximum amount of the Corporation's obligational authority under section 152 ($20 billion) be deposited in the general fund of the Treasury as miscellaneous receipts.

The Assistant Secretary interprets section 154 as directing that only those contract administration expenses that are incurred in the same fiscal year in which moneys are received may be defrayed by those moneys. Otherwise, he asserts, the hierarchy of section 154 would not make sense because an entire receipt could be "banked" and applied toward the contract administration expenses of future fiscal years and there would be no surplus to apply to the descending order of priorities. Instead, since the next two listed priorities in the hierarchy of section 154 are no longer available,[2] the Assistant Secretary proposes to

---

[1]Section 120 of the Energy Security Act, 42 U.S.C. § 8716 (1982 ed.), limited annual administrative expenses to $35,000,000 (adjusted for inflation).

[2]Both the Continuing Resolution and the Synthetic Fuels Corporation Act of 1985 provided that as of the date of their enactment, the Corporation was no longer authorized to make any new awards of financial assistance or any changes in existing awards of financial assistance. It is also the Assistant Secretary's understanding that the amount borrowed by the Corporation under a note purchased by the Secretary of the Treasury is no longer being carried on the books of the Treasury Department as an account receivable by the Secretary of the Treasury, but was written off as "uncollectible." Thus, the Assistant Secretary asserts that the "remaining balance cannot be applied toward the

(continued...)

transfer the $1,481,855 remaining balance[3] of the $2,000,000 payment from the Cool Water Project from the Energy Security Reserve into the Treasury general fund as miscellaneous receipts pursuant to section 154(c) of the Energy Security Act.

We do not agree that the Energy Security Act requires the Secretary of the Treasury to deposit the balance of the Cool Water Project payment into the general fund of the Treasury as miscellaneous receipts. As the Assistant Secretary himself points out, applying the receipts to defray administrative expenses fulfills congressional intent by offsetting transactions which otherwise would be reflected as outlays of the federal budget. Defraying administrative expenses was clearly the first priority established by Congress under section 154 of the Energy Security Act, see H.R Conf. Rep. No. 1104, 96th Cong. 2d Sess. 180, 228 (1980), and it was only to the extent that "surplus," as determined by the Corporation, was thereafter available that other priorities were to be funded. Furthermore, under section 154(b), moneys not otherwise used by the Corporation could have either been deposited in the Treasury of the United States subject to withdrawal by the Corporation or deposited in a Federal Reserve bank. This indicates that Congress had no objection to the Corporation accumulating monies, not otherwise needed, for future use if the amounts did not exceed the relevant limitations. See S. Rep. No. 387, 96th Cong., 2d Sess. 177 (1979).

Accordingly, in our view, all of the $2,000,000 Cool Water Project payment is available for contract administration expenses, since it does not appear from the submission that either the obligational limitation of section 152 of the Energy Security Act, or the limit on administrative expenses of section 120, has been exceeded. Furthermore, based on the statutory hierarchy explained above, we agree with the

---

[2](...continued)
redemption or retirement of the borrowings of the Corporation."

[3]According to the submission, contract administration expenses amounted to $518,145 in fiscal year 1989, the same fiscal year Treasury received the $2,000,000 from the Cool Water Project.

Assistant Secretary that the entire $595,449.99 payment from the Forest Hill Project in settlement of the government's secured claim against the project is also available to pay contract administration expenses.

for Milton J. Socolar
Comptroller General
of the United States