CLAIM SUMMARY / DETERMINATION FORM

Date	: 11/17/2008
Claim Number	: P05005-138
Claimant	: Logan Generating Company LP
Type of Claimant	: Corporate (US)
Type of Claim	: Real or Personal Property
Claim Manager	: [redacted]
Amount Requested	: $40,729.17

I. Background:

Oil Spill Incident: On 26 November 2004, the Cypriot-flagged tank vessel ATHOS I struck a submerged anchor as it approached the CITGO Asphalt Refining Company terminal at Paulsboro, New Jersey. The anchor punctured the hull and caused the release of Venezuelan crude oil into the Delaware River. The FOSC issued a Notice of Federal Interest designating the vessel's owner, Frescati Shipping Company Limited, as the Responsible Party (RP). The RP denied all claims under the Oil Pollution Act of 1990 (OPA). The NPFC advertised for claims relating to the oil spill, so claimants do not have to submit claims to the RP prior to submitting them to the National Pollution Funds Center (NPFC).

Claimant: The claimant operates a coal-fueled, 218 megawatt (MW) cogeneration facility on the Delaware River. The power plant provides electricity to Atlantic City Electric (ACE) – and provides steam to Ferro Corp. Uncommitted capacity and energy beyond ACE's requirements are made available in the regional wholesale market. The facility is 9.9 miles downriver from the location of the incident.

Claim Description: The claimant alleges that the ATHOS I oil spill damaged its Reverse Osmosis (RO) membranes. The membranes are a part of the plant's cooling water circulation system and are supposed to filter out salts and other impurities from the cooling water before it goes to the cooling towers. The claimant alleges that the oil contaminated these membranes forcing the claimant to replace them prematurely. The claimed amount represents the value of remaining expected useful service life of the membranes.

Related Claims: The NPFC received one package of claimed costs. They were broken down into property damage and lost profits, with added assessment costs. The NPFC recognized that a portion of the claimed lost profits were more appropriately characterized as removal costs. Therefore, the NPFC divided the claims into three separate claims as follow: 1) P05005-137-Lost Profits, 2) P05005-138-Property Damage, and 3) P05005-154-Removal Costs.

APPLICABLE LAW:

Claims may be presented first to the Fund if the President or his delegated representative has advertised or notified claimants that the Fund is accepting claims resulting from an oil discharge. 33 U.S.C. §2713(b)(1)(A).

The uses of the OSLTF are described at 33 U.S.C. §2712. It provides in relevant part that:

"(a) Uses generally
The Fund shall be available to the President for –

(4) [T]he payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages; . . ."

Damages include damages for injury to natural resources, injury to or economic losses from the destruction of real or personal property, loss of subsistence use of natural resources, Government loss of revenues, loss of profits or earning capacity as a result of loss or destruction of real or personal property or natural resources, and costs of increased public services. 33 U.S.C. §2702(b). Damages are further defined in OPA to include the costs of assessing the damages. 33 U.S.C. §2701(5).

Damage claims must be presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 U.S.C. §2712(h)(2).

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a claim presented to the Fund should include, as applicable:

> "[T]he reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim." 33 CFR 136.105(e)(8).

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90.

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident.

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

DETERMINATION OF LOSS:

The claimant's cooling water system uses 108 of the RO membranes at one time. The claimant bases its claim on the allegation that the RO membranes in service at the time of the incident

experienced a 64% reduction in their service life. The membranes' expected life is 36 months. The claimant alleges that the actual life of the membranes, which are the subject of this claim, was only 13 months. The claimant spent $63,750.00 for the replacement and installation of new membranes in May 2005.

According to the claimant, new membranes reject 98% of the salt in the water, and the percentage drops over time. The claimant changes the RO membranes when their performance degrades to 92% effectiveness in salt rejection. Logan replaced the membranes in April 2004 because of a promise from the manufacturer that the new membranes would have improved performance and a steep discount. Logan asserts that the membranes' performance had plateaued at 94.5% salt rejection when the spill occurred. As a result, Logan infers that because of the oil spill the 92% threshold was passed and that salt rejection at the time of replacement in May 2005 was 90%.

The manufacturer of the membranes provides a three-year warranty for salt rejection of at least 94%. The claimant states that the warranty is void if the feed-water to the RO elements contains oil. The claimant maintains that the presence of the oil in the cooling water is evidenced by the accumulation of oil on the surface boom in the make-up cooling water pond, which was a part of a mitigation strategy. However, we find that the statement that oil on boom in retention pond is not sufficient evidence that the filters were damaged by oil. Normally, the plant draws cooling water straight from a subsurface intake in the Delaware River. After the spill, the claimant devised a strategy to prevent oil from being taken into the cooling water system. This strategy involved diverting water into a rainwater basin where the water could be observed and oil could be separated and decanted. On pages 7 and 8 of the claimant's submission binder, the claimant stated that "the mitigation strategy seemed to work effectively" and the alternate feed water pumping system was "continuing to function well."

By letter dated April 10, 2008, the NPFC requested the claimant to provide evidence that the RO membranes were oiled. In its response dated August 12, 2008, the claimant stated, *"There is no direct evidence. The RO membranes were disposed of, not autopsied. The evidence is indirect. Evidence of oil in the river, oil in the water pumped into plant and RO filter intolerance to oil has been provided."* The indirect evidence is not evidence of damage. It merely proves that oil was in the river and rainwater pond. It does not prove that oil got into the plant and damaged the membranes. The claimant's own statements make it readily apparent that the mitigation strategy was working successfully. The claimant went to great lengths to take the necessary mitigation precautions to prevent oil from entering its cooling water system, a system which, it states was successful, but then asserts failed in the fact that it is claiming damages to its filters.

The claimant provided a graph and supporting data in an attempt to demonstrate that the effectiveness of the filters dropped as a result of the oil spill. However, we find that this data does not bolster the claimant's position. The data and graph show that the effectiveness of the filters was on a downward trend that continued after the spill. This downward trend could be just as easily caused by a defect in the filters or some other factor. The claimant failed to prove a link to the oil spill with this documentation.

The weakness in the claim is that the claimant has no actual hard evidence of damages. When it disposed of the membranes it threw away its only means of proving that they were oiled. They did no testing on the membranes prior to the disposal. Without the actual filters and evidence of tests to the filters showing the presence of oil in the filters, the claimants are unable to show that the filters were damaged by oil. The collateral data provided by the claimant does not show that oil was in the system, much less that it damaged the membranes because the membranes'

performance was already degrading prior to the spill. To reiterate, the claimant has not met its burden of proving that the oil spill damaged or caused diminished performance of the filters.

As for claimed assessment costs, since the underlying claim for property damage has not been proven compensable, the relevant assessment costs are not compensable either. Additionally, the claimant does not owe the Claims Assessment Group for assessment costs unless the Fund pays them to the claimant. (See Certification at bottom of Lighthouse Technical Consultants invoice #2007-CAG201 dated 13 Feb 2007).

***AMOUNT*: $0.00**

***DETERMINATION*:**

Logan failed to meet its burden of proving that the oil spill caused it to have to prematurely replace its RO membranes. Therefore, the claim for property damage and associated assessment costs is denied.

Claim Supervisor: [redacted]
Date of Supervisor's review:
Supervisor Action:
Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone [redacted]
E-mail: [redacted]@uscg.mil
Fax: 202-493-6937

5890
02/10/2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7007 2680 0002 9613 4997

Logan Generating Company LP
ATTN: [redacted]
76 Route 130
Swedesboro, NJ 08085-9300

RE: Claim Number: P05005-138

Dear Mr. Sousa:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number P05005-138 involving the Athos I incident. Compensation is denied for the reasons stated in the enclosed Claim Summary/Determination Form.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter or within 30 days of your receipt of this letter, whichever date is earlier, and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number P05005-138.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[redacted]
Claims Manager
U.S. Coast Guard