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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Department of the Army—Use of Appropriations for Bottled Water

File: B-310502

Date: February 4, 2008

DIGEST

Federal law and U.S. Army Corps of Engineers (Corps) policy require that the Corps provide access to potable water for employees working in remote areas of the Savannah District. For work sites that have no access to potable water, it is within the Corps' discretion to decide how best to meet this responsibility, whether by providing coolers or jugs for transporting water or by providing bottled water. We have no objection to the Corps using appropriated funds to provide bottled water, so long as the Corps administratively determines that providing bottled water is the best way to provide its employees at a particular remote area with access to potable water.

DECISION

A disbursing officer of the U.S. Army Corps of Engineers (Corps) has requested an advance decision under 31 U.S.C. § 3529 regarding the availability of appropriated funds to pay for bottled water for employees working in remote areas in the Corps' Savannah District. Letter to Office of General Counsel, GAO, from Anne Schmitt-Shoemaker, Disbursing Officer, Corps, to Office of General Counsel, GAO, Sept. 12, 2007 (Request Letter). Specifically, the disbursing officer has asked whether the Corps may use appropriated funds to reimburse employees for bottled water or to purchase bottled water in bulk to provide to employees working in remote areas. For the reasons stated below, we have no objection to the Corps using its appropriations for bottled water so long as the Corps administratively determines that providing bottled water is the best way to provide access to employees to a source of potable water. To protect the health and safety of its employees, federal law and Corps policy and regulation require that the Corps provide employees with access to potable water.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at

www.gao.gov/legal/resources.html. In this regard, we sent a development letter to the disbursing officer to clarify facts and obtain copies of legal advice that had been provided to her. Letter from Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, to Anne M. Schmitt-Shoemaker, Disbursing Officer, Corps, Oct. 24, 2007. In response, the disbursing officer forwarded to us information provided by the Savannah District Office, including the opinions provided by both District Counsel and counsel at Corps Headquarters. Letter from Anne M. Schmitt-Shoemaker, Disbursing Officer, Corps, to Thomas H. Armstrong, Assistant General Counsel, GAO, Nov. 5, 2007 (Response Letter).

BACKGROUND

Army Corps of Engineers drill crews work in remote areas throughout various parts of the United States. Response Letter, at 2. Remote work sites are often not easily accessible and, at times, crews of up to 4 or 5 employees travel by boat or walk through swamps and wooded areas to reach drilling sites to begin each day's work. E-mail from Brenda Ponder, Finance and Accounting Officer, Corps Savannah District, to Anne Schmitt-Shoemaker, Nov. 2, 2007 (Ponder E-mail) (transmitted with Response Letter). Employees are often required to work outside in hot, humid, and dusty conditions for up to 12 hours during the day. *Id.* Many of these remote drilling sites in the Savannah District are not developed and contain no utility infrastructure. *Id.* In most cases, no potable water is available at or within a reasonable distance from the site. *Id.*

From time to time, Corps Finance Center has received requests to reimburse Savannah District employees for purchases of bottled water consumed while working on drill crews at remote sites.¹ Request Letter, at 1. Noting that other districts do not provide bottled water to employees working in remote areas, the disbursing officer has questioned whether she may approve payment for bottled water for Savannah District employees or for purchase of bottled water in bulk for use of employees at remote work sites. Request Letter, Attachment 2.

Included with the Request Letter is e-mail correspondence between the Finance Center and Corps Headquarters regarding Corps policy on the purchase of bottled water for use of employees. Request Letter, Attachments 1, 2. According to advice from Headquarters' Office of Counsel, the purchase of bottled water is viewed as a luxury and it should not be purchased for use of work crews unless potable water is not available within a reasonable distance from the work site. Request Letter, Attachment 2. Noting that crews working at remote sites often will have access to potable water in hotels or at home, Office of Counsel further advised, in keeping with Corps practice, that water coolers be purchased and filled with water from these sources and carried into the field for employees' consumption during field activities. *Id.*

¹ There are currently no outstanding requests for reimbursement for purchase of bottled water from the Savannah District. Ponder E-mail.

In addition to the advice provided by the Office of Counsel, the disbursing officer received what she perceived to be conflicting advice from the Savannah District Counsel, who took the position that appropriations are available for purchase of bottled water and that a water cooler is inadequate to meet the needs of the drilling crews. Request Letter, Attachment 1. According to the Savannah District Counsel, due to the extreme conditions encountered by the drilling crews, potable water is a “life safety issue” and is required by Army Regulations and agency policy. *Id.* District Counsel noted that, in most cases, the only water sources available to fill water coolers are located in motels housing employees during assignment. *Id.* Questioning whether conditions would allow for jugs or coolers to be adequately sterilized for use over multiday assignments, the District Counsel determined that the purchase of bottled water is the most cost effective way to provide potable water to employees on some remote drilling sites and concluded that, in such conditions, appropriations are available for the purchase of bottled water. *Id.*

DISCUSSION

Bottled water is ordinarily considered a personal expense of the government employee. B-303920, Mar. 21, 2006. As a general rule, without specific statutory authority, appropriated funds are not available for personal expenses. B-302548, Aug. 20, 2004; 68 Comp. Gen. 502 (1989). We have recognized exceptions to this general rule, however, when the expenditure for a particular item, otherwise personal in nature, primarily benefits the government. B-309604, Oct. 10, 2007. For example, we concluded that appropriations were available to purchase special protective clothing and equipment for federal employees of a War Department ordnance plant. 21 Comp. Gen. 731, 733 (1946). The department could show that such items, by protecting the safety of War Department employees and the public, were “essential to the safe and successful operation of the respective plants and their purchase [was] primarily for the benefit of the government.” *Id.*

Under the Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 Stat. 1590 (Dec. 29, 1970), agencies, as employers, must provide “safe and healthful places and conditions of employment” for their employees and establish and maintain an effective and comprehensive occupational safety and health program for their employees. 29 U.S.C. § 668(a); Exec. Order No. 12196, *Occupational Safety and Health Programs for Federal Employees*, 45 Fed. Reg. 12,769 (Feb. 26, 1980). In this regard, the Corps provides guidance requiring that each component, including the district offices, “shall establish and maintain basic sanitation provisions for all employees in all places of employment.” *Safety and Health Requirements*, EM 385-1-1, 02.A.01 (Nov. 3, 2003). As part of basic sanitation, the guidance requires that “[a]n adequate supply of drinking water shall be provided in all places of employment. Cool water shall be provided during hot weather.” EM 385-1-1, 02.B.01. Corps policy also provides extensive guidance on furnishing potable drinking water to employees working field activities throughout the United States. *See* EM 385-1-1, 02.B.01c (drinking water for field activities shall be provided according to the procedures defined in Army regulations, field manuals, technical bulletins, and Marine Corps reference publications).

We have recognized that an agency, as an employer, is expected to meet certain basic needs of its employees, particularly when it comes to protecting an employee's health and safety in the workplace. For example, we have concluded that appropriations are available to purchase protective hoods for employees' use in the event of a chemical or biological attack. B-301152, May 28, 2003. In reaching this conclusion we noted:

“In considering the availability of an agency's appropriations for operational expenses, it is important to factor into our consideration notice of what our society expects of its employers. Without question, an agency may use appropriated funds to satisfy basic fundamental needs such as potable water, clean air, and sufficient light.”

Id. Similarly, an agency may use appropriated funds to purchase bottled water when an agency's work site has no available potable drinking water or when the available drinking water poses health risks if consumed. 25 Comp. Gen. 920 (1946) (drinking water supply pipeline could not be reliably maintained); B-247871, Apr. 10, 1992 (drinking water analysis revealed dangerous levels of lead contamination).

According to the Finance Center and the Savannah District Counsel, drilling crews working in some remote areas of the Savannah District have no reliable water source or access to a water source within a reasonable distance of the work site. Request Letter, Attachment 1; Ponder E-mail. Indeed, many of these drilling sites are far from any facility that could provide a water source. For some work sites, employees may be dropped off by boat or car and, in some instances, crews are required to walk through uninhabited areas to reach the actual work sites. In light of the lack of available potable water and consistent with the Occupational Safety and Health Act and Corps policy, it is the Corps' responsibility to provide access to potable water for employee consumption at all places of employment, regardless of whether that work site is an office building or in the field. It is within the Corps' discretion, however, to determine how best to meet this responsibility, whether by supplying employees with coolers or jugs to carry water to a work site from some other location or by providing bottled water. So long as the Corps determines that bottled water is the best way to provide employees with access to potable water in a particular situation, we would have no objection to the Corps' use of appropriations for the purpose of providing the bottled water.

CONCLUSION

Federal law and Corps policy require that the Corps provide access to potable water for employees working at Corps work sites. For employees working at remote sites with no access to potable water, it is within the Corps' discretion to determine how best to meet

this responsibility, whether by providing coolers or jugs for transporting water or by providing bottled water. We have no objection to the Corps using appropriated funds to provide bottled water so long as the Corps administratively determines that bottled water is the best way to provide employees at a particular site with access to potable water.

A handwritten signature in black ink, appearing to read "Gary L. Keplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Keplinger
General Counsel