U.S. Department of Homeland Security
United States Coast Guard

Director
National Pollution Funds Center

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5890
January 14, 2013

VIA EMAIL: [redacted]@aol.com
CERTIFIED MAIL NUMBER: 7011 1570 0001 4803 5069

RE: 910114-001

Tuck Point Condominium Association (Trust)
Attn: Stephen Mullen Tuck Point Environmental Committee
[redacted]

Dear Mr. Mullen:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number involving Tuck Point Condominiums referenced claim.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rational for this decision.

Disposition of this reconsideration constitute final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,
[redacted]
THOMAS S. MORRISON
Claims Adjudication Division Chief
U.S. Coast Guard
By direction

Enclosure: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number: 910114-001
Claimant: Tuck Point Condominium Trust
Type of Claimant: Condominium Association (Trust)
Type of Claim: Affirmative Defense
Claim Manager: Robert Rioux
Amount Requested: $6,508,869.56

INTRODUCTION:

The Tuck Point Condominium Trust[1] (TPCT or the Claimant) seeks reimbursement from the Oil Spill Liability Trust Fund (the Fund or the OSLTF) for uncompensated removal costs incurred to operate and maintain a system that recovers oil underlying its property located in Beverly, Massachusetts, and for uncompensated damages. The oil migrates under the property and periodically discharges into the Beverly Harbor, a navigable water of the United States. The Claimant, perhaps not fully understanding the environmental risks, received title to this contaminated property in 1987 while the prior owner/trust was installing an oil recovery system pursuant to orders from the Massachusetts Department of Environmental Quality Engineering (DEQE).

According to the Claimant, it has incurred $1,432,737.62 over the years to maintain and operate the system and claims it suffered economic losses to property values and property damages approximating $4.8 million. A break out of the claimed costs is provided in the first determination.

CLAIM HISTORY:

Initial Denial.

The NPFC denied the claim on December 1, 2011 on two grounds. First, Claimant did not establish that the source of the discharge of oil into Beverly Harbor was a facility[2] as defined in OPA. Information in the administrative record reflects that the source of the discharge of oil into the Beverly Harbor is the oil in the soils and the groundwater underlying the Claimant's property. The oil migrates toward Beverly Harbor and intermittently discharges into the harbor. Since soil and groundwater are not used to explore for, drill for, produce, store, handle, transfer, process or transport oil, the source of the oil does not meet the definition of a facility. Therefore, the discharge is not an OPA incident and the Fund is not available for reimbursement of the claim.

[1] In its initial claim to the Oil Spill Liability Trust Fund Claimant identified itself as the Tuck Point Condominium Association but acknowledged in its request for reconsideration that it is in fact the Tuck Point Condominium Trust.
[2] A "facility" in OPA means "any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing or transporting oil." 33 U.S.C. § 2701(9).

The NPFC denied the claim on a second, alternative ground. That is, if the source of the discharge is an OPA facility, the Claimant is the owner of the facility, is the responsible party, and is liable for the removal costs. In order for a responsible party to recover its removal costs and damages from the Fund it must demonstrate entitlement to a complete defense or a limit on liability. 33 U.S.C. § 2708(a). Claimant argues that it is an innocent landowner, thus seeking entitlement under a sole fault third party defense. OPA's third party defense provides that a responsible party is not liable for removal costs or damages if it establishes by a preponderance of the evidence that the discharge was caused solely by the act or omission of a third party (or in combination with an Act of God or Act of War), other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any *contractual relationship* with the responsible party **AND** establishes by a preponderance of the evidence that the responsible party exercised due care with respect to the oil concerned and took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions. 33 U.S.C. § 2703(a)(3)(A) and (B).

OPA provides further definition and clarification of a "contractual relationship," which is pertinent to this claim because Claimant argues that it is an innocent landowner. For purposes of 33 USC § 2703(a)(3), a "contractual relationship" includes but is not limited to land contracts, deeds, easements, leases, or other instruments transferring title or possession. 33 USC § 2703(d). Under OPA a contractual relationship may be nullified under certain required circumstances: at the time the responsible party acquired the property on which the facility is located the responsible party did not know and *had no reason to know* that oil that is the subject of the discharge was located on, in or at the facility. 33 USC § 2703(d)(2)(A). Finally, OPA provides criteria for establishing that a responsible party *had no reason to know*.

The responsible party must demonstrate that on or before the date the responsible party acquired the property on which the facility is located the responsible party carried out all appropriate inquiries. 33 USC § 2703(d)(4). For property purchased prior to May 31, 1997, the following are taken into account: (1) any specialized knowledge or experience on the part of the responsible party; (2) the relationship of the purchase price to the value of the facility and the property on which the facility is located; (3) commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located; (4) the obviousness or likely presence of oil at the facility and on the real property on which the facility is located; and (5) the ability of the responsible party to detect oil by appropriate investigation. 33 USC § 2703(d)(4)(D)(i)(I)-(V). Finally, and important to this claim, OPA provides that nothing in this paragraph shall affect the liability of a responsible party who, by an act or omission caused or contributed to the discharge of oil which is the subject of the action related to the property (33 U.S.C. § 2703(d)(6)). Also, a responsible party must evidence by a preponderance of the evidence that it is in compliance with any land use restrictions established or relied on in connection with the removal action and has not impeded the effectiveness or integrity of an institutional controls employed in connection with the removal action (33 USC § 2703(d)(3)(C) and (D)).

The NPFC denied the claim on this ground because the administrative record reflects that the Claimant knew or should have known of the presence of oil on the property. Local newspaper articles noted that the property was previously used as an oil and/or chemical storage facility and the articles cited environmental issues associated with the property. Prospective unit owners

were given written notice that the property had been formerly used as a disposal site prior to purchasing their units. There was an obviousness or likely presence of oil on the real property because at the time Claimant took possession of the property in 1987, the former trust was installing recovery wells, part of the oil recovery system required by DEQE. Thus, there was commonly known or reasonably obtainable information about the real property on which the oil was located and Claimant did not establish entitlement to a third party defense because it did not meet the required circumstances for an innocent landowner defense.

Claimant's Request for Reconsideration.

The Claimant sought reconsideration and on March 15, 2012 and provided the following arguments on reconsideration.

1) The NPFC erred when it determined that there was no OPA facility, arguing that tanks at the former oil and chemical depot were the source of the discharge or alternatively, there are remnants of those tanks on the property (oiled sand, an oil off-load and transfer dock and subsurface oil floating on the groundwater underlying the property);
2) If the NPFC determined that there is no OPA facility on the site it erred when it did not consider that the discharge on the property was a mystery spill and Claimant is entitled to reimbursement for its removal costs and damages associated with a mystery spill;
3) The NPFC erred in its determination that the TPCT had a contractual relationship with the previous owners of the property, and
4) The NPFC erred in its determination that in order for the TPCT to be entitled to an innocent landowner defense it had to establish that it had taken certain actions and it had established that it did not know and had no reason to know of the prior use of the property.

With its arguments Claimant submitted various articles, issue papers and reports but this information was not supportive in demonstrating that the TPCT established entitlement to a third party/innocent landowner defense.

HISTORY OF THE SITE:

According to information provided by the Claimant the earlier owner of the property was Agrichem Corporation, who operated the site as the Beverly Chemical Terminal Company, until the early 1980s. The business was storage and distribution of chemicals used in industrial and commercial applications. In 1980 Beverly Chemical Company and the City of Beverly executed an agreement in which the City would purchase the property for $2.2 million and would apply for a federal grant, an urban development action grant (UDAG) that provided financial aid to local governments in order that they could purchase contaminated properties, decontaminate them and develop them into commercial and residential sites.

In 1981 One Beverly Development Corporation (OBDC) entered into an agreement with the City and Agrichem to purchase and develop the property into a condominium complex. OBDC contracted with Goldberg-Zoino & Associates, Inc. (GZA), which conducted geotechnical

studies of soil borings and groundwater in 1981 and 1982 and discovered that portions of the property were contaminated with hydrocarbons that may have leaked into the soils on the property during normal operations at the storage facility.[3]

A Master Deed for the Tuck Point property was executed and filed in the public records on October 17, 1983. On the same date the original trust members[4] executed and filed in the public records the Tuck Point Condominium Trust (Declaration of Trust), described in the Master Deed of Tuck Point Condominium recorded in Book 7285, Page 386, Southern Registry District of Essex County, Massachusetts, on November 10, 1983. The property was transferred to the current trust, the TPCT, in 1987.

The Massachusetts DEQE[5] first became interested in the site as early as 1983 when it issued a memorandum stating that the oil boom placed in the harbor to stop the discharge of oil was not performing adequately at low tide. In a 1984 DEQE meeting with the OBDC DEQE appeared to approve a passive oil recovery system with 4-6 passive wells. The wells captured the oil as it migrated toward the harbor on a rising tide. The captured oil was stored in an underground storage tank on the property. According to the administrative record the oil recovery system was installed in 1986 - 1987, about the same time that the original trust transferred the property to the current trust, TPCT.

In the fall of 1989 the Massachusetts Department of Environmental Protection (MA DEP) became involved in assessing the current status of remedial actions at the site.[6] MA DEP conducted a site visit on September 8, 1989 and in a memorandum documenting this visit Claimant was identified as the "legal entity overseeing remedial actions."[7] MA DEP records indicate that the passive recovery system was not properly operating and/or not operating on a regular basis from the fall of 1989 until May 1991. Claimant hired Sommer Environmental Technologies Inc. (SET) to reactivate the system. Shortly thereafter, in September 1991, MA DEP issued a Short Term Measure Approval letter to the Claimant, which contained requirements for operation of the system. A SET report submitted to MA DEP reflected that the system was operating properly in November 1992 because oil was present in each of the seven wells and over 500 gallons of oil was collected in the underground tank.

From late December 1992 through late October or early November 1994 the system either was not operating properly or not operating at all. On August 10, 1994, MADEP investigated a report of a sheen in Beverly Harbor around the Tuck Point property and issued its first Notice of Responsibility (NOR) to the Claimant.[8] On September 1, 1994 MADEP issued a Transition Permit Statement to Claimant stating that no later than November 1, 1994, Claimant was to provide a Licensed Site Professional (LSP) Opinion to MADEP stating whether a more active

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[3] "Tuck Point Disclosure of Soil Conditions, Urban Development Action Grant ("UDAG") Payment Terms and Public Access to the Waterfront", provided to potential buyers of units at Tuck Point Condominiums.
[4] The original trust members were: Warren Sawyer (President, OBDC), Gerald Gouchberg and Kenneth Hoffman.
[5] The DEQE is now known as the Massachusetts Department of Environmental Protection (MADEP).
[6] MADEP April 16, 1996 Site Status Memorandum to the File authored by Zachary A. Peters.
[7] Under Massachusetts law the current owner of polluted property is strictly liable for removal costs.
[8] The NOR notified Claimant that it was required to take all necessary response and that it had failed to take the response actions necessary to achieve a level of No Significant Risk by October 1, 1993. The NOR also notified Claimant that failure to do so could subject it to sanctions and payment of three times the response costs incurred if MA DEP contractors conducted the response actions.

recovery system was necessary and if not, the technical justification as to why such a system was not necessary.

Claimant responded to MADEP and explained it was not accepting the Transition Permit due to financial constraints. Claimant provided no supporting documentation or financial hardship documentation required by MADEP when citing financial difficulties. When Claimant failed to respond adequately to the 1994 NOR the MADEP issued a second NOR in July 1996. Since 1994 Claimant has hired several contractors to conduct remediation activities to recover the oil in the ground and to mitigate oil seeping into the harbor.

NPFC ANALYSIS ON RECONSIDERATION:

In its reconsideration request the NPFC reviewed the claim *de novo*, including all information submitted by the Claimant with its claim and information provided with its request for reconsideration. The NPFC independently gathered information from MA DEP and this information became part of the administrative record. The NPFC denial dated December 1, 2011 is incorporated into, and, except where inconsistent with this determination, becomes part of this determination. The NPFC addresses Claimant's arguments below.

1. *Claimant argues that the NPFC erred when it determined that there was no OPA facility, arguing that former tanks at the former oil and chemical depot were the source of the discharge.*

Claimant acknowledges that oil in the soils and groundwater underlying its property is migrating to the Tuck Point seawall and ultimately discharges into Beverly Harbor during tidal episodes. It acknowledges that its removal costs are associated with removing oil from the soils. Claimant argues that historically there were tanks on the property that stored oil that is currently in the soils and that remnants of the oil depot were left under the Tuck Point residential site.[9] In its request for reconsideration it asserts there are still remnants of the oil depot on its property, namely an oil off-load and transfer dock, oil-stained soils and subsurface oil floating on top of the groundwater. The record also establishes that the seawall and passive recovery system were intended to prevent oil discharges to the adjacent waters.

Taking into consideration all the facts and information, the administrative record establishes that the oil source is located on the property. There was legacy contamination of soil and groundwater, most likely from the former chemical facility, to be managed by the passive recovery system and bulkhead. But the record does not establish whether the discharges and removal activities that form the basis for this claim are from chemical facility remnants still on the site, or from the passive recovery system owned and operated by the claimant, or from the soil and groundwater as a result of the claimant's on and off operation of the passive recovery system, in violation of state orders. In these circumstances, where the claimant may well be the responsible party, the claimant is burdened to establish sufficient evidence as to the source of the discharge as to support its claim as a non-liable third party claimant.

[9] Tuck Point claim, Defense to Liability (May 26, 2010), page 20.

Even if in the alternative we were to consider some or all of the above as comprising the "facility,"the claimant owns the property, owns any facility remnants, including the bulkhead, and owns and operates the passive recovery system. Thus claimant would be the responsible party for the facility, strictly liable for any oil removal costs and damages that result from an incident under 33 USC 2702(a).

A responsible party may present a claim to the Fund if it demonstrates entitlement to a complete defense. See 33 USC §§2708. In this claim Claimant relies on the innocent landowner component of the sole fault third party defense. 33 USC §2703. As fully discussed above, a responsible party may be entitled to a third party defense it is can establish by a preponderance of the evidence that the discharge was caused solely by a third party and the responsible party does not have a contractual relationship with that third party, despite a deed or transfer of the property from that third party, because it is an "innocent landowner." Claimant has not established entitlement to a third party defense. In light of its knowledge as to the oil on the property and its own acts or omissions in respect to maintenance and operation of the recovery system, it has not established that it is an innocent landowner, nor has it established that the discharges and removal activities that form the basis for its claim were *solely* caused by a third party.[10]

2. *Claimant argues that the NPFC erred when it determined that it had a contractual relationship with the previous owners.*

Contractual relationships include those that may be established by deeds, land contracts or other instruments transferring title unless a responsible party can establish that at the time it took title it did not know or did not have reason to know that oil was located at the facility.

In this claim a Master Deed for the Tuck Point property was executed and filed in the public records on October 17, 1983. On the same date the original trust/prior owner executed and filed in the public records the Tuck Point Condominium Trust. The original trust[11] transferred the property to the current owner, the TPCT, in 1987. Thus, there is a contractual relationship between the current TPCT and the former owner/trust; Claimant is not entitled to the third party defense unless it can establish that it is entitled to the innocent land owner defense, i.e., at the time it took title to the property it did not know and had no reason to know that there was oil on the property.

3. *Claimant argues that the NPFC erred when it determined that TPCT was not entitled to an innocent landowner defense because it had to establish that it had taken certain actions to establish that it did not know and had no reason to know of the prior use of the property.*

In order for a responsible party to establish entitlement to an innocent landowner defense it must establish that it carried out all appropriate inquiries (AAI) on or before the date that it acquired

10 Courts have interpreted the OPA compete defenses very narrowly. See *Apex Oil Company, Inc. v. U.S.*, 208 F. Supp. 2d 642. 654 (E.D. La. 2002), citing *U.S. v. English,* 2001 WL 940946 (D. Hawaii 2001). (The defenses are narrowly construed and only in a situation where the discharge was totally beyond the control of the discharging vessel would the responsible party be excused from liability.)

[11] The original trust members were: Warren Sawyer, Gerald Gouchberg and Kenneth Hoffman.

the property. 33 U.S.C. § 2703(d)(4)(A). An AAI includes reviews of local, Federal and State records, commonly known or reasonably ascertainable information about the facility and the real property on which it is located, and the degree of obviousness of the presence or likely presence of oil at the facility and on the real property on which the property is located. Additionally, a responsible party must also establish that *it took reasonable steps to stop any continuing discharge*, prevent any substantial threat of a discharge and prevent or limit any human, environmental or natural resource exposure to any previously discharged oil 33 U.S.C. § 2703(d)(4)(A)(ii)(I)–(III).

There is substantial evidence in the administrative record – most of it provided by the Claimant - reflecting that the Claimant knew or should have known that oil was located on the property. Claimant acknowledges that it knew that the property was previously used as an oil depot. Claimant provided local newspaper articles describing the former uses of the property and environmental concerns during development of the condominium complex. The property was transferred to the City of Beverly and OBDC under a UDAG, which provided funding to convert high risk industrial sites to residential districts. It knew that the city was awarded $2 million to convert the former Agrichem and Beverly Chemical Company oil depot into a condominium complex.

"New trustees' transitions meetings" between the former trust and the Claimant began on May 9, 1987. Environmental issues were discussed at these meetings. Specifically, at Transition Meeting #2, on May 13, 1987, the new trustees (represented by T. Collins) were notified that seven small wells had been installed along the seawall to help mitigate oil in the soil from going into the harbor. At that meeting it was explained that the system had been operating for about two months and that OBDC would continue to operate the system for one year before turning it over to the Association (the Trust). OBDC fully disclosed the recovery plan to the new trustees and GZA trained the Claimant's employees in the proper operation and maintenance of the recovery system.[12] Thus, there is substantial evidence in the record that Claimant knew or should have known of the presence or likely presence of oil on the property at the time it took possession.

Claimant argues that the unit buyers did not know of the previous use of the site, that they didn't know of a pollution threat to Beverly Harbor and/or they relied on an assumption that the governments involved would correct any environmental issues. Claimant acknowledges that prospective unit owners were provided with sales letters advising them of the property's prior uses and they possibly knew of potential contamination or prior uses from local newspaper articles.[13]

Claimant's focus on the unit owners not knowing the prior uses of the property is misplaced because the unit owners are not the Claimant in this claim. The TPCT is the claimant and based on information in the record it knew or should have known the prior use of the property and the likelihood that oil was present on the property when it took possession in 1987.

Finally and most importantly, Claimant did not take reasonable steps to stop the discharge or substantial threat of a discharge of oil into Beverly Harbor; it impeded the effectiveness of the

[12] Shephard S. Johnson, Jr. letter, Fasanella Johnson & Wood P.C. letter dated May 9, 1997 to Scott Sayers, Environmental Analyst, DEP/NERO.

[13] Claimant submitted several unit owner letters that stated the owners knew of the prior use of the property.

recovery system on the property when it took title in 1987. MA DEP issued its first NOR in 1994 when it determined that Claimant had not taken all necessary and required response actions such that a level of No Significant Risk exists or has been achieved. MA DEP issued a second NOR in 1996 when Claimant did not comply with earlier MA DEP requests. Claimant cited financial hardships but did not provide documentation to support its financial problems. Thus, even if Claimant established that it conducted an AAI, and it has not, it has not demonstrated entitlement to an innocent landowner defense because it did not take reasonable steps to stop the discharge or the substantial threat of discharge of oil into Beverly Harbor. As such, Claimant contributed to the discharge of oil to Beverly Harbor and cannot argue that it is entitled to a sole fault third party defense.

In summary, TPCT took title to a contaminated property in the 1980s, one that had been converted from an abandoned industrial site into a residential property. During the 1980s, oil from the property and the soil discharged into Beverly Harbor. During construction of the condominium buildings oil was discovered in the excavation sites; engineering and design plans were modified to build lighter weight, smaller buildings, and venting was installed to prevent fumes from harming residents. The prior owner/trust installed and operated a recovery system to mitigate and prevent oil from discharging into the harbor; the Claimant was required to maintain and operate the system after it took possession of the property. For several years Claimant failed to maintain or to properly maintain the system and oil discharged into the harbor. As a result Claimant contributed to the discharge and cannot successfully argue that the discharge was caused solely by a third party.

Based on evidence in the administrative record, the Claimant has not demonstrated entitlement to a sole fault third party defense/ innocent landowner defense. For the reasons stated above, the claim is denied on reconsideration.

CLAIMANT'S ADDITIONAL POINTS:

In its request for reconsideration Claimant made several additional points. The NPFC reviewed these points and determined that they did not affect the NPFC decision to deny the claim on reconsideration.

1. *Only oil companies and vessel owners are liable under OPA because they are the entities carrying or producing oil. Claimant is neither an oil company or vessel owner; therefore, it is not liable under OPA.*

OPA does not limit liability to oil companies or vessel owners or operators. Any person, including an individual, owning or operating a vessel or onshore facility that is the source of a discharge or substantial threat of a discharge of oil to navigable waters is liable. For instance owners and operators of fishing vessels, private yachts, trucks and cars that carry oil products in their fuel tanks are liable if such vessels and facilities are the source of a discharge; owners of residential and commercial oil tanks are liable if their tanks are the source of a discharge.

2. *The responsible parties in this claim are the developers and the prior owners of the property.*

The developers and/or previous owners of the property may have been liable at some time in the past when they owned the property. The evidence in the administrative record reflects that MADEP first identified TPCT as the responsible party in 1989, when they owned the property.

There is evidence in the record that MADEP issued an NOR to OBDC in October 1996 but did not pursue the NOR because it determined that under the terms of the UDAG OBDC was indemnified against liability. Further, there is evidence that OBDC and the Tuck Point Condominium Trust executed a General Release and Indemnification agreement sometime in 1990.[14] That agreement allegedly provided that OBDC paid $55,000 to the Trust in exchange for the Trust executing the agreement. Under the terms of the agreement the Trust indemnified and held harmless OBDC and all others from all claims arising out of, connected with, related to, caused by or resulting from the provisions of MGL 21E (Massachusetts oil and hazardous substance laws). Therefore, even if the developer was liable the Trust indemnified the developer and gave up all its rights for claims for oil and hazardous substance liability.[15] OPA provides that payment from the Fund shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover from the responsible party.[16] Thus, even if we agreed the developers and/or former site owners are the responsible parties, and the claimant was a compensable third party claimant, there is some evidence the claimant has bargained away its rights to recover from those entities and has not established it can satisfy the subrogation requirements under OPA.

3. *The unit owners believed that, and relied upon, implied warranties that the property was safe for them because several government agencies were involved in the UDAG and construction of the condominium complex. The information given the unit owners was that "the site was free from any residual effects of the chemical facilities which could be harmful to the health and welfare of any occupants thereof."*

First, as discussed in the determination the Claimant in this matter is the Tuck Point Condominium Trust, not the unit owners. Further, even if the "knew or should have known" requirement was applicable to the unit owners in this claim, the notice was explicitly limited to residual effects that could be harmful to the health and welfare of occupants. While the information in the notice does not address the migrating oil into Beverly Harbor it does provide evidence of the obviousness of the presence or likely presence of oil on the property and Claimant knew or should have known of the presence of oil.

4. *Claimant argues that if it had a contractual relationship with the previous trust, the contractual relationship was not related to the oil at issue and therefore is not applicable to this claim.*

OPA's third party defense language, stated above, provides for <u>any</u> contractual relationship and does not provide that the contractual relationship must be related to the oil at issue. Also, OPA

[14] November 7, 1996 letter from Goldstein & Manello, P.C. to Tuck Point Condominium Trust citing a 1990 General Release and Indemnification Agreement.
[15] The Goldstein & Manello letter states that the Tuck Point Condominium Trust received a copy of this General Release and Indemnification but Claimant did not submit the document with any of its claims submissions.
[16] 33 USC § 2712(f).

specifically provides that for purposes of the "contractual relationship" term, it includes land contracts, deeds, easements, leases or other instruments transferring title for the real property on which the facility concerned is located was acquired after the placement of oil on, in or at the real property on which the facility is located. (Emphasis added). Thus, the relationship between the former trust and the current trust, the TPCT, is a contractual relationship related to the oil at issue on the property.

5. *Claimant argues that the NPFC erred when it determined that the Tuck Point Condominium Trust was a commercial entity.*

The NPFC did not consider whether the Claimant is a commercial or residential entity when it initially denied the claim because that issue is not dispositive in this claim. It is unclear how Claimant reached the conclusion that the NPFC determined that the Trust was a commercial entity.

The NPFC agrees that the TPCT is a residential entity. The NPFC reviewed both the Master Deed of Tuck Point Condominium and the Tuck Point Condominium Trust prior to issuing its original denial. According to the Master Deed the trust was formed to manage and regulate the condominium pursuant to the terms of the Trust. The Trust established a membership organization that includes all unit owners, who have a beneficial interest in proportion to the percentage of an undivided interest in the common areas and facilities. The unit owners elect the trustees, who have various powers, including the power to incur liabilities and expenses, and to pay from the principal or the income of the trust property and to determine the common expenses and to collect the common charges from the unit owners.

AMOUNT: $0.00

Claim Supervisor: [redacted]

Date of Supervisor's review: 1/14/2013

Supervisor Action: ***Denial Approved***

Supervisor's Comments: