

CLAIM SUMMARY / DETERMINATION FORM

Date	: 04/04/2011
Claim Number	: P05005-147
Claimant	: The Premcor Refining Group Inc.
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$1,149,658.00

FACTS:**1. Oil-Spill Incident:**

On November 26, 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).

2. Claimant:

CLAIMANT, The Valero Energy Corporation on behalf of Premcor Refining Group Inc. – Delaware ("Claimant") presented this claim on November 19, 2007 to the National Pollution Funds Center (NPFC) for reimbursement from the Oil Spill Liability Trust Fund (OSTLF) for loss of profits and earning capacity stemming from increased shipping costs of oil to Premcor. It should be noted that Claimant's original submission was for a sum certain of \$1,149,658 (including \$1,090,820 in loss of profits & earnings capacity and \$58,838.00 in assessment costs). The NPFC notified the RP of the claim submitted by the Premcor Refining Group (PRG) via an email dated November 26, 2007, which the RP acknowledged and deemed denied on that same day.

At the time of the oil-spill, Premcor was an independent petroleum refiner and supplier of unbranded transportation fuels, heating oil, petrochemical feedstock, petroleum coke and other petroleum products. Premcor owned and operated refineries stretching from Port Arthur, Texas to Memphis, Tennessee to the Delaware River, Delaware City, Delaware.¹ The Delaware City Refinery was the facility allegedly affected by the oil-spill incident and was located approximately 30 miles downstream from the Athos I.² Premcor Inc. merged with Valero Energy Corporation (Valero) on September 1, 2005.

Claim Under Reconsideration:

When the NPFC adjudicated the claim on December 7, 2010, it denied the claim, as Claimant had failed to demonstrate by a preponderance of the evidence that it sustained lost profits and

¹ Valero Energy Corporation, Form 10-K, Page 2.

² Claimant's 31 January 2009 Information Submission Binder, page 7

that Valero had a right to submit this claim on behalf of Premcor. On January 17, 2011, Claimant timely requested reconsideration. On March 18, 2011 Claimant presented arguments and evidence that cleared the rightful Claimant issue, through the submission of evidence that shows the Premcor Refining Group (PRG) is in fact the rightful Claimant for these alleged damages, specifically:

- Listing of Subsidiaries of Premcor Inc. and The Premcor Refining Group Inc.³
- Valero Energy Corporation and Subsidiaries as of February 1, 2006⁴
- Form W-9, Request for Taxpayer Identification Number and Certification dated 1/1/2009
- Certificate of Incorporation in State of Delaware – The Premcor Refining Group Inc. dated 10/20/10
- [REDACTED]'s notarized certificate dated March 15, 2011 that provided:
 - o Exhibit A: Certificate of Merger of Premcor Inc. with and into Valero Energy Corporation dated 08/31/05.
 - o Certificate of Merger of Premcor Inc. with and into Valero Energy Corporation filed 04:28 PM 08/31/2005

3. Claim

The Claimant alleges that the Athos I oil-spill incident and its subsequent effects on the movement of vessels within Premcor's Delaware City Refinery surrounding port area caused significant delays to its vessels.⁵ Specifically, Claimant attributes an increase in its shipping costs to the delays in the movement of oil into its refinery for the following vessels; M/T *Moscow River*, M/T *Genmar Gabriel*, M/T *Kyeema Spirit*, and the unmanned barge VB-42. Moreover, the Claimant alleges that FOSC actions, including river closures, disrupted and delayed normal delivery operations to Claimant's Delaware City facility which impacted refinery operations.

At the time of the claim submission the Claimant requested additional time to submit supporting documentation which the NPFC granted and set a due date of 31 January 2008. On 31 January 2008, the NPFC received supporting documentation from the Claimant which is summarized in Table #1. Going forward, this claim will be analyzed and adjudicated following the table's order:

³ www.sec.gov/Archives/edgar/data/20762/000119312505043760/dex211.htm

⁴ www.sec.gov/Archives/edgar/data/1035002/000095013406004061/d32462exv21w0

⁵ Claimant's 31 January 2009 Information Submission Binder, page 12

Table #1

Item #	Damage Source	Reason	Claimed Sum Certain ⁶ - Spreadsheet	Documented Amount ⁷
1	M/T Kyeema Spirit	Loss of Charter Time	\$98,350.00	\$65,104.17
2	M/T Moscow River	Demurrage	\$520,556.00	\$392,388.89
3	M/T Genmar Gabriel	Demurrage	\$444,322.00	\$389,583.33
4	VB-42 Barge	Demurrage	\$27,592.00	\$15,300.00
Sub-Total Claimed			\$1,090,820.00	\$862,376.39
5	Assessment Costs		\$58,838.00 ⁸	\$88,267.87 ⁹
GRAND TOTAL			\$1,149,658.00	\$950,644.26
DELTA BETWEEN SUBMISSIONS				(\$199,013.74)

Although Claimant alleged a sum certain of \$1,149,658.00, the documentation received on January 31, 2008 along with that received on August 12, 2009, and presumed to be assessment costs, supports \$950,644.26, a difference of \$199,013.74.

APPLICABLE LAW:

Claims may be presented first to the Fund if the President or his delegated representative has advertised¹⁰ 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;

(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

⁶ Claim Submission – received by NPFC on 19 November 2007.

⁷ Claimant's 31 January 2009 Information Submission Binder, TAB 12, Schedule 1

⁸ This amount is found on the Optional OSLTF Claim Form submitted by claimant; dated 16 November 2007.

⁹ Documentation for these Assessment Costs are not included in the 31 January 2008 submission. However, an email from [REDACTED] to [REDACTED] dated 12 August 2009 documented \$88,267.87 in a top invoice from LTCL, but the costs considered by the NPFC totaled \$82,757.18. These costs were described as adjudication costs. The NPFC presumed these costs to be assessment and considered them as such.

¹⁰ Enclosure #1- USCG Press Release 16 February 2005. (Doc#1)

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. 233 & 235.

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.
- (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 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).

D. BACKGROUND AND FACTS¹¹:

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 additional information from other sources is provided as Attachment #1 to this determination.

I. OVERVIEW

1. The incident involved the discharge and continuing substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
2. The NPFC notified the RP of claimed costs for which the RP responded¹² by denying these costs. 33 U.S.C. § 2713(a)
3. Real or personal property or natural resources have been injured, destroyed, or lost; specifically oil was released into and injured the Delaware River, a natural resource of the United States. 33 U.S.C. § 2703(B)
4. The claim was submitted on time. 33 CFR § 136.101(a)(1)(i). 33 U.S.C. 2712 (h)(2)
5. In accordance with 33 CFR § 136.105(e)(12). 33 U.S.C. 2713 (b)(2) the Claimant has certified that there is no suit in court for the claimed costs and damages.
6. The Claimant seeks \$1,149,658.00 in loss of profits as a consequence of the increased expenses due to shipping delays from the slowed or stopped marine traffic on the Delaware River. 33 CFR § 136.105(b)
7. In the process of adjudicating this claim, the NPFC Claims Manager collected additional information from the Claimant and other sources to corroborate what took place at the time of the incident. 33 CFR § 136.105(e)(13)
8. The Claimant asserts that if not for the oil-spill incident it would not have incurred in the additional expenses claimed. 33 CFR § 136.231(a)

Basis for the Claim:

As discussed above, this claim arises from the Athos I oil-spill incident on the Delaware River that occurred on November 26, 2004, causing Claimant to incur increased expenses associated with shipping delays from the slowed or stopped marine traffic on the Delaware River. Claimant’s Delaware City refinery was highly dependent on river traffic, primarily for crude oil

¹¹ NPFC research is included as Attachment #1 to this claim determination.

¹² Email from [REDACTED] to [REDACTED] dated 26 November 2007 @ 5:32PM

deliveries and cargoes, which were often discharged at multiple docks. The oil-spill incident specifically impacted three vessels and one barge contracted by TPRG. As a whole, this claim deals with fixed-rate contracts or purchase orders for vessels delivering oil.

To receive payment from the Fund for lost profits, a claimant must prove that it lost profits and that the loss resulted from the oil-spill incident. For example, decreased revenue and/or increased expenses caused by an oil-spill incident which reduce the profits claimant would have otherwise earned could 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 incident¹³. Therefore, where ever the Claimant proves that it incurred increased expense(s) that were not offset by additional revenue and which reduced its profits these could be compensable under OPA.

TPRG asserts that it lost profits when it incurred increased expenses, where the revenue was fixed and the profit¹⁴ was directly affected by the expenses the Claimant incurred in the process of fulfilling contractual commitments, as result of the Athos I oil-spill incident from November 26, 2004 until December 8, 2004, without any offset in revenues. While a vessel delay in and of itself does not necessarily equate to increased expenses and increased expenses alone may or may not be a loss of profits, the financial data¹⁵ provided by the Claimant and verified by the NPFC, demonstrates that in this case TPRG could not pass the increased costs onto others. This is because the pricing for refinery products is determined by the market.¹⁶ The affected oil deliveries, where Claimant alleges a loss of profits, were to Premcor's Delaware City refinery on the Delaware River. The Claimant asserts that its expenses for the various charter party trips continued to accrue while the vessels were delayed, either inbound or outbound.

For this claim, the claims manager has followed a process to analyze and adjudicate the asserted loss of profits presented by the Claimant in the order shown in Table #1 above.

ANALYSIS & DETERMINATION

ITEM #1 – M/T Kyeema Spirit

The Claimant asserts that M/T Kyeema Spirit (Kyeema) lost 62.5 hours of charter time and values this time as \$65,104.17, based on a daily rate of \$25,000 per day.¹⁷ On 5 August 2004 Teekay chartering LTD, the (disponent) owner of the Kyeema, chartered this vessel to PRG. The contract called for the charter to last *"five (5) years plus any extension(s) authorized by this charter and/or plus or minus 30 days in Charterer's option,"*¹⁸ for the purpose of carrying

¹³ Enclosure #1- USCG SITREP-POL/ACTUAL dated 271013Z Nov 2004. (Doc #2)

¹⁴ Profit = Revenues – Expenses, is the formula used throughout the determination.

¹⁵ Enclosure #1- Premcor Refining Group Inc 10-K for fiscal year ended 31 December 2004.

¹⁶ Enclosure #1- Monthly U.S. No.2 Distillate Retail Sales by All Sellers for the months of November and December 2004 which shows prices dropping versus rising. The statistic confirms that the marketplace drives prices and that a single entity, such as Valero, cannot pass onto its customers, increased costs that have such a short duration on a geographically limited impact area. Source: U.S. Energy Information Administration found at: http://tonto.eia.doe.gov/dnav/pet/pet_stoc_cu_s1_m.htm (Doc #3)

¹⁷ Claimant's 31 January 2009 Information Submission Binder. Page 22

¹⁸ *Ibid.* - Enclosure 3 (CD) – Time Charter Party for M/T Kyeema dated 5 August 2004. – Clause #8 (Printed by claims manager and included in submission binder in hard copy).

merchandise “including in particular crude oil and or dirty petroleum products...”¹⁹ The rate of hire for this charter was \$25,000.00 per day pro rata.²⁰

Pursuant to the Ship’s Agent Port Log²¹ at the time of the Athos I oil-spill incident (2230 on 26 November 2004), the Kyeema was enroute to Premcor’s Delaware City facility after having loaded crude oil in St. Eustatius, N.A. At 1900 on November 27, 2004 it tendered its Notice of Readiness, as it had come to the end of its sea passage. At 2100 of the same day it anchored at Big Stone Anchorage while it waited to be lightered.²² Because the Maritrans 400 was delayed in arriving at Big Stone Anchorage due to the river closure and cleaning requirements, lightering of the Kyeema did not begin as scheduled at 0700 on November 29, 2004. Instead on December 1, 2004 at 2130 the Maritrans 300 arrived to service Kyeema; approximately 62.5 hours later than planned.²³

Time Delayed:

As stated above, at the time of the oil-spill incident, the Kyeema was chartered by the Claimant through a Time Charter, which is why neither the Claimant nor the Kyeema incurred demurrage on a voyage-by-voyage basis.

The damage presented by the Claimant, as charterer, is based on the cost allocation²⁴ of the Kyeema’s charter time, which it claims was lost while it waited for the barge Maritrans 400 to come and lighter it. The claimed period of loss starts at 0700 on November 29, 2004 when the Maritrans 400 was scheduled to begin lightering Kyeema and ends at 2130 on December 1, 2004 when a replacement, the Maritrans 300, arrived to service Kyeema.

In the case of a time charter, where the charterer (Claimant) claims the loss of charter time as damage due to an oil-spill incident, the charterer has to wait until after the end of the charter. This particular charter’s specific end²⁵ is unknown, but conceivably can be the maximum allowed in the charter party, which is five years from its inception plus 30 additional days and if so, would approximately end on September 4, 2009. However, the Claimant did not provide documentation as to the actual end date for this charter. Without a final accounting there is no way to reconcile the time lost/gained through the duration of the charter to determine the actual demurrage incurred and what, if any loss, is allocated to the oil-spill incident.

Calculation of Lost Profits

At this time, we have not been provided with the information and analysis that would link and make the case that the oil-spill incident delays, claimed as lost time, affected subsequent voyages within this time charter. To be considered OPA compensable, the Claimant would need to

¹⁹ *Ibid.* Clause #4

²⁰ *Ibid.* Clause #8.

²¹ *Ibid.* Enclosure 9 – PortLog and Statement of Facts – M/T Kyeema Spirit dated 6 December 2004.

²² *Ibid.* Delaware City Refinery – Page 13; To have adequate water under the keel, tankers bound for the Delaware City docks are scheduled according to the tides and ship’s actual draft. Still deeper draft tankers typically must lighter part of their cargo before they can transit to the dock... Lightering takes place at Big Stone Anchorage.

²³ *Ibid.*

²⁴ Claimant’s 31 January 2009 Information Submission Binder, Enclosure 12, Schedule 1.

²⁵ Claimant’s 31 January 2009 Information Submission Binder. Enclosure 3 (CD) – Time Charter Party for M/T Kyeema. – Clause #4; Period Trading.

provide such analysis²⁶ with supporting documentation, to include mitigation, and demonstrate the requisite causation.

Under this time charter²⁷, the vessel owner, Teekay Chartering LTD, pays for vessel expenses with the exception of those specified in Clause #7. That clause requires that the charterer pay for certain items including fuel. The fuel consumed during the time of alleged delay is OPA compensable, if properly documented. However, PRG has not claimed this as a loss.

Claimant's burden is to demonstrate that it suffered a loss of profits either through income reduced or as an impairment of earning capacity. Given what has been presented, this burden has not been met. 33 CFR 136.235. While under contract, the Claimant agreed to pay a fixed hire rate (\$25,000.00 per day pro rata) regardless of the status of the vessel. The Claimant has not provided the NPFC with information showing that there were additional payments made or opportunities lost due to the delay in lightering. For failing to demonstrate that this time delay impacted follow-on voyages, that carried through to the end of the time charter, this portion of the claim in the amount of \$98,350.00 is deemed denied.

Item #1		M/T Kyeema Spirit Demurrage / Loss of Charter Time	
Claimed Amount	Documented Amount	Amount Offered	Amount Denied
\$98,350.00	\$65,104.17	\$0.00	\$98,350.00

ITEM #2 – T/V Moscow River

This portion of the claim is attributed to the demurrage incurred by the T/V Moscow River (Moscow) during the Athos I oil-spill incident. Claimant asserts that Moscow incurred demurrage and values the demurrage (damage) as \$392,388.89,²⁸ based on a daily rate of \$80,000.00 per day pro rata.²⁹ Claimant states that Moscow was under a contract of affreightment to deliver 100K MTS (metric tons) of Urals, a Russian Export Blend Crude Oil, to the Delaware City Refinery³⁰ and points to a 27 October 2004 fixture letter between the Claimant and Sinochem International Oil³¹. Also, the Claimant provided a Sinochem International Oil (London) Co. LTD (Sinochem) document which confirms and provides the terms of a crude oil sales negotiation between Sinochem, as seller of crude oil, to PRG.³² This contract is the reason Moscow was hired by Sinochem to deliver the crude oil purchased by the Claimant. According to this contract, the vessel to make the delivery to be nominated, given that it is referred to as an "Ex-Ship".³³ The applicable demurrage,³⁴ according to the contract between Sinochem and the

²⁶ At a minimum, this would include information on each voyage, when it began, how far vessel had to travel, downtime experienced during transits and expenses paid.

²⁷ Claimant's 31 January 2009 Information Submission Binder, Enclosure 3 (CD) – Time Charter Party for M/T Kyeema dated 5 August 2004.

²⁸ Claimant's 31 January 2009 Information Submission Binder, Enclosure 12, Schedule 1

²⁹ *Ibid.* Page 20.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.* Enclosure 3.

³³ *Ibid.* – Agreement between Sinochem International Oil (London) Co. Ltd. and The Premcor Refining Group Inc. – Paragraph 5; Delivery.

³⁴ *Ibid.* Paragraph 11; Laytime and Demurrage.

Claimant, was agreed to be found in the vessel's charter party. A rate of \$80,000.00 per day pro rata is quoted via email³⁵.

Time Delayed

When the Moscow arrived at the Delaware Bay entrance at the end of the sea passage at 0545 on December 3, 2004, the Athos I oil-spill incident (2230 on November 26, 2004) had already occurred and response efforts were underway. The Moscow tendered its NOR at 0700 on its arrival date and waited for a survey of the vessel, which was completed at 1100 on December 4, 2004.³⁶ Because the Moscow required lightering prior to proceeding to Delaware City by a tank barge that Maritrans was to provide, it experienced delays when Maritrans schedules were impacted by the oil-spill incident's VTMS in place. The delays Maritrans experienced in servicing vessels caused ripple effects that in the case of the Moscow delayed its lightering which in turn delayed its travel to its final destination to the Delaware City Refinery. From December 4th at 11:01 through December 8th at 09:40 the Moscow awaited lightering with the Maritrans 300 barge. The Moscow lightered twice, first on December 8, 2004 and again during the period of December 9-10, 2004. At 0015 on December 11, 2004, the first line from the Moscow was passed to the pier at Premcor's Delaware City Refinery.³⁷

The NPFC acknowledges that the oil-spill incident caused delays and that the period of loss started at 1101 on December 4, 2004, which is 28 hours and 1 minute after the Moscow tendered its NOR, and ended at 0940 on December 8, 2004³⁸ for a delay of 94 hours and 39 minutes (3.94375 days).

Calculation of Lost Profits

Having found that the Moscow was delayed 94.65 hours or 3.94375 days, the issue remaining is that of quantifying the dollar value of profits lost during that delay and applying any credits due the charterer by the owner in accordance with the charter party agreement. The charter party agreement calls out a rate of \$80,000.00 per day pro rata.³⁹ Nothing in the charter party shows the Claimant being entitled to any discounts. This is a straight calculation of days lost by the applicable rate; \$80,000.00, which yields a total of \$315,500.00.

As proof of payment the Claimant provided a Bank of America account statement which confirms a wire transfer in the amount of \$349,531.27 to Taurus dated 21 July 2005.⁴⁰ This delay directly increased expenses of delivered product without any offset to revenues. The NPFC concludes that the Claimant's profits would have been \$295,781.25 more than they actually were as a result of the oil-spill incident.

³⁵ *Ibid.* Enclosure 7; email between [REDACTED] (Sinochem) and [REDACTED] (Premcor) of 24 November 2004.

³⁶ *Ibid.* PortLog and Statement of Facts.

³⁷ *Ibid.*

³⁸ Claimant's 31 January 2009 Information Submission Binder, Enclosure 8 – Statement of Facts by Moran Agencies. Page 11 of 20.

³⁹ *Ibid.* Poten & Partners, Inc. – Genmar Gabriel – URSA Final Recap dated 12 November 2004.

⁴⁰ *Ibid.* Enclosure 11 (Bank of America - Statement's Page 40 of 58)

Item #2		M/T Moscow River – Demurrage	
Claimed Amount	Documented Amount	Amount Offered	Amount Denied
\$520,556.00	\$392,388.89	\$315,500.00	\$205,056.00

ITEM #3 – T/V Genmar Gabriel

This portion of the claim is attributed to the demurrage incurred by the T/V Genmar Gabriel (Genmar) during the Athos I oil-spill incident. The Claimant asserts that the Genmar incurred demurrage and values the demurrage (damage) as \$389,583.33,⁴¹ based on a daily rate of \$75,000 per day pro rata.⁴² The Claimant states that the Genmar was under a contract of affreightment⁴³ to deliver 600,000 barrels of Napo Light crude oil to its Delaware City refinery⁴⁴ and points to a October 27, 2004 Deal Sheet between PRG and Taurus Petroleum Limited (Taurus) as well as a letter confirming the charter party from the Genmar's broker (Poten and Partners, Inc.).⁴⁵ Also, the Claimant provides a Taurus contractual document which confirms and provides the terms of a crude oil sales negotiation between Taurus, as seller of crude oil, to PRG.⁴⁶ This contract is the reason the Genmar was hired by Taurus to deliver the crude oil purchased by the Claimant.

At the time of the Athos I oil-spill incident, the Genmar was enroute⁴⁷ to the Delaware City Refinery. As noted in the Statement of Facts⁴⁸ signed by the Master, the Genmar anchored, tendered its NOR⁴⁹ at 2330 on November 30, 2004, and waited for lightering by a Maritrans barge. The Maritrans 300 arrived and secured the first line to the Genmar at 1625 on 6 December 2004 and completed lightering the next day, December 7, 2004, when the last line was off at 0230.⁵⁰ On December 7, 2004, the Genmar departed Big Stone Anchorage at 0245 and arrived at the Delaware City Refinery #1 Dock at 0912.

Time Delayed

When the Genmar arrived at the Delaware Bay entrance at 2100 on November 30, 2004 the Athos I oil-spill incident (2230 on 26 November 2004) had already occurred and response efforts were underway. Due to the oil-spill incident a vessel traffic management system (VTMS) was implemented and a Safety Zone was established which controlled and imposed significant traffic restrictions on vessel movement. Because the Genmar required lightering by a tank barge that

⁴¹ *Ibid.* Enclosure 12, Schedule 1.

⁴² *Ibid.* Page 21.

⁴³ An agreement for carriage of goods by water. This type of contract usually takes the form of a bill of lading or charterparty. - Black's Law Dictionary

⁴⁴ Claimant's 31 January 2009 Information Submission Binder, Page 20.

⁴⁵ Though both documents were absent from claimant's 31 January 2009 submission, [REDACTED] responded to an email from [REDACTED] dated 25 August 2010 by personally hand carrying both documents to [REDACTED] on 26 August 2010. See Email from [REDACTED] to [REDACTED] confirming receipt. Documents were placed and are found in the binder's Enclosures 3 and 8, per claimant's 31 January 2009 submission.

⁴⁶ Claimant's 31 January 2009 Information Submission Binder, Enclosure 3.

⁴⁷ *Ibid.* Page 8 of 20.

⁴⁸ *Ibid.* Page 11 of 20 – Moran Agencies – Statement of Facts.

⁴⁹ *Ibid.* Page 10 of 20.

⁵⁰ *Ibid.* Page 12 of 20.

Maritrans was to provide prior to it proceeding to Delaware City, Genmar experienced delays when Maritrans schedules were impacted by the oil-spill incident's VTMS in place. The delays Maritrans experienced in servicing vessels caused a ripple effect that in the case of the Genmar delayed its lightering which in turn delayed its travel to its final destination to the Delaware City refinery.

The NPFC acknowledges that the oil-spill incident caused delays and that the Genmar's period of loss started at 0915 on December 3, 2004 when the surveyor completed cargo calculations, which is 57 hours and 45 minutes after Genmar tendered its NOR, and ended on 1625 on December 6, 2004⁵¹ for a delay of 79 hours and 10 minutes (3.29861 days).

The NPFC concludes that the Genmar was delayed 79 hours and 10 minutes (79.16667 hours) or 3.29861 days.

Calculation of Lost Profits

Having found that the Genmar was delayed 79.16667 hours or 3.29861 days, the issue remaining is that of quantifying the dollar value of profits lost during that delay and applying any credits due the charterer by the owner in accordance with the charter party agreement. The charter party agreement calls out a rate of \$75,000.00 per day pro rata.⁵² Nothing in the charter party shows the Claimant is entitled to any discounts. This is a straight calculation of days lost by the applicable rate; \$75,000.00, which yields a total of \$247,395.75.

As proof of payment the Claimant provided a Bank of America (BOA) account statement which confirms a wire transfer in the amount of \$349,531.27 to Taurus dated 21 July 2005.⁵³ The NPFC concludes that the Claimant's profits would have been \$247,395.75 more than they actually were as a result of the oil-spill incident.

Item #3		M/T Genmar Gabriel – Demurrage	
Claimed Amount	Documented Amount	Amount Offered	Amount Denied
\$444,322.00	\$389,583.33	\$247,395.75	\$196,926.25

ITEM #4 –VB-42

This portion of the claim is attributed to the demurrage incurred by the Vane Brothers barge VB-42 as a result of the Athos I oil-spill incident. Vane Line Bunkering Inc. (Vane Line) is the owner of the barge VB-42 which was on contract via a purchase order⁵⁴ to the Claimant to move product to different locations. The Claimant asserts that due to the ongoing response to the Athos I oil-spill incident, the movement of the barge was restricted, which caused the accrual of demurrage charges that are included and claimed as a lost profit.

⁵¹ *Ibid.* Enclosure 8 – Statement of Facts by Moran Agencies. Page 11 of 20.

⁵² Claimant's 31 January 2009 Information Submission Binder, Enclosure 8; Poten & Partners, Inc. – Genmar Gabriel – URSA Final Recap dated 12 November 2004.

⁵³ *Ibid.* Enclosure 11 (BOA Statement's Page 40 of 58)

⁵⁴ *Ibid.* Enclosure 10 – Vane Line Bunkering – Invoice #4K0034D.

The Claimant describes this portion of the claim by pointing out that there were two periods when the barge VB-42 was delayed during the oil-spill incident, with the second one being the one claimed. As the Claimant explains, the first delay would have occurred without the oil-spill incident due to the refinery not being ready to load the cargo of the VB-42. This first delay is deemed by the Claimant as normal demurrage and totaled 30.73 hours and valued at \$12,292.00.⁵⁵ The second delay, which is the one claimed and attributed to the oil-spill incident, is described in a spreadsheet⁵⁶ included in the 31 January 2009 information submission and is for 38.25 hours, which the Claimant valued at \$15,300.00.⁵⁷ The Claimant states that the VB-42 barge rate is \$400.00 per hour.⁵⁸

Time Delayed

The documentation provided by the Claimant, captures the events affecting the barge starting at 0001 on 26 November 2004 through 1450 on 3 December 2004, which includes the loading, offloading and reloading of product at the Delaware City Refinery.⁵⁹ SITREP-POL 8⁶⁰ describes the Safety Zone extended for a total of 21 miles,⁶¹ stretching as far south as the intersection of the Marcus Hook Range and the Bellevue Range and the effects it had on commercial traffic moving in and out of the Delaware River area.⁶² A delay due to the oil-spill incident can be discerned starting at 1805 on November 27, 2004 and ending at 1300 on 28 November 2004.

The NPFC acknowledges that the oil-spill incident caused delays and that the period of loss started at 1805 on 27 November 2004 and ended at 1300 on November 28, 2004, which is 18 hours and 55 minutes (18.91667 hours), for a difference of 19.33 hours less than what claimed.

Calculation of Lost Profits

Having found that the VB-42 barge was delayed 18.91667 hours, the issue remaining is that of quantifying the dollar value of profits lost during that delay. Given that the contract vehicle is a purchase order, this is a straight calculation of lost hours by the applicable rate; \$400.00 per hour, which yields a total of \$7,566.67.

As proof of payment the Claimant provided a Bank of America account statement which confirms a wire transfer in the amount of \$41,535.00 to Vane Line Bunkering dated 15 March 2005.⁶³ The NPFC concludes that the Claimant's profits would have been \$7,566.67 more than they actually were as a result of the oil-spill incident.

⁵⁵ *Ibid.* Page 22.

⁵⁶ *Ibid.* Enclosure 12, Schedule 5 – Section (B) – Less Adjustment for Oil Spill Delays

⁵⁷ *Ibid.* Page 22.

⁵⁸ *Ibid.* Enclosure 10 – Vane Line Bunkering Inc. – Invoice #4K0034D.

⁵⁹ Claimant's 31 January 2009 Information Submission Binder, Enclosure 10 – Demurrage Calculation for Order #04K00304.

⁶⁰ Enclosure #1 – USCG SITREP-POL 8 (Doc #4)

⁶¹ USCG SITREP-POL 9 describes the total length of the area as 27.5 miles.

⁶² USCG SITREP-POL 8 – Paragraph 4, Waterways Management.

⁶³ Claimant's 31 January 2009 Information Submission Binder, Enclosure 11 – Bank of America Statement, page 33 of 65.

Item #4		Vane Brothers VB-42 Barge – Demurrage	
Claimed Amount	Documented Amount	Amount Offered	Amount Denied
\$27,592.00	\$15,300.00	\$7,566.67	\$20,025.33

ITEM #5 – Lighthouse Technical Consultants - Assessment Costs

The Claimant hired Lighthouse Technical Consultants, Inc. (LTCI) to assess the damages, which subcontracted with PCCI⁶⁴ and RGL – Forensic Accountants and Consultants (RGL). PCCI incurred over 70% of the documented direct costs while RGL reviewed and analyzed Claimant's business documents to measure its losses. Their efforts were presented and billed to Valero by LTCI.

Based on the activity records provided by PCCI, the efforts of researching and assessing the information that would document the Claimant's damages, were conducted primarily by PCCI with further assistance from RGL. Also it appears that during this process, the activities of PCCI and RGL were occasionally joined by an LTCI member. From the documentation provided, the activities in which an LTCI member interacted with PCCI and RGL were few and far between. When comparing the time logged by the PCCI and RGL members with LTCI, it appears that LTCI's primary purpose was not assessment; i.e. strategy consultation, organization of site visit, preparation for site visit. Given that Claimant has not met its burden of proving and supporting the claim that LTCI's activities and associated costs are in fact OPA compensable assessment costs, they are deemed denied.

NPFC developed a spreadsheet capturing the activities of LTCI, PCCI and RGL which was used to summarize all alleged costs included in the LTCI package. It should be noted that the submitted documentation showed a bottom line (total) of \$88,757.18, which is different from what Claimant submitted on the claim form, when the claim was presented to the NPFC; assessment costs in the amount of \$58,838.00. Enclosure (2) is the spreadsheet that captures the details of all items submitted as assessment costs and the NPFC's adjudication of each one. The NPFC determined the total OPA compensable assessment costs are \$19,141.14.

Documentation for Assessment Costs was not included in the 31 January 2008 submission. However, an email from [REDACTED] to [REDACTED] dated 12 August 2009 claimed to document \$88,267.87 in a top invoice from LTCI. Upon close inspection, however, the NPFC found that this figure was wrong as the documented costs received and considered by the NPFC; totaled \$82,757.18. While these costs were described as adjudication costs by the Claimant, the NPFC presumed these costs to be assessment and considered them as such.

Item #5		Lighthouse Technical Consultants (LTCI)	
Claimed Amount	Documented Amount	Amount Offered	Amount Denied
\$58,838.00	\$88,267.87	\$19,141.14	\$39,696.86

⁶⁴ A Marine and Environmental firm.

DETERMINATION OF LOSS:

The NPFC acknowledges that the Athos I oil-spill incident impacted shipping and operations along the Delaware River. Under the OPA some of PRG's claims were documented, are compensable. The table below summarizes the NPFC's determination as to each item claimed.

TABLE #2

ADJUDICATION SUMMARY						
#	1	2	3	4	5	6
	Damage Source	Reason	CLAIMED AMOUNT ⁶⁵	Documented Amount ⁶⁶	AMOUNT OFFERED	Denied Amount ⁶⁷
1	M/T Kyeema Spirit	Loss of Charter Time	\$98,350.00	\$65,104.17	\$0.00	\$98,350.00
2	M/T Moscow River	Demurrage	\$520,556.00	\$392,388.89	\$315,500.00	\$205,056.00
3	M/T Genmar Gabriel	Demurrage	\$444,322.00	\$389,583.33	\$247,395.75	\$196,926.25
4	VB-42 Barge	Demurrage	\$27,592.00	\$15,300.00	\$7,566.67	\$20,025.33
Sub-Total			\$1,090,820.00	\$862,376.39	\$570,462.42	\$520,357.58
5	Assessment Costs		\$58,838.00 ⁶⁸	\$88,267.87	\$19,141.14	\$39,696.86
GRAND TOTAL			\$1,149,658.00	\$950,644.26	\$589,603.56	\$560,054.44
DETERMINATION:			CLAIMED AMOUNT	AMOUNT OFFERED		DENIED AMOUNT
			\$1,149,658.00	\$589,603.56		\$560,054.44

DETERMINED AMOUNT: \$589,603.56

Claim Supervisor:

Date of Supervisor's Review:

Supervisor Action:

Supervisor's Comments:

Approved

4/11/11

⁶⁵ Claim Submission – received by NPFC on 19 November 2007⁶⁶ Claimant's 31 January 2009 Information Submission Binder, TAB 12, Schedule 1⁶⁷ Denied Amount (Column # 6) = Claimed Amount (Column # 3) – Determined Amount (Column # 5)⁶⁸ Amount on the Optional OSLTF Claim Form submitted by claimant; dated 16 November 2007