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United States General Accounting Office
Washington, DC 20548

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May 31, 2002

The Honorable Lane Evans
Ranking Democratic Member
Committee on Veterans' Affairs
House of Representatives

Subject: Use of Oil Spill Liability Trust Fund for Administrative Costs of Processing
Oil Pollution Act Claims

Dear Mr. Evans:

This responds to your letter of October 9, 2001, written jointly with The Honorable Corrine Brown, concerning the Coast Guard's use of the Oil Spill Liability Trust Fund (the Trust Fund), as created by the Oil Pollution Act (the Act), Pub. L. No. 101-380, 104 Stat. 484 (1990). The Act established a no-year appropriation for payment from the Trust Fund of uncompensated claims for damages and removal costs arising from oil spills. 33 U.S.C. §§ 2712(a)(4), 2752(b). It also authorized annual appropriations, not to exceed \$25 million per year, to be derived from the Trust Fund, for payment of the Coast Guard's "operating expenses" under the Act. 33 U.S.C. §§ 2712(a)(5)(A), 2752(a).

Congress appropriates funds annually out of the Trust Fund for use as part of the Coast Guard operating expenses appropriation. For fiscal year 2002, for example, the total "operating expense" appropriation is about \$3.4 billion for the "necessary expenses for the operation and maintenance of the Coast Guard," of which \$24.9 million came from the Trust Fund. Pub. L. No. 107-87, 115 Stat. 833, 835 (2001). Nevertheless, since 1998, the Coast Guard has used the Act's no-year appropriation to pay not only the uncompensated claims, but also its costs of processing those claims, including the salaries of adjudicators and the other administrative expenses associated with payment of the claims. You asked for our opinion on whether the no-year appropriation is available for these purposes.

For the reasons given below, we conclude that the no-year appropriation is not available to pay the salaries of adjudicators and the other administrative expenses associated with payment of uncompensated claims for damages and removal costs arising from oil spills. Accordingly, the Coast Guard must adjust its records to charge the expenses at issue to the correct accounts. The Chief Counsel of the Coast Guard provided GAO with information that the Coast Guard expended \$23,729,000 of no-year funds for these purposes between November 1998 and November 2001. In enclosures to this opinion, we have summarized that information (Enclosure 1) and included a table portraying those expenditures, which the Coast Guard provided us (Enclosure 2).

BACKGROUND

The Act establishes liability for damages and costs resulting from oil spills, requiring the party responsible for a vessel or facility from which oil is discharged, or which threatens to discharge oil, to reimburse injured parties for the removal costs and damages resulting from a spill.¹ 33 U.S.C. § 2702. In certain circumstances, however, uncompensated claims for removal costs and damages may be presented to the Coast Guard for payment from amounts appropriated from the Trust Fund. 33 U.S.C. §§ 2712(a)(4), 2713. The Act provides that the Trust Fund is available for “the payment of claims . . . for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages.” 33 U.S.C. § 2712(a)(4). The Act created a no-year appropriation for payment of these claims. 33 U.S.C. § 2752(b).

The Act also authorized the appropriation of not more than \$25 million per year for the Coast Guard’s “operating expenses” under the Act. 33 U.S.C. § 2712(a)(5)(A). Amounts in the Trust Fund are available for this purpose, however, “only as provided in annual appropriation acts.” 33 U.S.C. § 2752(a). Since the Act became law, Congress has enacted annual appropriations from the Trust Fund for the Coast Guard’s operating expenses. For fiscal year 2002, Congress appropriated a lump sum \$3.4 billion for Coast Guard operating expenses—\$24,945,000 of which was derived from the Trust Fund. Pub. L. No. 107-87, 115 Stat. 833, 835 (2001).

The 1998 Memorandum

In March 1998, the Chief Counsel of the Coast Guard opined that the Act’s no-year appropriation was available to pay not only the uncompensated claims, but also the indirect expenses incurred by the Coast Guard in processing the claims.² He noted

¹ The Act was intended, among other things, “to consolidate and improve Federal laws providing compensation and establishing liability for oil spills.” S. Rep. No. 101-94, at 1 (1989).

² Memorandum entitled “Payment from OSLTF: Costs Connected to Claims and Claims Process” from Paul Blayney, Chief Counsel, Commandant, United States Coast Guard, to Director, National Pollution Funds Center (Mar. 2, 1998) (hereafter cited as 1998 Memorandum).

that, as a consequence of a September 1997 opinion of the Justice Department's Office of Legal Counsel,³ the Coast Guard expected to receive and process additional claims for uncompensated damage and removal costs. The new claims would require new policies, new procedures, and as many as 30 new employees. For this reason, the Chief Counsel had been asked about "funding the claims division (both for natural resources damage and other type of claims) from the [Trust Fund] rather than from the Operating Expense account." The Chief Counsel agreed to the proposal. He found that the words, "payment of claims," as used in section 2712(a)(4), are "subject to more than one reasonable interpretation. [T]he term can be narrowly interpreted to mean only the amount to be paid to a claimant. Alternatively, it can be broadly interpreted to encompass any amount necessary to effect payment of a claim." He concluded that Congress intended the latter. 1998 Memorandum.

For support, he relied on another part of the Act, section 2713, and its legislative history. Section 2712(a)(4) refers to "the payment of claims in accordance with section 2713." 33 U.S.C. § 2712(a)(4). Section 2713 requires the President to promulgate procedures for the "presentation, filing, processing, settlement, and adjudication of claims under [the Act]." 33 U.S.C. § 2713(e). According to the Chief Counsel, the reference to section 2713 "serves to bring all costs of claims processed under [section 2713] within the exception from the requirement of an appropriation." 1998 Memorandum. He supported this conclusion with a quotation from the Act's legislative history:

"In implementing this section [2713], the President may use the facilities and services of private insurance and claims adjustment organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. The Conferees also intend that the President may make advance payments to the contractor to be used for the payment of claims."

H.R. Conf. Rep. No. 101-653, at 117. In the Chief Counsel's view, this shows that Congress meant the phrase "payment of claims," as used in section 2712(a)(4), "to be broadly construed to include all costs associated with claims payments." 1998 Memorandum. According to the Chief Counsel, these costs would include the indirect costs, such as salaries and contracting for damage assessments, of paying for the claims.

He also found that "the cost of establishing a system for processing claims is [not] an 'administrative, operational' cost necessary for the 'implementation' and 'administration' of [the Act]" within the meaning or scope of section 2712(a)(5). As stated above, section 2712(a)(5) authorizes not more than \$25 million per year from the Trust Fund for operating expenses. The Chief Counsel asserted, without explanation, that "payment of claims" does not fall into the "categories" found in

³ Memorandum entitled "Funds Available for Payment of National Resource Damages Under the Oil Pollution Act of 1990," from Randolph D. Moss, Deputy Assistant Attorney General, Office of Legal Counsel, to Frank W. Hunger, Assistant Attorney General, Civil Division (Sept. 25, 1997).

section 2712(a)(5), which apply to “implementation, administration, and enforcement.” Instead, he found that setting up a claims process is an “essential and integral element” of paying claims. He concluded that all of those costs were payable from the no-year money made available for “the payment of claims under section 2712(a)(4) of the Act.” 1998 Memorandum.

Recently, we asked the Chief Counsel to confirm that he continues to support the position taken in the 1998 Memorandum.⁴ In a letter dated November 29, 2001, the Chief Counsel did so, saying: “[T]he Act does permit the payment of all costs, direct and indirect, necessary to process and pay claims under section [2712(a)(4)], including a claims processing system and staff salaries, notwithstanding section [2712(a)(5)].”⁵

DISCUSSION

At issue here is which of two appropriations is available to pay the adjudicator salaries and other administrative expenses related to processing claims under section 2712(a)(4) of the Act—the no-year appropriation for payment of claims under section 2712(a)(4) or the fiscal year appropriations for operating expenses. As noted above, the Act’s no-year appropriation, to which the Coast Guard presently charges its costs of processing claims for uncompensated removal costs and damages, is available for “the payment of claims . . . for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages.” 33 U.S.C. §§ 2712(a)(4), 2752(b).

If section 2712(a)(4) were the only statutory provision involved, we might agree with the Chief Counsel’s assertion that the necessary and incidental costs of processing claims are captured in this section’s use of the phrase “payment of claims.” See generally 36 Comp. Gen. 745, 746 (1957) (“Manifestly, legal services are necessary in the settlement of these claims and the cost of such legal services are properly to be regarded as part of, or incident to the claim and consequently would be allowable as a proper expense [of the claim].”); B-140736, June 1, 1961. However, the Chief Counsel’s arguments fail to give any weight to the fact that there is another appropriation which makes specific provision for the Coast Guard’s administrative expenditures in connection with the Act. As a general rule, an appropriation for a specific object is available for that object to the exclusion of a more general appropriation which might otherwise be considered for the same object. 65 Comp. Gen. 881, 884 (1986). The Act makes up to \$25 million from the Fund available for payment of Federal administrative, operational, and personnel costs and expenses necessary for implementation and administration of the Act. 33 U.S.C. § 2712(a)(5)(A). Pursuant to 33 U.S.C. § 2752, Congress has annually appropriated this amount from the Fund to the Coast Guard’s “operating expense” account. Here,

⁴We also asked the Attorney General for his views on this matter. The Justice Department’s liaison to GAO informally advised us that the Attorney General would not be responding to our request.

⁵Letter from R. F. Duncan, Chief Counsel, United States Coast Guard, to Thomas Armstrong, Assistant General Counsel, GAO (Nov. 29, 2001).

section 2712(a)(4) permits payment of claims for uncompensated removal costs from a no-year appropriation from the Trust Fund, but says nothing about the administrative costs, including salaries of personnel. However, the more specific provision of the Act, section 2712(a)(5)(A), does contemplate the availability of the Fund for payment of operating expenses in implementing, administering, and enforcing the Act, including administering the Fund, but “only as provided in annual appropriation acts.” As noted earlier, Congress has implemented this provision by appropriating money from the Fund on a fiscal year basis. 33 U.S.C. § 2752. The provisions of sections 2712(a)(5) and 2752, read together, plus Congress’ implementation of this scheme, make clear that Congress did not intend the no-year appropriation to be used to pay the administrative expenses of implementing the Act.

In similar circumstances, we held that the Federal Emergency Management Agency (FEMA) was required to pay the administrative expenses of its disaster relief program from its “salaries and expenses” appropriation rather than the President’s “disaster relief” appropriation because the administrative expenses were made specifically available for the administrative costs of implementing the disaster relief program. B-222009-O.M., Mar. 3, 1986. The disaster relief appropriation was available for grants, subsidies and contributions, and direct assistance to disaster victims and was silent as to administrative expenses. FEMA argued that it could charge its administrative expenses attributable to specific disasters to the disaster relief appropriation. We disagreed. *Id.* We explained that the Congress had enacted the salaries and expenses appropriation for all of FEMA’s administrative expenses. The salaries and expenses appropriation, we concluded, was the more specifically applicable appropriation for that purpose. *Id.*

In the case at hand, Congress specified that operating expenses, which include the personnel costs, were to come from the annual appropriation. In fact, the Coast Guard previously used its annual operating expense appropriations to pay the necessary and incidental costs of processing claims under section 2712(a)(4). *See* 1998 Memorandum. It was the Coast Guard’s anticipation of additional claims, requiring new policies, new procedures, and new employees which caused it to look into switching from the annual operating expense appropriation to the no-year appropriation established by the Act. However, as noted, the annual appropriation for operating expenses for payment of administrative and personnel is for the costs of implementing the Act, including the costs of processing claims under section 2712(a)(4).

The Chief Counsel argues that sections 2712(a)(4) and 2713 read together bring all the costs of claims processing under section 2712(a)(4). We disagree. As noted above, section 2712(a)(4) provides for the payment of claims pursuant to section 2713. However, section 2713 merely requires the President to promulgate procedures governing the process by which the Coast Guard is to pay claims under the Act. Neither of these sections, either separately or together, addresses the administrative costs of processing and paying claims, or the appropriation from which those costs should be paid, and there is nothing in the legislative history of section 2713, on

which the Chief Counsel relies, which lends any support to the Chief Counsel's position.

The Chief Counsel also asserts that the costs of establishing a system for processing claims do not qualify as "administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement" of the Act under section 2712(a)(5). The Chief Counsel's position ignores the obligation to give the Act's words their plain and ordinary meaning. E.g., Mallard v. United States District Court, 490 U.S. 296, 301 (1989); B-271845, Aug. 23, 1996. By paying uncompensated claims under section 2712(a)(4) of the Act, the Coast Guard is in fact both "implementing" the payment provision and "administering" the Act through a claims process. All of the activities the Chief Counsel calls indirect cost – salaries for personnel, contract support, information and technology, and administrative costs – are administrative costs under 2712(a)(5). Rather than apply the plain language of section 2712(a)(5), the Chief Counsel concludes that the general language of section 2712(a)(4) necessarily and implicitly applies to the exclusion of the explicit language of section 2712(a)(5). We do not agree. B-271845, Aug. 23, 1996 (the clear intent of Congress must be determined by giving all language of the statute its plain meaning). See also, e.g., Auburn Housing Authority v. Martinez, 277 F.3d 138, 144 (2d Cir. 2002) ("[T]he preferred meaning of a statutory provision is one that is consonant with the rest of the statute.").

CONCLUSIONS

The Coast Guard's operating expenses appropriation is the appropriation specifically available for Coast Guard's claims processing costs. Congress enacted a specific appropriation for operating expenses, which generally includes all administrative costs of the Coast Guard. Claims processing costs such as adjudicator salaries are administrative costs that would normally be funded under operating expenses, and that the Coast Guard funded from its operating expenses appropriation until 1998. The Act clearly contemplates that the Coast Guard would pay the "operating expenses" of implementing the Act, in whole or in part, from annual appropriations derived from the Trust Fund. 33 U.S.C. §§ 2712(a)(5), 2752(a). Thus, of the appropriations available to it, the Coast Guard must pay the administrative costs of processing claims for uncompensated removal costs and damages from the annual "Operating Expenses" appropriation.

In view of our conclusion, the Coast Guard should adjust its accounting records. The Coast Guard should deobligate the adjudicator salaries and other administrative expenses charged to the no-year appropriation since 1998 and charge them instead to the annual operating expense appropriations in effect at the time those expenses were incurred. Then, the Coast Guard must determine whether those adjustments

result in any violations of the Antideficiency Act, 31 U.S.C. § 1341(a).⁶ To the extent that there was insufficient budget authority, the Coast Guard should report the deficiency in accordance with the Antideficiency Act.

Sincerely yours,

Anthony H. Gamboa
General Counsel

Enclosures

cc: The Honorable John D. Ashcroft, Attorney General
Rear Admiral R.F. Duncan, Chief Counsel, U.S. Coast Guard
Mr. Kenneth Mead, Inspector General, Department of Transportation

⁶ The Antideficiency Act prohibits making expenditures or incurring obligations in excess or in advance of appropriations available for that purpose. 31 U.S.C. § 1341(a). See, e.g., 42 Comp. Gen. 272, 275 (1962). The Antideficiency Act also requires the head of the agency involved to report immediately to the President and the Congress all violations of this act, together with a statement of the relevant facts and the actions taken in response to the violation. 31 U.S.C. § 1351.

Enclosure 1: Use of The No-Year Appropriation for Operating Expenses¹

As of November 2001, the Coast Guard expended \$23,729,000 from the Act's no-year appropriation pursuant to the Chief Counsel's 1998 Memorandum. The Coast Guard identified \$1.2 million of those expenses as "direct processing costs," and \$22.5 million as "indirect costs." The Coast Guard accounts for the indirect costs in four categories: "1) pay and benefits for all positions supporting claims; 2) information technology; 3) program management costs; and 4) administrative support."

Using these funds, the Coast Guard created a "Claims Processing System" which, the Coast Guard reports, is now "partly operational." It includes a number of administrative offices and processes, including the "National Pollution Funds Center" (NPFC), and two subdivisions, the "Natural Resource Damage Claims Division" (NRD), and the "Non-NRD Claims Division." Since 1998, the NPFC has adjudicated nearly 6,400 claims for uncompensated damages and removal costs with a claimed value of \$105 million. Of those, about 2,000 claims have been paid a total of about \$34 million. An additional 254 claims for uncompensated damages and removal costs (with a claimed value of \$90 million) were awaiting processing.

The NPFC has contracted for "program management services" to support the new NRD Division, and for "ongoing business improvement support for all of [its] claim processes." NPFC staffing is nearly complete. The Coast Guard expects that indirect costs of processing claims will remain relatively constant in the future, with only modest increases due to inflation. On the other hand, direct costs of processing claims are expected to increase. This expectation is based on a number of factors, including anticipated increases in the size and complexity of future claims.

¹ This enclosure summarizes expenditures reported by the Coast Guard in a letter from R. F. Duncan, Chief Counsel, United States Coast Guard, to Thomas Armstrong, Assistant General Counsel, GAO (Nov. 29, 2001). GAO has not verified this information.

Enclosure 2: Expenditures From Oil Spill Liability Trust Fund, 1998-2001

20-Nov-01

OSLTF Claims Adjudication
FY1998-2001

Claims Processed FY1998-2001		
	Number	Dollars
Claims Adjudicated	6,393	\$105,034,000
Claims Paid	2,058	\$33,773,000
Claims Pending (30 Sep 01)	254	\$89,792,000

Adjudication Costs By Fiscal Year					
Fiscal Year	Indirect Costs	Direct Processing Costs	Claim Payments	Fiscal Year Totals	
FY1998	Personnel Costs (1)	\$ 1,830,000			
	Information Technology (2)	\$ 1,533,000			
	Contract Support (3)	\$ 524,000			
	Administrative Costs (4)	\$ 2,000			
	subtotal	\$ 3,889,000	\$ 131,000	\$ 3,944,000	\$ 7,964,000
FY1999	Personnel Costs	\$ 2,595,000			
	Information Technology	\$ 242,000			
	Contract Support	\$ 503,000			
	Administrative Costs	\$ 1,146,000			
	subtotal	\$ 4,486,000	\$ 305,000	\$ 10,690,000	\$ 15,481,000
FY2000	Personnel Costs	\$ 4,431,000			
	Information Technology	\$ 1,805,000			
	Contract Support	\$ 156,000			
	Administrative Costs	\$ 663,000			
	subtotal	\$ 7,055,000	\$ 617,000	\$ 2,405,000	\$ 10,077,000
FY2001	Personnel Costs	\$ 4,614,000			
	Information Technology	\$ 1,373,000			
	Contract Support	\$ 197,000			
	Administrative Costs	\$ 884,000			
	subtotal	\$ 7,068,000	\$ 178,000	\$ 16,734,000	\$ 23,980,000
FY98-01 Expenditures		\$ 22,498,000	\$ 1,231,000	\$ 33,773,000	\$ 57,502,000

Footnotes:

- (1) Personnel Costs = Pay and Benefits
- (2) Information Technology = Systems Development, Hardware, Software, Operations Support
- (3) Contract Support = Program Implementation, Business Process and Outreach Support
- (4) Administrative Costs = Rent, Equipment, Telecom, Training, Travel, Publications, Supplies

DIGEST

The Coast Guard may not pay the administrative costs of processing and paying claims for uncompensated damages and removal costs arising from oil spills under the Oil Pollution Act, Pub. L. No. 101-380, 104 Stat. 484 (1990), from the Act's no-year appropriation because its annual "operating expenses" appropriations are explicitly available to pay the "necessary expenses for the operation and maintenance of the Coast Guard," and the provisions of the Act make clear that Congress did not intend the Coast Guard to use the no-year funds for that purpose.