

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/12/2009
Claim Number	: P05005-154
Claimant	: Logan Generating Company LP
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$49,644.37

### **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, and is within the area affected by the oil.

***Claim Description:*** The claimant alleges that the ATHOS I oil spill necessitated a mitigation strategy to prevent and minimize the effects of oil on its facility. The activities included booming, redirecting intake water, and monitoring/analysis.

***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 (extra expenses) 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:**

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. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"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".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident”.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

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(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

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. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

### **DETERMINATION OF LOSS:**

The claimant seeks reimbursement for the costs of its mitigation strategy, which was implemented to prevent oil from getting into the plant’s cooling system. Normally, the plant draws cooling water straight from a subsurface intake at the end of its pier 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 an onsite 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.”

The costs claimed of \$47,110.04 include the supplies and equipment used to implement the diversion and oil separation system. The claimant characterized these costs as extra expenses as a subcategory of its lost profits claim. The NPFC determined that these costs are actually removal costs which were necessary to prevent, minimize and mitigate the effects of the oil spill incident on the power plant. The claimant provided photographs, maps, schematics, and a Unified Command report to show that the oil required it to engage in mitigation. The NPFC finds that most of these costs are compensable removal costs under OPA. The costs that are not compensable are detailed in the attached spreadsheet. The reasons for denial of certain costs include lack of documentation (e.g. missing proof of payment), not spill-related, and the fact that several items became company assets that are still used.

There were also estimated costs of \$2,534.33 for extra fuel expenses. These extra fuel expenses are denied because there is no supporting documentation or proof that they are spill-related. The claimed amount is based on a calculated average gallons delivered per month by Ross Fogg. The monthly fuel expenses are variable and even if we had the documentation to show the fuel purchases it would not be clear that the expense was higher than normal and caused by the spill.

Assessment costs are not authorized under OPA or its regulations for costs related to oil spill removal, prevention or mitigation, but are only authorized for damages. Since this is a claim for removal costs, any related assessment costs are denied. 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). Therefore, the claimant is entitled to payment for the removal costs it has proven in the amount of \$43,029.22.

**AMOUNT: \$43,029.22**

**RECOMMENDATION:**

The claimant has shown that its mitigation strategy was necessary and reasonable to mitigate the effects of the oil spill on its power plant. Therefore, the claim should be paid in the compensable amount of \$43,029.22.

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 2 [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: James Sousa  
76 Route 130  
Swedesboro, NJ 08085-9300

Re: Claim Number P05005-154

Dear Mr. Sousa:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$43,029.22 is full compensation for OPA claim number P05005-154.

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

All costs that are not determined as compensable are considered denied. 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 and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration 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 corresponding claim number.

Mail reconsideration request to:

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

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at [www.ccr.gov](http://www.ccr.gov). Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at [REDACTED]

Sincerely,

Eric Bunin  
Claims Manager

ENCL: 1. Claim Summary/Determination Form  
2. Acceptance/Release Form