U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6891
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5890
4/6/2011

VIA EMAIL: [redacted]

Ingram Barge Company
c/o Liskow & Lewis
One Shell Square
701 Poydras Street, Suite 5000
New Orleans, LA 70139

Re: Claim Number: N08057-060

Dear Mr. [redacted]:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $47,574.11 is compensable for OPA claim number N08057-060.

This reconsideration determination is based on an analysis of information submitted.

All costs that are not determination as compensable are considered denied. Disposition of this reconsideration constitute final agency action.

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

Director (ca)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

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, your payment will be mailed within 30 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 202-493-6831.

[redacted]
Chief, Claims Adjudication Division

ENCL: (1) Claim Summary / Determination Form
(2) Acceptance / Release Form
(3) Ingram Reconsideration Removal Claim Costs Spreadsheet
(4) NPFC letter dated 1/20/2011 with attached initial Claim Summary/Determination Form and Ingram Removal Claim Costs Spreadsheet.

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/06/2011
Claim Number	: N08057-060
Claimant	: Ingram Barge Company
Type of Claimant	: Corporation
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $210,704.57

FACTS

A. Oil Pollution Incident:

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States.

B. Claim History:

On October 21, 2009, the National Pollution Funds Center (NPFC) received a removal cost claim for $335,529.37 from the Liskow & Lewis law firm, representing Ingram Barge Company, dated October 15, 2009. 1 As a result of this incident, Ingram Barge Company claims that 127 barges had to be cleaned. Ingram hired three contractors whose costs totaled $276,690.93, which was later amended to $137,256.13 after receiving a payment from the Responsible Party. Ingram sent employees to the incident to coordinate these cleanings and handle claims. Their costs totaled $4,553.44. Additionally, Ingram utilized their own tugs to move barges around in order to facilitate the barge cleanings. Ingram claimed $54,285.00 in vessel costs, which was later amended to $68,895.00.

The NPFC determined the Claimant Ingram Barge Company had **$31,622.99** in uncompensated removal costs for this claim (-17,460.00 for barge cleanings + 2,832.79 in Ingram personnel costs + 46,250.20 for Ingram vessel costs). See Enclosure (4) – NPFC letter dated 1/20/2011 with the attached Claim Summary/Determination Form and Ingram Removal Claim Costs Spreadsheet.

C. Claim Reconsideration:

The Claimant did not accept the NPFC offer. Instead they requested reconsideration of their claim, which was received at the NPFC on March 22, 2011.[2] Besides this letter and two attached enclosures (affidavits), no other information was submitted by the Claimant in support of their reconsideration request.

Ingram requests that the NPFC reconsider its uncompensated removal costs in the amount of $137,256.13 for third party contractor costs. They also want the NPFC to reconsider the $1,559.91 in Ingram personnel expenses for Ms. [redacted], Mr. [redacted] and Mr [redacted] not offered in the original determination in addition to the already offered $1,323.91 for [redacted] costs and $1,508.88 (total of $4,392.70) for Mr. [redacted] costs. They are not disputing the $160.74 of personnel costs denied in the original offer for Mr. [redacted] ($115.06) and Mr. [redacted] ($45.68),

[1] See Cover letter signed by [redacted] and Claim Form signed by Mr. [redacted] and [redacted] on 10/15/09.

[2] See Liskow & Lewis letter dated March 18, 2011.

which brought the total Ingram Personnel costs to $4,553.44. Finally, Ingram requests reconsideration of the $22,644.80 in Ingram vessel expenses not offered by the NPFC in addition to the $46,250.20 already offered in the original determination (total of $68,895.00). Ingram's total requested amount upon reconsideration is $210,543.83.[3]

The Claimant's assertions in support of reconsideration consist of the following:

1. Third Party Contractor Costs - $137,256.13

The Claimant asserts that the NPFC erred by failing to award Ingram its actual unreimbursed removal costs paid to third party contractors to clean barges following the spill. They argue that the NPFC relied on an inaccurate United States Coast Guard (USCG) spreadsheet, accepted settlement figures as indicative of reasonable cleaning costs, and revisited and effectively amended the terms of a settlement agreement to which the NPFC was not a party.

The Claimant provides that the Oil Pollution Act of 1990 (OPA) authorizes the recovery of "any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan." 33 U.S.C. § 2702(b)(1)(B). They state that it is undisputed that Ingram incurred and paid third party contractor costs in the amount of $276,690.93 to clean barges located in the affected area, and Ingram argues that it has submitted detailed documentation supporting both the invoices and payments. Ingram assigned two personnel to allegedly monitor the contractors' activities to ensure that they were doing the work that Ingram paid them to do and to coordinate the cleaning and release of affected barges with the FOSC. The Claimant states that since many of the barges were "approved" by USCG personnel, it conclusively demonstrates that Ingram's hiring and paying these contractors to clean oiled barges was "consistent with the National Contingency Plan" as OPA requires. Ingram seeks to recover what it actually paid to have the third party contractors clean its barges, less the amount otherwise settled with the responsible party. They assert that Ingram provided ample evidence that these third party contractor costs were reasonable.

Ingram provides an affidavit signed by [redacted] stating that USCG approval and release of barges was often verbal and that Ingram is in no way to blame for obvious inaccuracies in those records.

The Claimant states the NPFC erred in determining that $1,455.00 was a "reasonable" per barge cleaning cost because that was the amount that Ingram and the Responsible Party (RP) agreed to as the basis for partially settling its removal cost claim. They state the Federal Rules of Evidence are clear that evidence of amounts agreed to in settlement are not relevant or admissible for demonstrating either liability or the amount of a liability. Fed. R. Evid. 408(a)(1). Ingram states the NPFC's readiness to utilize the compromise figure of $1,455.00 per barge as the sole basis for reimbursement as opposed to the actual demonstrated cleaning costs incurred by Ingram, stands starkly at odds with the later denial of other Ingram expenses such as vessel expenses.

The Claimant argues that the NPFC erred in revisiting cleaning costs that had already been compromised between Ingram and the RP and that the NPFC had no more jurisdiction or right to determine that the RP was due a credit for amounts that it had already agreed to settle.

2. Ingram Personnel Expenses - $4,553.44

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[3] See Liskow & Lewis email dated March 25, 2011.
[4] See Enclosure (1) of Liskow & Lewis letter dated March 18, 2011.

The Claimant states they are entitled to recover Ingram personnel expenses for Jeff Wood, Angela Angrick and Fred Enters, citing the NPFC Claimant's Guide which allows "reasonable cost of assessing your damage." Claimant's Guide: A Compliance Guide for Submitting Claims under the Oil Pollution Act of 1990 (April 2003)(emphasis added).

Angela Angrick's affidavit states these employees travelled to the affected area to assess damages and coordinate recovery efforts.[5]

Ingram did not dispute the NPFC's denial of Mr. Brown's $115.06 meal cost or Mr. Hoover's $45.68 costs which total $160.74. This is why Ingram's personnel costs under reconsideration are $160.74 less than their original amount of $4,553.44.

3. **Ingram Vessel Expenses - $68,895.00**

Ingram contends that contrary to the NPFC's initial determination, the Standard Cost Analysis provided for the M/V MIKE SCHMAENG and the M/V RAY GEE provides the most accurate means for assessing the costs to operate these vessels for any given period. They provide that the cost analyses are relied upon by Ingram in its budgeting processes and constitute competent evidence of those costs.

APPLICABLE LAW:

Under 33 CFR § 136.115(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

The Fund shall be available to the President for the payment of claims in accordance with section 2713 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). (Emphasis added.)

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."

CLAIM ANALYSIS:

I. OVERVIEW

[5] See Enclosure (2) of Liskow & Lewis letter dated March 18, 2011.

In its original determination the NPFC reviewed all of the information received by both the Claimant and the RP. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR Part 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.

II. NPFC RECONSIDERATION ANALYSIS

1. Third Party Contractor Costs - $137, 256.13

The issue on the third party contractor costs component in this reconsideration is the amount of alleged uncompensated removal costs to which the Claimant is entitled. However, the first question that must be answered is the number of barges associated with those alleged costs. Claimant initially claimed that it had 127 barges that required decontamination. Subsequently, the responsible party (RP) reimbursed the Claimant $93,120.00 for the costs associated with cleaning 64 barges. This leaves an alleged 61 (63 - 2 which were counted twice) barges that may have associated uncompensated removal costs. After reviewing the invoices submitted by Ingram for their third party contractor costs, the NPFC required the Claimant to identify each barge claimed, because the invoices submitted contained more than 127 barges. Also, several of the barges were on more than one invoice and others were scratched out. The Claimant responded with 128 barges allegedly cleaned.[6]

Under 33 CFR 136.205 "Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC." When the NPFC began receiving vessel removal costs claims for the DM 932 oil spill, it requested evidence from the FOSC that vessels oiled and decontaminated in the DM 932 oil spill incident were coordinated with the FOSC and that the decontamination was consistent with the National Contingency Plan (NCP). The FOSC compiled two spreadsheets with vessels they identified during the spill incident. These spreadsheets contain the vessels name, date cleaned/cleared and FOSC representative (FOSCR) name.

The Claimant has not provided the NPFC with evidence that the FOSC approved most of the barge cleanings for which Ingram is seeking removal costs. Ingram states they assigned two personnel to allegedly monitor the contractors' activities to ensure that they were doing the work that Ingram paid them to do and to coordinate the cleaning and release of affected barges with the FOSC; however, Ingram provided no proof that the FOSC determined their claimed barges were cleaned or that these removal actions were consistent with the NCP.

In an attempt to determine the status of each of the Ingram-claimed barges the NPFC placed the 128 barges identified by the Claimant on a spreadsheet. The claims manager identified whether the claimed barge was on the Claimant's invoice submitted, and if so, the date the third party contractor cleaned the barge, whether the RP already provided payment for this barge, if the barge was on the FOSC Decontamination list, who cleaned the barge, the name of the FOSCR who cleared the barge and the date/time it was cleared. He also created approved and denied columns with comments, to document which barges he found compensable and others that were not compensable.[7]

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[6] See Liskow & Lewis letter dated August 12, 2010.
[7] See comments section of our spreadsheet for details.

Based on the FOSC spreadsheet provided, the NPFC discounted Ingram claimed barges that were not certified clean or cleared by the FOSCR. The claims manager also discounted any of the 128 claimed barges that did not show up on the FOSC provided decontamination spreadsheet. Finally, the NPFC discounted barges that the FOSCR cleared as cleaned by a contractor other than one identified by the Claimant. Based on this spreadsheet the claims manager identified only 51 barges of the 128 Ingram-identified barges that the FOSCR identified as being cleaned by Ingram or one of its third party contractors.

The affidavit provided by [redacted] in the Claimant's reconsideration letter states that FOSC vessel sign offs were often verbal. The Claimant contends that they should not be blamed for obvious inaccuracies in the FOSC records. However, Ingram provided no records to show their contracted barge cleanings were coordinated by the FOSC or were consistent with the NCP. No proof was provided by the Claimant that the FOSC allowed verbal sign off of cleaned barges. Since some of the barges claimed were not on the Claimant's own invoices, or on the FOSC decontamination spreadsheet, the NPFC could not reasonably offer payment for these barges or ones that were verbally cleared with no documentation from the FOSC. Based on all the evidence before the NPFC the claims manager determined that the Claimant had 51 barges requiring decontamination and meeting the FOSC coordination/NCP requirement for proper cleaning. This number is based on the Coast Guard FOSC records (which included barges cleared as certified clean and barges cleaned by a contractor other than the Claimant's contractors), the barges listed on the RP's settlement package and the claims manager's spread sheet. The Claimant's evidence, i.e., its invoices that sometimes listed barges twice or did not include barges on its list submitted to the NPFC for reimbursement was not persuasive and did not meet its burden of proof that the costs to decontaminate the remaining 63 barges remain uncompensated. Because evidence was submitted that the RP compensated Ingram for 64 barges, and we found only 51 barges compensable, the NPFC determines that the Claimant has been compensated in full for barge cleaning costs.

The second issue is whether the Claimant's removal costs for the barge cleaning was reasonable. The OPA regulations at 33 CFR 136.205 state that 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. Although Ingram states in their reconsideration letter that they have provided ample evidence that these costs were reasonable, the NPFC does not find this to be a fact.

Ingram originally submitted their third party contractor cost invoices for barge cleanings completed on a time and materials basis, expecting full payment on the costs they incurred. In its original determination the NPFC used the $1,455 per barge as reasonable because that was the negotiated settlement with the RP for 64 barges.

The Claimant contends the NPFC erred in determining that $1,455.00 was a reasonable payment per barge cleaning. On reconsideration, the NPFC acknowledges the Claimant's assertion that the $1,455 per barge rate should not be used if it was a negotiated rate per barge for cleanup.[8] The Claimant argues that $2,178.66 per barge is a reasonable removal cost. This calculation was based on the total contractor costs ($276,690.93) ÷ (127 barges). However, the NPFC does not agree that this rate is reasonable because the $276,690.93 total cost was calculated and paid on a time and materials basis. When the Claimant entered into cleanup contracts with its three contractors, they did not contemplate a per barge rate but rather a time and materials rate. Claimant cannot now use its alleged uncompensated removal

[8] A March 9, 2010, letter to the NPFC from RP attorneys, Nicolletti Hornig & Sweeney, states that the RP offered $1,455/barge because "from its experience cleaning hundreds, if not thousands of barges under the supervision of the Coast Guard, ACL determined that the reasonable cost for cleaning a barge was $1,455 per barge."

costs (deducting the $93,120.00 received from the RP for 64 barges) of $137,256.13 ÷ 63 barges and argue that the per barge rate of $ 2,178.66 is reasonable.

Upon reconsideration, the NPFC has determined that the third party contractor costs should be treated as a stand-alone cost claimed.[9] Based on all evidence before the NPFC on this component the NPFC finds that Ingram has been fully compensated concerning its third party contractor costs.

2. Ingram Personnel Expenses - $4,553.44

The Claimant states they are entitled to recover Ingram personnel expenses for [redacted], citing the NPFC Claimant's Guide which allows "reasonable cost of assessing your damage." [redacted]s affidavit provided states these employees travelled to the affected area to assess damages and coordinate recovery efforts.

[redacted] is noted in Ingram's claim as being Corporate Counsel. [redacted] is a Claims Manager and [redacted] is the Claims Director. [redacted] states in her affidavit that the purpose of their trip was to monitor the clean-up operation and its progress and assist those efforts as required. Ingram provided no documentation of these individuals assessing damages for claims reimbursement purposes or coordinating recovery efforts. Additionally, no dailies or evidence was provided to prove these persons monitored clean-up operations or assisted with those efforts. Therefore these costs are again denied.

We also denied Mr. [redacted] costs in our initial claim determination, but inadvertently offered to pay most of his costs on the attached spreadsheet submitted with that initial determination. Although Ingram claimed Mr. [redacted] (Manager of Fleet Administration and Services) was allegedly a Qualified Individual (QI) for emergency response with the company, they could not provide a valid HAZWOPER certificate for him. As required by the National Contingency Plan (NCP), all persons involved in removal activities must be properly certified in this training. The claims manager notified the Claimant's attorney of this, allowing them an opportunity to provide justification for us to offer Mr. Hoover's costs within two weeks after March 22, 2011.[10] As of this date, nothing has been provided.

The NPFC therefore finds **$1,323.91** as full compensation for Ingram personnel costs, which include Mr. Brown's total costs, minus one meal receipt which we found excessive of $115.06.

3. Ingram Vessel Expenses - $68,895.00

Ingram contends that contrary to the NPFC's initial determination, the Standard Cost Analysis provided for the M/V MIKE SCHMAENG and the M/V RAY GEE provides the most accurate means for assessing the costs to operate these vessels for any given period. They provide that the cost analyses are relied upon by Ingram in its budgeting processes and constitute competent evidence of those costs.

As Ingram stated several times in their claim, the Standard Cost Analysis provided is a budgeting tool used to forecast costs for these vessels. The NPFC required the Claimant to provide actual expenses incurred by each vessel resulting from the oil spill, which would provide an accurate accounting of costs for these vessels. Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated reasonable removal costs of

[9] In its original determination the NPFC reduced it final offer for three components of the claim by $17,460.00 that it determined the Claimant had been overpaid.

[10] See NPFC email to Mr. Wise of Liskow & Lewis dated March 22, 2011.

actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

The Claimant's Standard Cost Analysis budgeting tool does not represent "uncompensated reasonable removal costs" as required under OPA. The NPFC requested that the Claimant provide actual vessel costs associated with moving barges around the fleeting area in order that the barges could be cleaned. Ingram provided actual vessel cost documentation, which the NPFC utilized to spreadsheet the costs incurred during the spill incident period. Our offer was a product of these actual costs as required by OPA law. Therefore, the offer of **$46,250.20** for Ingram vessel costs on reconsideration remains the same.

The NPFC therefore finds total uncompensated costs for this claim on reconsideration are $1,323.91 for Ingram personnel costs and $46,250.20 for Ingram vessel costs, which total $47,574.11. NPFC offer to the Claimant upon this reconsideration claim is **$47,574.11**.

Claim Supervisor: [redacted]

Date of Supervisor's Review: 4/6/11

Supervisor's Action: Offer all costs

Supervisor Comments:

U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6891
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Fax: 202-493-6937

Claim Number: N08057-060	Claimant Name: Ingram Barge Company C/o Liskow & Lewis Attn: Mr. Brett Wise One Shell Square 701 Poydras Street, Suite 5000 New Orleans, LA 70139

I, the undersigned, ACCEPT the determination of $47,574.11 as full compensation for the removal costs incurred.

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), 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

DUNS Number	Bank Routing Number	Bank Account Number