



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: U.S. Coast Guard - Oil Spill Liability Trust Fund

File: B-255979

Date: October 30, 1995

DIGEST

Coast Guard asks whether it may reimburse natural resources trustees directly from the Oil Spill Liability Trust Fund (Fund) under subsection 1012(a)(4) of the Oil Pollution Act (OPA) or whether such reimbursements may only be made, subject to the annual appropriations process as required by section 6002 of OPA, under the authority of subsection 1012(a)(2). Given the specific language of subsection 1012(a)(2) with regard to natural resources trustees and the requirements of section 6002, we conclude that natural resources trustees may be reimbursed from the Fund for costs incurred for damage assessments and the development and implementation of restoration plans only under subsection 1012(a)(2) of the Oil Pollution Act, subject to the annual appropriations process. Subsection 1012(a)(4) of OPA is not available to natural resources trustees for claims for damages.

DECISION

The Commandant, United States Coast Guard, requested our opinion concerning certain provisions of the Oil Pollution Act of 1990 (OPA), Pub. L. No. 101-380, 104 Stat. 484 (1990). Specifically, the Commandant questioned whether the Coast Guard can reimburse natural resources trustees directly from the Oil Spill Liability Trust Fund (the Fund) under the authority of subsection 1012(a)(4) of OPA, or whether such reimbursements must be made under the authority of subsection 1012(a)(2) and thus subject to the annual appropriations process pursuant to section 6002 of OPA. For the reasons set forth below, we conclude that natural resources trustees may be reimbursed from the Fund for costs incurred for damage assessments and the development and implementation of restoration plans only under subsection 1012(a)(2), subject to a requirement for a specific appropriation.

BACKGROUND

The Coast Guard has received several claims for reimbursement from natural resources trustees for costs incurred while carrying out their duties under section

1006 of OPA. Section 1006 provides that where there is damage to natural resources due to the discharge of oil, the United States Government, state and local governments, or Indian tribes shall act as trustees for those natural resources owned or controlled by that governmental unit and shall assess the damage and develop plans for the restoration, rehabilitation, or replacement of such resources, or acquisition of equivalent natural resources. Such damages are to be recovered from the party responsible for the discharge under section 1002 of OPA, but OPA also makes available the Oil Spill Liability Trust Fund for payments as set forth in section 1012 of OPA.

Subsection 1012(a)(2) of OPA provides specifically that the Fund shall be available to the President for "the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 1006" However, a second subsection may also be available to natural resources trustees, subsection 1012(a)(4) of OPA, which provides that the Fund shall also be available to the President for the payment of claims, submitted under the procedures of section 1013 of OPA, for uncompensated removal costs or uncompensated damages.

The issue is important because, under the provisions of section 6002 of OPA, the Fund is only available under subsection 1012(a)(2) to the extent Congress has provided amounts in annual appropriation acts. Payment of claims from the Fund under subsection 1012(a)(4) is not similarly subject to the limitation in section 6002.

The Coast Guard questions whether the application of "Federal appropriations law principles" precludes natural resources trustees from receiving reimbursement under subsection 1012(a)(4) because it views subsection 1012(a)(4) to be a general appropriation and subsection 1012(a)(2) to be a specific appropriation. Thus, the rule that a specific appropriation is available to the exclusion of a general appropriation would dictate that natural resources trustees must seek reimbursement under subsection 1012(a)(2).

DISCUSSION

Subsections 1012(a)(2) and Section 6002 of OPA

Section 1012 of OPA defines the availability of the Oil Spill Liability Trust Fund to reimburse specific entities carrying out certain duties. Subsection 1012(a)(2) specifically directs the President to make the Fund available to natural resources trustees for "assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources" The application of this subsection to natural resources trustees for compensation of their activities is clear. Under subsection 1012(a)(2), the trustees are required to go through the appropriations process to access the Fund because of the requirements of section 6002 of OPA.

Subsection 6002(a) requires that all amounts in the Fund be available only as provided in annual appropriations acts, with certain exceptions.

Section 6002 was introduced as a floor amendment to H.R. 1465 (the bill which eventually became OPA) in the House of Representatives because of a perceived problem with the budget scoring of the legislation, which is required under the Budget Enforcement Act of 1990, Pub. L. No. 101-508. Congressman Walter Jones, Chairman of the House Merchant Marine and Fisheries Committee, stated in introducing the amendment that the Congressional Budget Office had "scored" the legislation for budget purposes at \$221 million in direct spending for three years. According to Chairman Jones, this was a result that was not intended, and the purpose of his amendment was to limit direct spending from the Fund to a few discrete instances. The direct spending which would result from the bill, as amended, was estimated to be only \$1 million. 135 Cong. Rec. H28,258-59, Nov. 9, 1989. Section 6002(a) thus requires that all requests for reimbursement from the Fund go through the appropriations process, with certain exceptions.

One of the exceptions is subsection 1012(a)(4). Subsection 1012(a)(4) contains a much broader instruction to make the Fund available for "the payment of claims in accordance with section 1013 for uncompensated removal costs . . . or uncompensated damages" (emphasis added). This subsection covers a wide range of costs and damages that remain uncompensated by the party responsible for an oil spill. The question raised is whether this subsection also includes uncompensated costs incurred by natural resources trustees.

Claims for uncompensated damages under
subsection 1012(a)(4)

Under the procedures governing subsection 1012(a)(4) payments, subsection 1013(d) of OPA provides that a "claim" may be presented to the Fund for uncompensated damages and removal costs. All "claims" must first be presented to the responsible party. A "claim" is defined in subsection 1001(3) as a request for compensation for damages or removal costs resulting from an incident, while a "claimant" is defined under subsection 1001(4) as "any person or government who presents a claim for compensation under this title." These definitions are themselves broad enough to include claims by natural resources trustees.

The definition of "damages" which may be claimed under subsection 1012(a)(4) is also broad enough to include natural resources damages. The term "damages" is defined in subsection 1001(5) as those "damages specified in section 1002(b) of this Act, and includes the cost of assessing these damages." Subsection 1002(b)(2) covers a broad range of damages, including "Real or Personal Property," "Subsistence Use," "Revenues," "Profits and Earning Capacity," "Public Services" and "Natural Resources." Subsection 1002(b)(2)(A) specifies that "natural resources

damages" includes, "Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee" Finally, subsection 1006(d) says that the measure of natural resource damages under subsection 1002(b)(2)(A) includes the "cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources" and "the reasonable costs of assessing those damages." This definition of "natural resources damages" applies both for the purposes of subsection 1012(a)(2) and by implication, subsection 1012(a)(4).

Although both subsections could be construed to allow natural resources trustees access to the Fund, principles of statutory construction argue against such an interpretation. Subsection 1012(a)(2) specifically provides that natural resources trustees' activities that can be reimbursed from the Fund. Subsection 1012(a)(4) is a much more general provision that includes "uncompensated removal costs" and "uncompensated damages". As mentioned earlier, the term "damages" as defined under subsection 1002(b)(2) includes a wide range of damages, beyond just "natural resources damages".

A longstanding principle of statutory construction states that,

"Where there is a seeming conflict between a general provision and a specific provision and the general provision is broad enough to include the subject to which the specific provision relates, the specific provision should be regarded as an exception to the general provision so that both may be given effect, the general applying only where the specific provision is inapplicable." B-163375, Sept. 2, 1971.

Limiting the scope of subsection 1012(a)(4) as it applies to natural resources trustees does not, as has been suggested in natural resources trustees submissions to us, render the provision meaningless. Other types of "damages" to other injured parties, as outlined under subsection 1002(B)(2), including real or personal property, subsistence use, revenues and profits and earning capacity, would still be covered under subsection 1012(a)(4). There is also no discussion in the legislative history of OPA that contemplates natural resources trustees making claims under subsection 1012(a)(4).

In addition, if both subsections are available to the trustees equally, the result would be to allow the trustees to access the Fund under the subsection of their choosing. Under subsection 1012(a)(2), the trustees would be required to go through the appropriations process to access the Fund because of the requirements of section 6002 of OPA. Under the other subsection, 1012(a)(4), the trustees could directly access the Fund to get reimbursement for their costs. Given the choice, the trustees would naturally opt for the less burdensome process under subsection 1012(a)(4), and subsection 1012(a)(2) and section 6002 and its attendant

requirements would be rendered meaningless.

Therefore, given the specificity of the language of the two subsections and the requirements of section 6002, we conclude that subsection 1012(a)(2) is the provision which natural resources trustees must use to access the Fund for the purposes of assessment of natural resources damages and the development and implementation of plans for the "restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources". These payments are to be made from the Fund without regard to the claims process requirements of section 1013, but subject to the appropriations process as specified in section 6002.

CONCLUSION

Subsection 1012(a)(2) provides natural resources trustees access to the Fund for damage assessment and development and implementation of plans for restoration of damaged resources, within the limitations provided under section 6002.

/s/Robert P. Murphy
for Comptroller General
of the United States