

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/6/2012
Claim Number	: 911044-0001
Claimant	: National Response Corporation (NRC)
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$40,712.32

FACTS:

1. Oil Spill Incident:

On March 28, 2010, a hydraulic oil hose on the MT *Anasazi* burst, spraying oil onto the ship's deck, into the water, and onto the dock as well as other shore structures. The vessel was berthed in the harbor at Port Everglades, FL. About 84 gallons were released and five gallons of oil reached the water. The Claimant was hired to clean up the oil.

2. Claimant:

The Claimant is an Oil Spill Response Organization (OSRO), hired by the Responsible Party to handle the response to the incident. Claimant activated a member of its Independent Contractor Network (ICN), Cliff Berry, Inc. (CBI) to perform the response.

3. Claim:

The Claimant requested compensation from the Oil Spill Liability Trust Fund (OSLTF) for their uncompensated removal costs associated with the cleanup of the oil. Claimant paid CBI to perform the removal operations. On January 9, 2012, the NPFC issued a determination offering the Claimant \$35,438.29 and denying \$5,274.02. On January 30, 2012, Claimant requested reconsideration via email.

4. Responsible Party:

The Responsible Party (RP) is identified as AHL Shipping Company. Claimant invoiced the RP. The Claimant stated that the invoice was not paid because the RP filed for bankruptcy.

5. Description of Removal Actions Performed:

CBI performed activities such as containing, recovering, cleaning and decontaminating the affected area.

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable

waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

"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 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 because 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].

No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim. 33 U.S.C. §2713(b)(2). See also 33 CFR 136.103(d).

DETERMINATION OF LOSS:

A. Overview:

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. § 2702(b)(1)(B) and 2712(a)(4);

2. The incident involved the report of a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six year statute of limitations for removal costs under the Oil Pollution Act of 1990;
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Bankruptcy Claim

Claimant filed a proof of claim in the bankruptcy proceeding of AHL Shipping. It initially filed for \$58,712.32 in removal costs and retainers.¹ The NPFC position is that a proof of claim in bankruptcy proceedings seeking the same costs that are claimed against the OSLTF constitutes an action in court to recover the same costs that are the subject of the claim. Thus, while the proof of claim pended in court, the NPFC could not approve the claim. On August 10, 2011, the Claimant amended its proof of claim in the bankruptcy court withdrawing the \$40,712.32 in costs that it claimed against the OSLTF. Therefore, the NPFC position is that the Claimant no longer has a claim for the same OPA removal costs pending in a court action and therefore it retains its subrogable rights to the \$40,712.32 and the NPFC can adjudicate the claim.

C. Analysis:

The Claims Manager reviewed the invoices, the daily field logs and associated other documentation and the Claimant's and its subcontractor's rate sheets in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether the actions taken were compensable "removal actions" under OPA and its 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.

The Claims Manager reviewed the CBI costs as presented by the Claimant and confirmed that most of the costs were within the rates provided by the contractor for 2010. As the prime contractor, the Claimant also provided its rate sheet for 2010. The Claims Manager verified NRC's costs paid to CBI plus its own administrative fee permitted by the rate schedule terms and conditions.

The attached reconsideration spreadsheet details the NPFC's adjudication of the claimed costs. Those costs that were found to be missing from daily logs or not supported by the documentation are deemed denied. Some costs were reduced by the NPFC during adjudication to correlate with the rate sheet as provided in support of the claim. Some units were reduced to correspond with the daily logs vice what was billed in the contractor invoicing.

¹ Case #10-12167 in the United States Bankruptcy Court for the Eastern District of Louisiana.

On reconsideration, the Claims Manager hereby determines that the OSLTF should pay \$37,704.10 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911044-0001. All costs claimed were incurred by the Claimant for removal actions taken, as defined under OPA and payable by the OSLTF as compensable removal costs.

The remaining \$3,008.21 is denied. See the attached spreadsheet for an itemization of all costs including all costs denied.

DETERMINED AMOUNT: \$37,704.10

Claim Supervisor 

Date of Supervisor's Review: 3/8/12

Supervisor Action: *Reconsideration approved*

Supervisor's Comments: