

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	916016-0001
Claimant	Hull's Environmental Services, Inc.
Type of Claimant	OSRO
Type of Claim	Removal Costs
Claim Manager	[REDACTED]
Amount Requested	\$26,270.75

### **FACTS**

**A. Oil Spill Incident:** On January 26, 2015, the F/V AC III, a commercial fishing vessel ran aground two nautical miles south of Cape San Blas, FL. After unsuccessfully attempting to refloat the vessel, the crew was safely recovered by a US Coast Guard helicopter from Air Station Clearwater, FL. Left unattended, the AC III later refloated during high tide and eventually sank by the bow. With the vessel partially submerged and containing approximately 250 gallons of diesel fuel, it began discharging diesel oil into the Gulf of Mexico, a navigable waterway of the United States.<sup>1</sup> The Federal On-Scene Coordinator (FOSC) USCG Marine Safety Detachment (MSD) Panama City responded to the grounding and discharge of oil and identified Honey Bee Inc. as the Responsible Party (RP) as the owner and operator of the sunken vessel.<sup>2</sup> Honey Bee Inc. hired Hull's Environmental Services, Inc. (Hull's) to raise the sunken vessel and perform pollution removal activities as needed.

**B. Description of actions performed as reported by the FOSC representative:** On February 10, 2015, Hull's subcontracted Clipper Cove Diving Services, LLC., and responded to the sunken vessel. Hull's personnel deployed a portable vacuum unit, absorbent boom, and 100 feet of 18 inch containment boom around the sunken vessel. Clipper Cove Diving Services, LLC., a four (4) man commercial dive team plugged the fuel vents and attempted to remove diesel fuel present within the vessel's tanks. Bad weather interrupted pollution removal activities and attempts to raise the vessel. On February 12, 2015, after numerous attempts to raise the vessel for fuel removal purposes, the vessel ripped apart due to the heavy presence of mud. Consequently, only the stern of the vessel was successfully lifted out of the water. With all of the diesel fuel removed from the vessel, the bow of the vessel was marked and left on-scene.<sup>3</sup>

**C. Presentment to the Responsible Party:** At the time of the above-mentioned incident, ownership of the AC III was unclear due to an expired CG Certificate of Documentation.<sup>4</sup> Ultimately, [REDACTED] as Honey Bee, Inc., admitted ownership and accepted responsibility of the sunken vessel.

Hull's made presentment of the costs associated with this claim to Honey Bee, Inc., on February 18, 2015, by way of Hull's Environmental Services Invoice # 21627 in the amount of \$41,270.75. Honey Bee, Inc. made an initial credit card payment to Hull's Environmental, Inc.

<sup>1</sup> See USCG MISLE Incident Investigation Report for F/V ACIII dated January 26, 2015.

<sup>2</sup> See F/V AC III Vessel Pollution Removal and Environmental Risk Mitigation Plan dated February 9, 2015.

<sup>3</sup> See phone notes between the NPFC and LT [REDACTED] CG Sector Mobile dated December 8, 2015.

<sup>4</sup> See phone notes between the NPFC and the National Vessel Documentation Center (NVDC) dated December 9, 2015.

in the amount of \$15,000.00 prior to the start of their pollution removal activities. However, Honey Bee, Inc. failed to reimburse Hull's for the remainder of their pollution removal costs totaling \$26,270.75.<sup>5</sup>

Upon receipt of this claim submission, the NPFC sent an RP Notification Letter to [REDACTED] Honey Bee, Inc. dated December 2, 2015. To date, the RP has not responded to this notification.<sup>6</sup>

**THE CLAIMANT AND THE CLAIM:**

On December 1, 2015, Hull's Environmental Services, Inc. submitted an uncompensated pollution removal cost claim associated with the cleanup of the AC III oil spill to the Oil Spill Liability Trust Fund (OSLTF or the Fund), asserting that Honey Bee, Inc. failed to pay them for their uncompensated removal costs in the amount of \$26,270.75.<sup>7</sup>

**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].

---

<sup>5</sup> Invoice #21627 totals \$41,270.75 less \$15,000.00 paid by Honey Bee, Inc. to Hull's Environmental Services, Inc. The February 9, 2015, bill of sale for \$15,000.00 is of record. See optional Claim Form submitted by Hull's Environmental Services dated December 1, 2015.

<sup>6</sup> See RP Notification Notification Letter dated December 2, 2015.

<sup>7</sup> See Optional OSLTF Claim Form dated December 1, 2015, submitted by Hull's Environmental Services, Inc.

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. Findings of Fact:***

1. L [REDACTED] CG MSD Panama City, provided coordination for this incident in his capacity as the Federal On-Scene Coordinator’s Representative (FOSCR). He provided information regarding the incident and affirmed that he oversaw the removal actions and determined that the actions undertaken by Hull’s Environmental Services, Inc. were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 to “navigable waters.”
3. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1).
4. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs claimed were associated with OPA compensable removal actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

**B. Analysis:**

NPFC CA reviewed the actual cost invoices and dailies to confirm that the majority 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 136.203: (1) whether the actions taken were 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 to be consistent with the NCP, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule in place at the time the services were rendered and were determined by the FOSC and the NPFC to be consistent with the NCP. The only cost denied by the NPFC were two overcharges for disposal costs totaling \$0.85. The overcharges are listed on the invoice dated February 12, 2015.<sup>8</sup>

The NPFC therefore determines that the OSLTF will pay \$26,269.90 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916016-0001. 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.

**AMOUNT:** \$26,269.90

Claim Supervisor: [REDACTED]

Date of Review: 1/20/2016

Supervisor's Actions: *Approved*

Supervisor's Comment

<sup>8</sup> See Optional OSLTF Claim Form dated December 1, 2015.