



Federal Emergency Management Agency

Washington, D.C. 20472

January 24, 2002

Ms. Karen D. Cyr
General Counsel
Nuclear Regulatory Commission
11545 Rockville Pike
Mail Code 15D21
Rockville, Maryland 20852-2738

Re: Reimbursement of Litigation Expenses

Dear Ms. Cyr:

The Federal Emergency Management Agency (FEMA) oversees the disaster-relief fund and is accountable for expenditures from that fund. In addition, consistent with government-wide requirements imposed by the Office of Management and Budget (OMB), FEMA must report contingent liabilities for litigation, claims, and assessments. To ensure that FEMA is meeting its responsibilities, FEMA recently reviewed the reimbursement procedures for litigation¹ costs incurred by Federal agencies carrying out work for FEMA under a mission assignment. Under the current practice, Federal agencies bill litigation expenses incurred for activities under the mission assignment directly to the mission assignment. Consequently, FEMA has no knowledge of these costs and is unable to fully comply with the OMB reporting requirements or fulfill its oversight responsibilities.

A mission assignment is the proper mechanism to reimburse eligible costs for activities expressly authorized under the mission assignment. After review, FEMA recognizes that a mission assignment is not the appropriate mechanism to reimburse Federal agencies for their litigation expenses. Litigation expenses, including costs of litigation, and settlements or judgments, will not be eligible for reimbursement through a mission assignment. This policy is retroactive to all outstanding litigation expenses. Litigation expenses may be reimbursed by FEMA only after approval, as set forth herein:

¹ Federal agencies may be sued by contractors, program beneficiaries, or others for activities related to or arising out of mission-assigned activities. In addition, the Federal government may bring affirmative litigation related to or arising out of mission assigned activities. Litigation may include suits filed in Federal or State courts, and claims brought before administrative tribunals.

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1. The Associate General Counsel for Litigation in FEMA's Office of the General Counsel must receive prompt notice of litigation. If suit has been filed, the named Federal Agency shall provide FEMA's Associate General Counsel for Litigation with a copy of the Complaint within 30 days of receipt, and other relevant documentation, including the answer, as soon as possible. Such documents shall be mailed to:

Associate General Counsel
Litigation Division
Federal Emergency Management Agency
500 C Street SW, Suite 840
Washington, D. C. 20472

2. If litigation is threatened and the mission-assigned Federal agency wishes to settle using FEMA's Disaster Relief Fund prior to the filing of a lawsuit, FEMA's Associate General Counsel for Litigation must receive notice and any relevant documentation.
3. If the Federal agency or Department of Justice files affirmative litigation related to or arising out of mission-assigned activities, FEMA's Associate General Counsel for Litigation shall be provided with notice and pleadings.
4. FEMA's Office of the General Counsel will examine the information provided. After consultation with the named Federal agency, FEMA will determine whether the suit is eligible for reimbursement, *i.e.* whether the litigation is within the scope of the mission assignment that gave rise to the allegations that form the basis of the litigation.
5. If the suit is eligible for reimbursement, FEMA will notify the named Agency. At that time, an Interagency Agreement must be established between FEMA and the Federal agency involved. The Federal agency will then be authorized to submit bills to FEMA's Financial Acquisition Management Division (FAMD). All requests for payment must be properly documented and supported. FAMD, in coordination with FEMA's Office of the General Counsel, will review the bills submitted to determine if such expenses are necessary and reasonable. Upon this determination, FAMD will disburse the appropriate reimbursement.
6. Requests for reimbursement for litigation costs and appropriate documentation shall cite the FEMA assigned Interagency Agreement number and be submitted to the following address:

Financial Acquisition Management Division
Disaster Finance Center
Federal Emergency Management Agency
P.O. Box 800
Berryville, VA 22611
Attention: Mission Assignment Litigation Expenses

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Thank you for your cooperation in this matter. We look forward to maintaining our good working relationship. Should you have any questions or need additional information, please call Jordan Fried, Associate General Counsel for Litigation at (202) 646-4112.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Brown". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Michael D. Brown
General Counsel

cc: Patricia English, Acting Chief Financial Officer, FEMA
Jesse Funches, Chief Financial Officer, Nuclear Regulatory Commission