

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/27/2009
Claim Number	: 909077-001
Claimant	: United States Environmental Services, LLC
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Gina Strange
Amount Requested	: \$5,363.50

### FACTS:

This is a claim for the reimbursement of uncompensated removal costs by a stiffed contractor, the claimant, United States Environmental Services, LLC (USES) in the amount of \$5,363.50. The incident that is the subject of this claim occurred on or about 16 September 2008 at the Bert Jones Yacht Harbor in Gulfport, Mississippi.

According to the claim submission, the claimant, USES was hired by W.C. Fore Trucking Company when it was believed that a fuel tank on or near a barge they owned and operated had a discharge of approximately 50 – 60 gallons of diesel oil that created a sheen in the waters of the Yacht Harbor an inlet of the Mississippi Sound, a navigable water of the United States.

The incident was reported to the NRC and given the number of 884074. According to claimant's submission, a sheen was noticed in the waters of the Harbor around 10:30 a.m. on 16 September 2008. At the time it looked like the source of the discharge was a BA/BG owned and operated by W.C. Fore Trucking Company (W.C. Fore). W.C. Fore hired the claimant, USES to respond to the incident and clean up the spill.

USES responded to the spill. They deployed boom in the southwest corner of the harbor to contain the spilled fuel. A wash pump was used to move the fuel from under the docks. Once the fuel was contained USES absorbed the fuel from the water with the use of petroleum absorbing pads. The recovered waste fuel and absorbent material was placed into poly bags. All bagged material was placed into 55 gallon drums for off site disposal. After all fuel was recovered, USES returned to its office to decontaminate the equipment. In total USES recovered 5, 55 gallon drums of waste for off site disposal.

On or about 1 October 2008 USES, the claimant transported all recovered waste to the Macland Disposal Center for off site disposal. All of the 5, 55 gallon drums were transported to this facility for disposal.

The claimant contacted both the Mississippi Department of Environmental Quality and the United States Coast Guard (USCG). The claims submission package includes a statement by the USCG, who was the Federal On Scene Coordinator (FOSC) supporting the claimant's statement of facts, indicating that they Sector Mobile was "*on scene and verified that the personnel, equipment, and materials that were on scene were appropriate for the necessary clean-up actions and proper disposal of the recovered product*".

### APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal

costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan”. 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean “oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil”.

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

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

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

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

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

## DETERMINATION OF LOSS:

### A. Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$ 5,363.50 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim number 909077-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on or about 16 September 2008. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

The United States Coast Guard (USCG) was the FOSC. The claimant presented a statement from the FOSC that indicates that the scope of the response actions associated with the oil spill was in fact necessary to mitigate the ongoing spill and substantial threat of contamination and discharge to the nearby waterway. The Claims Manager and the FOSC has determined that the response actions were reasonable and necessary to continue mitigating the substantial threat.

### B. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$ 5,363.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number 909007-001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

DETERMINED AMOUNT: \$5,363.50

RECOMMENDATION: I recommend offering compensation in the amount of \$5,363.50

Claim Supervisor: Thomas S. Morrison

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 2 [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
3/30/2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7004 1160 0005 3997 5261

United States Environmental Services, LLC  
365 Canal Street  
Suite 2500  
New Orleans, LA 70130  
Attn: D. Schenck

e-mail: d [REDACTED] k@usesgroup.com

Re: Claim Number: 909077-001

Dear Mr. Schenck:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$5,363.50 is full compensation for OPA claim number 909077-001.

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

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

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

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

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

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 2 [REDACTED]  
[REDACTED]

Sincerely,

Gina Strange  
Claims Manager

ENCL: Acceptance/Release Form

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

Claim Number: 909077-001	Claimant Name: United States Environmental Services, LLC 365 Canal Street Suite 2500 New Orleans, LA 70130
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I, the undersigned, ACCEPT the determination of \$5,363.50 as full compensation for the claim listed above.

This determination represents full and final release and satisfaction of all claims under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)0, associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number