

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 911094-0002  
Claimant : Garner Environmental Services, Inc.  
Type of Claimant : OSRO  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$78,139.54

**FACTS:**

1. ***Oil Spill Incident:*** On March 30, 2010, the United States Coast Guard Marine Safety Unit Port Arthur (USCG) reported to the National Response Center (NRC) that a black oil substance was under the water at the bow of the *T/V Glenross*, moored at Sunoco Logistics Partners facility at ship dock #5.<sup>1</sup> It was thought that the incident occurred due to an oil transfer between the vessel and the facility. According to the USCG, the oil substance was discharging across the Neches River in Nederland, Texas. The Neches River is a navigable waterway of the United States. After the initial report by USCG, the incident was reported to the NRC two additional times that day. An unknown sheen in the Neches River was reported by the Beaumont Federal Reserve Fleet.<sup>2</sup> O'Brien's Response Management (O'Brien's) reported an unknown sheen at the Sunoco dock.<sup>3</sup>

In response to the initial report to NRC, USCG responded and placed boom around the vessel. USCG MSU Port Arthur reported back to their unit that the vessel had been "boomed off" but "heavy product" remained in the river.<sup>4</sup> On March 31, 2010, as the discharge continued to flow into the Neches River, USCG continued investigating the oil spill. After further investigation of the incident and testing of oil samples, it was determined that the oil was discharging from below the vessel. However, it could not be determined that the vessel was the source of the discharge. USCG issued COTP Order #2010-208 that included a directive that comprehensive testing and analysis be done of the vessel's fuel and cargo systems to eliminate it as the source of the discharge, as well as to continue clean-up and recovery operations.

The Federal On-Scene Coordinator Representative (FOSCR), MSTI [REDACTED] of MSU Port Arthur, was at the incident site for an assessment and assistance, along with Texas General Land Office (TGLO), O'Brien's, Oil Mop, LLC (Oil Mop), and Garner Environmental Services, Incorporated (GESI), the Claimant. O'Brien's was hired by the vessel owner to oversee the clean-up. O'Brien's hired GESI, as well as Oil Mop to assist with the clean-up.

2. ***Description of Removal Activities for this Claim:*** GESI carried out their removal and disposal tasks, including placing boom and absorbent materials at the site, from March 30, 2010 to April 2, 2010, and June 21, 2010. Throughout the clean-up, GESI deployed a

<sup>1</sup> See NRC Report #935577.

<sup>2</sup> See NRC Report #935589.

<sup>3</sup> See NRC Report #935597.

<sup>4</sup> MSU Port Arthur Operations Center Log 30MAR2010, page 2.

supervisor, response equipment operators, and technicians; pick-up trucks, motorized flat boat, response trailer, barge boat, boom trailer, and a response boat. They also deployed a roll-off box and roll-off truck for disposal.

3. **The Claim:** On July 7, 2011, the Claimant submitted a removal cost claim in the amount of \$78,139.54 to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs for the services they provided under the direction of O'Brien's. This claim is for removal costs based on the Claimant's rate schedule in place at the time services were provided. A copy of that rate schedule is in the claim file. The claim consists of the Claimant's invoice, dailies, and correspondence from International Tanker Management Limited Dubai (ITM) (managing operator) informing that the vessel was determined not to be responsible for the spill by both the USCG Hearing Office and TGLO.

The Claim's Manager gathered additional information from USCG resources.

The responsible party has not been determined.

#### APPLICABLE LAW:

"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. Overview:*

1. The FOSC coordination was provided by MST1 [REDACTED] of the United States Coast Guard, MSU Port Arthur;
2. The incident involved the 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 uncompensated removal costs claimed;
4. The claim was submitted within the six year statute of limitations for removal costs;
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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 as set forth below;
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as "Compensation Allowable" under 33 CFR§ 136.205.

##### *B. Analysis:*

The NPFC Claims Manager has reviewed the actual cost documents 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, and (4) whether the costs were adequately documented and reasonable.

Upon review, the Claims Manager hereby determines that there are discrepancies with regards to the Claimant's invoice and the cost documentation provided for labor and fuel surcharges billed on Friday, April 2, 2010. Claimant billed nine hours of overtime for Equipment Operators [REDACTED] and [REDACTED] for work performed on

April 2, 2010. The overtime rate billed for each operator was \$57.00 per hour, for a total of \$1,026.00. However, the daily work sheet notes that each operator worked 5.50 hours of overtime that day. The NPFC requested additional information regarding the billing of the operators. In the Claimant's November 22, 2011 written response, it was explained that the operators worked a total of 13.50 hours that day, but were billed out at 17 hours each; and that a credit is due for 3.50 hours of overtime, for each operator, at the rate of \$57.00 per hour. Claimant's credit due is \$399.00, for the 7.0 hours of billed work of both operators not performed, at the rate of \$57.00. Therefore, the NPFC will not reimburse the Claimant for the \$399.00 credit.

The Claimant also billed a fuel surcharge of \$1,535.33. The NPFC requested additional information regarding the billing of the fuel surcharge. The Claimant's December 7, 2011 response provided documentation to explain how the surcharge was calculated and provided the Department of Energy EIA Retail On-Highway Diesel prices for April 2010. The Claimant's calculations noted the fuel surcharge amount should have been \$1,535.00 instead of \$1,535.33 requested in the claim submission. The amount was based on the total invoiced response automotive equipment used during the clean-up, plus their 20% mark-up. The NPFC will reimburse the Claimant \$1,535.00 for the fuel surcharge.

Based on the NPFC's denial of \$399.33, the NPFC determines that the OSLTF will pay \$77,740.21 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number 911094-0002.

**C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$77,740.21 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 911094-0002 for removal costs.

**AMOUNT: \$77,740.21**

Claim Supervisor: 

Date of Supervisor's review: 1/9/12

Supervisor Action: *Approved*

Supervisor's Comments: