CLAIM SUMMARY / DETERMINATION FORM

Date	: 9 December 2009
Claim Number	: P05005-157
Claimant	: Sunoco, Inc.
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claims Manager	: [redacted]
Amount Requested	: $2,008,711.06

FACTS

A. Oil Pollution 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 in Paulsboro, New Jersey. The anchor punctured the hull and caused the release of Venezuelan crude oil into the Delaware River. The Federal On Scene Coordinator (FOSC) issued a Notice of Federal Interest (NOFI) designating the vessel's owner, Frescati Shipping Company Limited, as the Responsible Party (RP). After it paid for costs exceeding its limit of liability, the RP denied all claims under the Oil Pollution Act of 1990 (OPA). The RP acknowledged the claim submitted by Sunoco via an email dated November 1, 2007 and deemed the claim denied. It is important to note that when the Sunoco claim first arrived at the NPFC, the NPFC identified it as claim # P05005-140 but later decided to divide the Sunoco claim into two separate claims identified as # P05005-140 claim for Sunoco refinery loss of profits and earnings claim and # P05005-157 claim for Sunoco's vessel delay loss of profits and earnings. Claim # P05005-140 for refinery losses has not been adjudicated as of this date.

B. Claim Detail:

Claimant, Sun International Ltd. (Sunoco) now presents this claim to the National Pollution Funds Center (NPFC) for reimbursement from the Oil Spill Liability Trust Fund (OSTLF) for loss of profits and earning capacity. Claimant seeks $2,008,711.06 in reimbursement for loss of profits stemming from increased shipping and delivery costs of oil which were required in order to keep Sunoco refinery operations going for Sunoco's three refineries located in the spill zone area; *North Star* increased expense costs[1]; *Stena Vision* increased expenses due to delays[2]; *Virgo*

[1] See (1) Nereus Shipping invoice # 90/04 found in Volume 3 of 3, tab 8B for $1,053,096.94; (2) Skaugen Petro Trans Inc. invoice # 04-0769 found in Volume 3 of 3, tab 8B for $58,500.00; (3) Skaugen Petro Trans Inc. invoice # 04-0770 found in Volume 3 of 3, tab 8B for $45,000.00; (4) Delaware Valley Marine, Inc. invoice # 2021-C found in Volume 3 of 3, tab 8B for $36,238.12; (5) claimant provided a detailed description of the fee reduction information related to Maritrans along with the completed figures and calculations that represent the credit that has been applied to this claim in the amount of $187,916.00 found in Volume 1 of 3, under the Narrative tab; (6) North Star charter party dated 10/15/04, page 2 which identifies the daily demurrage rate at $90,000 per day prorate, found in Volume 3 of 3, tab 8B used in conjunction with the delay period to determine increased expenses for the North Star; and (7) Actual Vessel Demurrage Analysis for the North Star, page 2 which gives the dates and times of delay period which establishes the North Star delay period resulting in the increased expenses for the North Star.

[2] See (1) Stena Vision schedule from vessel's agent dated 11/24/04, found in Volume 3 of 3, tab 8C; (2) Stena Vision schedule update from vessel's agent dated 11/27/04, found in Volume 3 of 3, tab 8C; (3) Stena Vision Statement of Facts from vessel's agent dated 12/04/04, found in Volume 3 of 3, tab 8C; (4) Stena Vision Port log and Statement of Facts; (5) Actual Vessel Demurrage Analysis for the Stena Vision, found in Volume 3 of 3, tab 8C; (6) Waterborne cargo freight calculation for Stena Vision at Nemba/Amenam found in Volume 3 of 3, tab 8C; (7)

Voyager increased expenses[3]; and *Genmar Zoe* increased expenses[4]. Sunoco reports that its refineries affected by the Athos I oil spill typically require 22 crude cargo deliveries per month in order to maintain operations. A typical crude oil cargo delivery of one million barrels only provides enough feedstock for Sunoco's local refineries to operate for only about 1 and 1/2 days[5]; The claimant outlined five components of lost profits as a direct consequence of the T/V ATHOS I oil spill as follows:

North Star spot chartering fee in the amount of	$1,053,096.94
Workboat fee for the *Astro Perseus* in the amount of	$58,500.00
Workboat fee for the *Astro Capella* in the amount of	$45,000.00
Increased agent fee/port expenses in the amount of	$36,238.12
Fee reduction related to Maritrans in the amount of	**($187,916.00)**
Total ship to ship lightering	**$1,004,919.06**
North Star increased expenses in the amount of	$64,500.00
Total *North Star* increased expenses	**$64,500.00**
Stena Vision increased expenses	$644,792.00
Total *Stena Vision* increased expenses	**$644,792.00**
Virgo Voyager increased expenses in the amount of	$39.500.00
Total *Virgo Voyager* increased expense costs in the amount of	**$39,500.00**
Genmar Zoe increased expenses in the amount of	$255,000.00
Total *Genmar Zoe* increased expense costs in the amount of	**$255,000.00**
Claim Total	**$2,008,711.06**

Genmar Orion (1st replacement vessel) fixture sheet and Charter Party recap found in Volume 3 of 3, tab 8C; (8) Genmar Orion freight invoice found in Volume 3 of 3, tab 8C; (9) Venetia (2nd replacement vessel) fixture sheet and Charter Party recap found in Volume 3 of 3, tab 8C; (10) Venetia freight invoice found in Volume 3 of 3, tab 8C.

[3] See the following documents which are found in Volume 3 of 3, tab 8C: (1) Virgo Voyager Charter Party recap dated 10/15/04; (2) Email dated 12/02/04 from Owner advising the Virgo Voyager not to transit the river; (3) Virgo Voyager Statement of Facts dated 12/02/04; (4) Email dated 12/03/04 from Owner advising the Virgo Voyager to not transit the river; (5) Virgo Voyager updated Statement of Facts dated 12/03/04; (6) Email dated 12/06/04 from Owner advising they will recommend river transit at 34ft draft to Management; (7) Email dated 12/07/04 from Owner advising they will not transit the river; (8) Email dated 12/07/04 regarding possible additional lightering; (9) Email dated 12/07/04 regarding possible docking schedules; (10) Email dated 12/07/04 balance discharge plans; (11) Email dated 12/08/04 from Owner confirming agreement to pay additional lightering expenses; (12) Virgo Voyager Statement of Facts dated 12/13/04; (13) Virgo Voyager increased expense invoice; and (14) December 2004 Monthly lightering volumes from Maritrans to claimant.

[4] See the following documents in Volume 3 of 3, tab 8E: (1) Genmar Zoe fixture sheet and Charter Party recap; (2) Orders to divert the Genmar Zoe to Riverhead for discharge dated 11/18/04; (3) Genmar Zoe discharge plan dated 11/30/04; (4) Email dated 12/07/04 advising vessel will not lighter two vessels simultaneously; (5) Genmar Zoe Port Call notes; (6) Genmar Zoe increased expense invoices (revised and original); and (7) Genmar Zoe Statement of Facts dated 12/12/04.

[5] See Narrative Tab for Claim Supporting Documentation found in Volume 1 of 3, page 14 section 3 entitled "Damages for Marine (Tab 8) – Sunoco".

C. Contractual Relationships:

Nereus Shipping N.A.; the owner of the *North Star* chartered its vessel to Sunoco via a charter party dated October 15, 2004 whereby it was scheduled to transport crude from West Africa to Sunoco refineries along the Delaware River. The rate of hire under this charter was $90,000.00 per day pro rata. The *North Star* was located at Fort Mifflin where it had discharged part of its cargo when it was delayed from 0600 on 11/27/04 until 1625 on 11/28/04 by the USCG as a result of the Athos I oil spill while the remaining cargo remained on board for future discharge at Eagle Point Terminal.[6]

Sun International, Ltd. (Sunoco); is the claimant and charterer of the *North Star*. Sunoco entered into a charter party that earned the claimant a consistent stream of revenue based on a timely voyage of the *North Star*. Revenue remained the same for this charter party as agreed upon the terms of the charter party dated 10/15/04. Sunoco's original charter party with the *North Star* expired upon completion of the unloading of all remaining cargo which occurred on November 29, 2004 at 1225 when the hoses were disconnected while the North Star was berthed at Eagle Point.[7] Thereafter, given delays caused by the spill, Sunoco entered into a spot charter with the *North Star* in order to lighter two deep draft vessels that were delivering cargo for Sunoco's refineries as a result of the Athos I oil spill, the company originally scheduled to lighter these two vessels was delayed in the "dirty" zone and therefore could not perform the lightering service as scheduled.

Chevron Texaco (Chevron); the owner of the *Virgo Voyager* chartered its vessel to Sunoco via a charter party dated 10/15/04 whereby it was scheduled to deliver a cargo of crude oil. When the vessel arrived in the Delaware River December 1, 2004 at 1500 hrs, the owner of the vessel, Chevron, did not want the vessel to transit the Delaware River because of concerns that it may experience a casualty similar to the Athos I. This ultimately resulted in a delayed crude delivery which the owner split with Sunoco in the amount of $39,500.00 each. Sunoco has requested reimbursement of their 50% of the increased costs that resulted from the delay.[8]

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 –

[6] See North Star Statement of Facts dated December 2, 2004, page 3 found in Volume 3 of 3, tab 8B.

[7] See email from Claimant Counsel to NPFC dated October 19, 2009 and also see North Star charter party dated 10/15/04, ASBATANK CLAUSE 11 – HOSES, which states "...LAYTIME SHALL CONTINUE UNTIL HOSES ARE DISCONNECTED..."

[8] See, Claim Supporting Documentation found in Volume 1 of 3; page 17 under the Narrative Section of the claim submission

(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; . . .

(b) Defense to liability for Fund

The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of the claimant."

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).

In any case in which the President has paid an amount from the OSLTF for any removal costs or damages specified under 33 U.S.C. §2712(a), no other claim may be paid from the Fund for the same removal costs or damages. 33 U.S.C. §2712(i).

Congress directed the President to promulgate regulations "for the presentation, filing, processing, settlement, and adjudication of claims..." 33 U.S.C. §2713(e). Those regulations are found at 33 CFR Part 136.

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).

With regard to claims for loss of profits and impairment of earning capacity, the NPFC must independently determine that the proof criteria in OPA and the implementing regulations, at 33 CFR Part 136, are met, including the general provisions of 33 CFR 136.105, and the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231, et seq.

Pursuant to the provisions of 33 CFR 136.231-136.235, the details for claims for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property or natural resources may be presented to the Fund by the claimant sustaining the loss or impairment.

"In addition to the requirements of Subparts A and B of this part, a claimant must establish the following—

(a) That real or personal property or natural resources have been injured, destroyed, or lost.
(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by documents such as income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established. [9]
(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established." 33 CFR 136.233 (a) – (d)

If a third party claimant or an RP is able to establish an entitlement to lost profits, then compensation may be provided from the OSLTF. But the compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident; all income from alternative employment or business undertaken; potential income from alternative employment or business not undertaken, but reasonably available; any saved overhead or normal business expenses not incurred as a result of the incident; and state, local, and Federal tax savings. 33 CFR 136. 235 (a) – (e).

BACKGROUND AND FACTS:

In the process of adjudicating this claim, the NPFC claims manager collected additional information from the claimant and other sources in order to document what took place at the time of the incident. The following is a list of primary documents that the NPFC relied upon in making its determination:

EXHIBIT #	DESCRIPTION
1	POLREPs 1-15
2	North Star demurrage invoice
3	North Star Demurrage Analysis
4	North Star Statement of Facts from vessel's agent
5	Freight Invoice from vessel owner
6	Skaugen (workboat) invoice for North Star / Astro Perseus and Astro Capella lightering
7	North Star charter party Recap for offshore lightering
8	Skaugen (workboat) Ship-to-Ship Support Services Agreement for North Star / Astro Perseus (Voyage # 5936)
9	Skaugen (workboat) Ship-to-Ship Support Services Agreement for North Star / Astro Capella (Voyage # 5940)
10	Email to Maritrans requesting lightering volume reduction on monthly invoice, incl. Astro Perseus and Astro Capella confirmation of volumes to be lightered, and December 2004 lightering invoice from Maritrans showing adjusted rate
11	Stena Vision schedule from vessel's agent dated 11/24/04
12	Stena Vision schedule update from vessel's agent dated 11/27/04

[9] See Sunoco Inc. 10-K for 12/31/05

13	Stena Vision Statement of Facts from vessel's agent dated 12/4/04
14	Stena Vision Port Log and Statement of Facts
15	Summary of Sunoco Refinery Requirements (all crudes) dated 11/24/04 and 12/14/04
16	Waterborne cargo freight calculation for Stena Vision at Nemba/Amenam
17	Genmar Orion (1st replacement vessel) fixture sheet and Charter Party Recap
18	Genmar Orion freight invoice
19	Venetia (2nd replacement vessel) fixture sheet and Charter Party Recap
20	Venetia freight invoice
21	Virgo Voyager Charter Party Recap dated 10/15/04
22	Email dated 12/2/04 from owner advising the Virgo Voyager not to transit the river
23	Virgo Voyager Statement of Facts dated 12/2/04
24	Virgo Voyager email dated 12/3/04 from owner advising Virgo Voyager not to transit the river
25	Virgo Voyager updated Statement of Facts dated 12/3/04
26	Virgo Voyager email dated 12/6/04 from owner advising they will recommend river transit at 34 ft draft to management
27	Virgo Voyager email dated 12/7/04 from owner advising they will not transit river
28	Virgo Voyager email dated 12/7/04 regarding possible additional lightering
29	Virgo Voyager email dated 12/7/04 regarding possible docking schedules
30	Virgo Voyager email dated 12/7/04 balance discharge plans
31	Virgo Voyager email dated 12/8/04 from owner confirming agreement to pay additional lightering expenses
32	Virgo Voyager updated Statement of Facts dated 12/13/04
33	Virgo Voyager demurrage invoice
34	December 2004 lightering invoice from Maritrans for Sunoco that shows in particular, the Virgo Voyager with a volume lightered in the month of December as 394,696.18 bbls
35	Genmar Zoe fixture sheet and Charter Party Recap
36	Orders to divert Genmar Zoe to Riverhead for discharge dated 11/18/04
37	Genmar Zoe discharge Plan dated 11/30/04
38	Genmar Zoe email dated 12/7/04 advising that the Genmar Zoe will not lighter two vessels simultaneously
39	Genmar Zoe Port Call Notes
40	Genmar Zoe demurrage invoices – revised and original
41	Genmar Zoe Statement of Facts dated 12/12/04
42	Misc. documents produced while claimant's counsel was trying to obtain a Jones Act waiver due to refinery shortfalls. Documents included information on extensive detail on shipping alternatives.
43	Copy of NPFC claim # P05005-060 for Maritrans which supports the claimant's position that Maritrans vessels were detained for cleaning due to the oil spill requiring alternatives measures to be taken in order to have crude oil lightered and delivered.

44	Declaration of Kathleen C. Yates; employee of Sunoco
45	Letter from Maritrans to CAPT Sarubbi dated 12/1/04 requesting expedited cleaning of their vessels that were engaged in lightering operations

CLAIM ANALYSIS:

I. OVERVIEW

As discussed above in the Background section, this claim arises from the Athos I oil spill incident on the Delaware River that occurred on November 26, 2004, which increased Sunoco's expenses due to shipping delays resulting from the slowed or stopped marine traffic on the Delaware River. The Sunoco Refineries in the region are highly dependent on river traffic, primarily for crude oil deliveries; typically 22 crude cargoes are required each month to maintain operations and cargoes are often discharged at multiple docks as shipments are shared between the Sunoco refineries. A typical crude oil cargo of one million barrels provides enough feedstock for the local refineries to operate for only 1½ days. The oil spill specifically impacted four vessels that were chartered by Sunoco, increasing transit times in aggregate by approximately 6.79583 days in November and December 2004. The financial impacts of this delay were increased expenses and lost profits resulting from the additional charter hires and lightering services required to make the crude oil deliveries to Sunoco's refineries.[10]

To receive payment from the Fund for lost profits, a claimant must prove that it lost profits and that those profits resulted from the oil spill. For example, decreased revenue and/or increased expenses caused by the oil spill that reduce the profits the claimant would have otherwise earned would be compensable as lost profit damages by the Fund. In this instance, the Delaware Bay is deemed a natural resource that has been injured by the Athos I oil spill therefore decreased revenue and/or increased expense(s) experienced by Sunoco that reduced their profits which would otherwise have been earned are deemed compensable under OPA.

In this claim submission, it is important to note that Sunoco's increased expenses continued throughout the Athos I oil spill for the time period between November 2004 and December 2004 without offsetting Sunoco's revenues. While a vessel delay in and of itself does not necessarily equate to increased expenses, the financial data provided by the claimant demonstrates that Sunoco could not pass the increased cost on to others because this type of increased expense would have no impact on pricing revenues since the pricing for refinery product is determined by the market.[11] This claim, as a whole, deals with fixed-contract rates for vessels picking-up and delivering oil to Sunoco for use at its refineries in the Delaware Bay area. Sunoco lost profits when its expenses for the various charter party trips discussed later in this section continued to accrue while the vessels were delayed in port awaiting release to sail. As the claimant demonstrates, it was unable to offset these continuing or additional expenses. This claim deals with contracts where the revenue is fixed and the profit was directly affected by the expenses the claimant incurred in the process of fulfilling contractual commitments. Because the claimant could not increase prices and continued to incur expenses (i.e. additional hire or increased expenses due to delay), the claimant effectively lost profit that it would have earned, had the vessels not been delayed by the oil spill.

[10] See, Claim Supporting Documentation found in Volume 1 of 3; page 14 under the Narrative Section of the claim submission

[11] See, Weekly United States Spot Price FOB Weighted by Estimated Import Volume (Dollars per Barrel) which demonstrates that the price of oil the months of November and December 2004 decreased and were not passed on to Sunoco's customers

For this claim, it is perhaps better to compare the asserted loss of profits as presented by the claimant individually compared to the facts, as the claimed damages are based on four separate charter party voyages.

North Star specifics and analysis

Specifically, in November 2004, the *North Star* was under a Voyage Charter dated 10/15/04 with Sunoco for the delivery of crude oil from West Africa to terminals in Delaware River.[12] The *North Star* arrived at Sun's Fort Mifflin dock in the Delaware River on 11/26/04 where it offloaded part of its cargo as scheduled. The *North Star* was scheduled to offload cargo at Fort Mifflin and then proceed immediately to Sun's Eagle Point terminal to offload the remaining cargo at which time the voyage would be completed in accordance with ASBATANK CLAUSE 11 of the North Star charter party. The operator of the vessel would then wait for the next set of directions from the owner of the vessel. The Athos I oil spill occurred on 11/26/04 which initially resulted in increased expenses to Sunoco for a 34.4 hour delay of the *North Star* at Fort Mifflin from 0600 on 11/27/04 until 1625 on 11/28/04.[13] The increased expenses associated with this particular delay, were split between the owner of the *North Star*, Nereus Shipping, and the charterer of the *North Star*, Sunoco. Sunoco was in fact billed and has paid for these costs.

It is clear from the evidence that the *NORTH STAR* was allowed to enter the Delaware Bay and make its first scheduled partial delivery at Fort Mifflin on 11/26/04 and then completed unloading the remaining cargo at Sun's Eagle Point terminal on 11/29/04 at 1225, thus completing the delivery associated with this particular charter party.[14] Unfortunately, as shown by the evidence including the Statement of Facts from the vessel's agent, the demurrage analysis on the *North Star*, the demurrage invoice for the *North Star*, the *North Star* charter party recap, and the FOSC reports demonstrate that the *NORTH STAR* was not allowed to depart Fort Mifflin to transit on to Sun's Eagle Point dock immediately following the first partial discharge of cargo on 11/27/04 at 0600 when the Notice of Readiness (NOR) was given because on the evening of 11/26/04, the port was closed to deep draft vessel traffic by order of the United States Coast Guard Captain of the Port (COTP).[15] Due to the port closure, the vessel had to wait to be cleared by the USCG before transiting to its next dock for offload.[16]

On 11/28/04 at 1625, the *North Star* received clearance and departed from Fort Mifflin for Sun's Eagle Point dock. The delay experienced by the *North Star* from 11/27/04 at 0600 until 11/28/04 at 1625 as documented in the Statement of Facts, resulted in increased expenses for Sunoco that they would have incurred but for the Athos I oil spill. The owner of the *North Star*, Nereus Shipping, split the delay with Sunoco which was calculated at $90,000.00 pdpr (per day pro rata) in accordance with the charter party dated 10/15/04 for the period of 34.4 hours or 1.433 days delay bringing the total increased costs to $128,970.00 less 50% that Nereus Shipping assumed responsibility for resulting in an increased cost to Sunoco in the amount of **$64,485.00** vice the $64,500.00 requested by Sunoco.

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[12] See, Charter Party dated 10/15/04 between Nereus Shipping and Sun International Ltd found in Volume 3 of 3; under Tab 8B. It is important to note that the North Star was originally scheduled to proceed to Hog Island to await orders from the owner, Nereus Shipping S.A. for its next voyage.
[13] See, North Star Statement of Facts dated December 2, 2004 found in Volume 3 of 3, tab 8B.
[14] See, updated Statement of Facts for the *North Star* dated 12/2/04
[15] See, T/S ATHOS I After Action Report by the USCG National Strike Force Coordination Center dated 5/1/06, page 10 section B
[16] See, USCG Pollution Reports One and Two

Following the initial delay, the *North Star* completed its discharge operation of the remaining cargo on 11/29/04 at 1225.[17] The *North Star* was then delayed a second time while it was waiting to be cleaned per the USCG. The claimant does not seek compensation for the second delay that the *North Star* experienced because the *North Star* was sitting unloaded at the Eagle Point dock awaiting directions from the owner.

Given that the charter party between Nereus and Sunoco had expired upon completion of the offload at Eagle Point, Sunoco then spot chartered the *North Star* on 12/1/04 in order to lighter two very large crude carriers (VLCC) identified as the *Astro Capella* and the *Astro Perseus* that were waiting offshore. Sunoco investigated alternative means by which to lighter these two large cargo carriers and mitigate their losses as the scheduled crude oil deliveries could not be made by the scheduled provider, Maritrans. The Maritrans vessels were unavailable to perform the lightering due to the back log they were experiencing as a result of the Athos I oil spill. The charter party that went into effect between Sunoco and Nereus Shipping dated 12/01/04, allowed for the *North Star* to perform "one" lightering declarable before the vessel, *North Star*, arrived at Big Stone anchorage. (See Clause 12 of spot charter dated 12/01/04).

Had Maritrans been able to lighter as originally scheduled, Sunoco would have paid \$187,916.00. Since Maritrans' vessels were delayed due to waiting to be cleaned as ordered by the Federal On Scene Coordinator (FOSC), Maritrans issued a credit to Sunoco for a fee reduction of \$187,916.00 (this is calculated as follows: 431,000 barrels of oil not lifted by Maritrans times the adjusted rate of \$0.436/bbl totaled \$187,916.00 credit) which the claimant applied to overall expenses incurred for the *North Star* because they were unable to perform the lightering as originally scheduled. The fee reduction included credit for costs associated with the workboats that would have worked between Maritrans and the *North Star* for which Sunoco ended up incurring increased expenses due to the increased expense of the additional spot charter of the *North* Star dated 12/1/04.

In order to perform the offshore lightering voyage under the spot charter between Sunoco and Nereus Shipping, two workboats were hired to work between the *North Star* and the *Astro Perseus* and the *North Star* and the *Astro Capella*. The cost of these workboats resulted in increased expenses to Sunoco in the amount of \$45,000.00 and \$58,500.00, respectively.[18]

As stated in the beginning of this determination, Sunoco averages 22 deliveries a month of crude oil and one million barrels of crude only provides enough feedstock for 11/2 days. Therefore it is apparent that the failure to make scheduled crude oil deliveries to Sunoco refineries at least every 2 days would have an adverse financial impact. The cost Sunoco incurred to spot charter the *North Star,* in order to lighter the *Astro Perseus* and the *Astro Capella* amounted to the total cost of \$1,053,096.94. *Although this amount is \$817,003.06 more than established charters,* it was reasonable under the circumstances when compared with the alternative - a potential shutdown of the refineries as a result of no crude deliveries during the river closure. In support of this position Sunoco provided a document entitled "Summary of Refinery Requirements – All Crudes".[19]

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[17] See, *North Star* actual demurrage analysis report and the Statement of Facts for the *North Star* dated 12/2/04 found in Volume 3 of 3, tab 8B.

[18] See, the Ship to Ship Support Services Agreement between the *Astro Capella* and the *North Star* dated 12/2/04 and the Ship to Ship Support Services Agreement between the *Astro Perseus* and the *North Star* dated 11/30/04; located in Volume 1 of 3; section 8B

[19] See, Summary of Refinery Requirements – All Crudes dated 11/24/04 which can be found in binder 3 of 3 section 8C

The additional spot charter for the *North Star* cost Sunoco $1,053,096.94 as a direct result of the Athos I oil spill that Sunoco would not have had to incur but for the Athos I oil spill.[20] Based upon the documentation provided by Sunoco, the NPFC has determined that the increased expense Sunoco incurred to spot charter the *North Star* on 12/1/04 so that the *Astro Capella* and the *Astro Perseus* could be timely lightered in order to make the scheduled crude delivery is compensable as an increased expense, that but for the oil spill, they would not have incurred.

In summary, while the additional spot charter for the *North* Star cost Sunoco $1,053,096.94 plus the increased expense for the *Astro* Perseus in the amount of $58,500.00; plus the increased expense for the *Astro* Capella in the amount of $45,000.00; plus the increased agent/port expenses in the amount of $36,238.12 associated with the *North Star* spot charter and the credit issued by Maritrans to Sunoco for fee reductions in the amount of ($187,916.00) establishes a total increased expense for the *North* Star of $1,004,919.06. The NPFC has determined that the **$1,004,919.06** in increased expenses for the *North Star* spot charter dated 12/1/04 is OPA compensable.

<u>Stena Vision specifics and analysis</u>

The claimant further argues that it incurred additional expenses in the amount of $644,792.00 relating to the *Stena Vision* delay while it was under a long term time charter with Sunoco. The *Stena Vision* arrived at Big Stone Beach anchorage on 11/27/04 at 2300 hours where it was originally scheduled to lighter upon arrival with the *Integrity* (a Maritrans lightering vessel) and the *Maritrans 400* (another Maritrans lightering vessel).[21] Both lightering vessels were delayed upriver at their respective berths unable to move until the USCG reopened the Delaware River resulting from the Athos I oil spill.[22] The *Stena Vision* was originally scheduled to dock at Fort Mifflin on 11/30/04 at 0330 hours and then expected to sail to its next load port on 12/1/04.[23] Due to the many vessel delays that resulted from the Athos I oil spill, the *Stena Vision* was not able to dock until 12/2/04 at 1730 resulting in a delay of 61.9 hours or 2.579 days. The 61.9 hour delay or 2.579 days is calculated from 11/30/04 @ 0330 until 12/2/04 @ 1730. As a direct result of the delay, the *Stena Vision* was unable to sail from port on 12/1/04 in order to make its next load port.

Sunoco spot chartered two smaller vessels, the *Genmar Orion* and the *Venetia* to take the place of the two million-barrel capacity vessel, *the Stena* Vision that was under a time charter with Sunoco dated 11/2/98 and was extended for three additional years under Addendum No. 2 dated 5/7/04. The rate of hire under this charter for the *Stena Vision* was $41,000.00 per day pro rata.[24]

The overall facts as presented in this claim demonstrate that the increased expenses associated with the delay of the two million-barrel capacity vessel, the *Stena Vision,* that was under a time charter with Sunoco at the time of the Athos I oil spill incident is as follows:

1. The *Stena Vision* was under a charter party with Sunoco dated 11/2/098 with Addendum No. 2 dated 5/7/04 (a date which preceded the Athos I oil spill). The rate of hire for this vessel was $41,000.00 per day pro rata.

[20] See, *North Star* charter party dated 12/1/04 for offshore lightering found in Volume 3 of 3; under Tab 8B
[21] See, *Stena Vision's* original schedule from the vessel's agent dated 11/24/04 found in Volume 3 of 3, tab 8C
[22] See, *Stena Vision* schedule update from vessel's agent dated 11/27/04 found in Volume 3 of 3, tab 8C and see also the FOSC Safety Zone
[23] See, *Stena Vision's* original schedule from the vessel's agent dated 11/24/04 found in Volume 3 of 3, tab8C
[24] See, *Stena Vision* charter party addendum no. 2 dated 5/7/04; clause 56

2. The *Genmar Orion* was under a charter party with Sunoco dated 11/23/04 (a date which preceded the Athos I oil spill). The rate of hire for this vessel as identified in the charter party was $120,000.00 per day pro rata.
3. The *Venetia* was under a charter party with Sunoco dated 11/23/04 (a date which preceded the Athos I oil spill). The rate of hire for this vessel as identified in the charter party was $130,000.00 per day pro rata.

In support of its claim, Sunoco provided a copy of the waterborne cargo freight calculations for the *Stena Vision* for the affected voyage (identified as waterborne voyage # 33 / 5925), the next voyage (identified as waterborne voyage #34 / 5963) and the next following voyage (identified as waterborne voyage #35 / 5999). The freight calculations demonstrate that due to the Athos I oil spill, Sunoco had to charter two smaller vessels in order to be able to load the amount of cargo the *Stena Vision* would have carried in order to make the next scheduled voyage.

The claimant provided a copy of the fixture sheets and freight invoices for the *Genmar Orion* and the *Venetia* which demonstrates the per day pro rata calculation for each vessel. The claimant is requesting compensation of the combined daily rates for the *Genmar Orion* and the *Venetia* as described in each charter party for the delay period of 61.9 hours or 2.579 days experienced by the *Stena Vision* which constitutes Sunoco's increased expenses associated with this component of their claim.

The increased expenses calculation as presented by the claimant is computed as follows: $120,000 per day pro rata according to the charter party for the *Genmar Orion*[25] times the total number of delayed hours of 61.9 hours for 11/30/04 @ 0330 until 12/2/04 @ 1730 which gives an increased expense of $309,480.00 for this vessel and $130,000 per day pro rata according to the charter party for the *Venetia*[26] times the total number of delayed hours of 61.9 hours for 11/30/04 @ 0330 until 12/2/04 @ 1730 which gives an increased expense of $335,270.00 for this vessel giving Sunoco a total increased expense of $644,750.00 a difference of $42.00 from the amount requested by the claimant.

Based upon the documentation provided by Sunoco, the NPFC has determined that the total increased expenses Sunoco incurred as a result of the Athos I oil spill and associated with the *Stena Vision* actually amounts to $644,750.00. The NPFC determined this amount by taking the increased expense of the *Genmar Orion*, as stated above, in the amount of $309,480.00 and by taking the increased expense of the *Venetia*, as stated above, in the amount of $335,270.00 which equates to $644,750.00. According to the charter party for the *Stena Vision*, the per day pro rata rate of $41,000.00 was still incurred by Sunoco since the vessel never went off hire therefore Sunoco had no saved expenses for which to offset Sunoco's increased expenses. In closing, the NPFC has determined **$644,750.00** in increased expenses for the *Genmar Orion* and the *Venetia* for the period of 11/30/04 @ 0330 until 12/2/04 @ 1730 which totals 61.9 hours that are OPA compensable.

<u>Virgo Voyager specifics and analysis</u>

This component of Sunoco's claim involves the *Virgo Voyager* which the claimant alleges they incurred increased expenses in the amount of $39,500.00 related to a 12 hour time delay that

[25] See, *Genmar Orion* spot charter dated 11/30/04 found in Volume 3 of 3, tab 8C
[26] See, *Venetia* spot charter dated 11/23/04 found in Volume 3 of 3, tab 8C

resulted from a decision made by ChevronTexaco, owner of the vessel, to not have their vessel transit the river over concerns that the vessel could suffer a similar casualty as the Athos I. After much deliberation, it was agreed to lighter an additional 100MB of cargo from the *Virgo Voyager* in order to lighten the vessel's draft to 34ft.7in prior to its transit upriver. The incremental lightering delayed the ship's docking. Ultimately, ChevronTexaco agreed to credit Sunoco 12 of the 24 hour delay since it was their decision not to transit the river at the draft specified in the charter party dated 10/15/04. Sunoco seeks reimbursement of the 12 hour delay time they incurred as a result of ChevronTexaco's decision to delay the vessel until incremental lightering could be performed.

With respect to increased expenses that are associated with the *Virgo Voyager*, this vessel was under a charter party between Chevron Texaco (Chevron) and Sun International, Ltd. (Sunoco) dated 10/15/04. Sunoco states that they incurred additional expenses associated with 12 hours of delay time at a rate of $79,000.00 per day pro rata as identified in the charter party dated 10/15/04. The claimant states that the *Virgo Voyager* arrived with a cargo of crude oil on 12/1/04 at 1500 hours. In accordance with the day rate as identified in the charter party dated 10/15/04, Sunoco's increased expenses were $39,500.00 and the owner, Chevron Texaco (Chevron) assumed liability for the other 12 hour delay at a total price of $39,500.00 since it was their decision not to transit the river at the draft specified in the charter party.

The NPFC has determined that this delay was not proximately caused by the oil spill which resulted in increased expenses but rather was a business decision by the vessel owner therefore these costs are not OPA compensable and are hereby denied in the amount of $39,500.00.

<u>Genmar Zoe specifics and analysis</u>

The final component of Sunoco's claim involves the *Genmar Zoe* where the claimant alleges that it incurred increased expenses in the total amount of $255,000.00 related to a 3 day delay which resulted because of the Athos I oil spill. Claimant argues that the *Genmar Zoe* was scheduled to discharge 300 MB of crude oil at Riverhead, NY as evidenced by an email dated 11/18/04 directing the vessel to Riverhead. Once the *Genmar Zoe* offloaded its cargo at Riverhead, NY, it was then directed to shift to Stapleton anchorage to lighter an additional 290 MB for delivery to Perth Amboy, NJ. (This cargo was shared with the Chevron site at Perth Amboy). After the delivery to Perth Amboy, the balance of 360 MB of cargo was then scheduled to be lightered onto Sunoco time chartered barges at Stapleton anchorage for ultimate delivery to Girard Point and Eagle Point on the Delaware River.

The *Genmar Zoe* arrived at Stapleton anchorage on 12/4/04 at 15:00 hours and did not leave port until 12/12/04 at 05:30 hours due to delays while awaiting Sunoco chartered barges to lighter the *Genmar Zoe*. The total time associated with delays while awaiting Sunoco barges for lightering are as follows: 12/4/04 @1832 until 12/6/04 @ 1900; then from 12/7/04 @ 1412 until 12/7/04 @ 1730; then from 12/7/04 @ 2212 until 12/7/04 @ 2300; then from 12/8/04 @ 1335 until 12/8/04 @ 2012; then from 12/9/04 @ 1000 until 12/9/04 @ 1956; and then finally from 12/11/04 @ 1100 until 12/11/04 until 1130. The total delay time for these periods equate to a total of 68.65 hrs or 2.86 days.

It is important to note that the Sunoco chartered barges were delayed arriving at Stapleton anchorage by 2.86 delay days at a rate of $85,000.00 per day pro rata per the *Genmar Zoe* charter party dated 10/15/04 which actually equates to $243,100.00. The claimant was unable to further mitigate the increased costs as there were no other barges available to lighter the *Genmar Zoe* and make the delivery to Girard Point and Eagle Point thereby leaving the claimant no other alternative but to incur the increased expenses while the revenues remained fixed under the charter party. The NPFC has determined the **$243,100.00** in increased expenses for the *Genmar Zoe* via a charter party dated 10/15/04 is OPA compensable.

II. CONSIDERATION

In consideration of all the evidence provided by the claimant, the NPFC finds that an OPA incident did in fact delay and disrupt the voyages of some of the claimant's vessels as described in the Analysis section above. The claimant has demonstrated that they have in large part experienced a direct loss of profit resulting from having to spot charter additional vessels and also incurred increased expenses while revenues remained fixed under existing charters resulting in a direct loss of profits. Based on the above, I find that the claimant has suffered $1,957,254.06 in OPA-compensable losses resulting from the Athos I oil spill on November 26, 2004. Thus, I recommend that the claimant be offered said amount to settle this claim.

III. DETERMINED AMOUNT

$1,957,254.06

Claim Supervisor:	[redacted]
Date of Supervisor's Review:	1/20/10
Supervisor's Action:	APPROVED