

CLAIM SUMMARY / DETERMINATION

Claim Number:	911100-0001
Claimant:	Assuranceforeningen Skuld
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$32,241.26

Facts of the Incident

On 11 March 2011, the vessel M/V Saga Spray had completed the discharge of a shipment of steel at Vancouver, Washington. The vessel was then moved to a lay berth at Ash Grove Cement terminal on the Willamette River, Portland, Oregon while awaiting the availability of a berth at the Kinder Morgan terminal. There the vessel was scheduled to load a cargo of bulk soda ash.¹

At approximately 1030 hours on 11 March 2011, while the vessel was alongside the berth, an oil sheen was sighted in the river off the vessel's port bow and starboard quarter.²

At 1120 hours, following an on board investigation, the Master confirmed that the M/V Saga Spray was not the source of the discharge. The Master then notified the U.S. Coast Guard, Sector Columbia River and the National Response Corporation via the vessel's agent, AGCI Shipping, Inc. The United States Coast Guard was the Federal On Scene Coordinator (FOSC) for this incident.³ On 11 March 2011, The Captain of the Port issued an Administrative Order requiring the vessel to remain at the Ash Grove Cement location.⁴ That order remained in effect until it was cancelled by the Captain of the Port on 13 March 2011.⁵

According to the claimant's submission, following an extensive on board investigation, which included an underwater hull inspection, the surveyor, ██████████, confirmed that the M/V Saga Spray was not the source of the discharge.

In addition, the United States Coast Guard,(FOSC) and Captain of the Port required the vessel's classification society, Det Norske Veritas (DNV) to conduct a separate investigation to verify the cause of the discharge.⁶ DNV also concluded that the M/V Saga Spray was not the source of the discharge.⁷

The NRC report number for this incident is 969827. A case in MISLE was opened and assigned the number 540330.

The Vessel

The M/V Saga Spray is an open box hold carrier specifically suited for the carriage of timber products, with ten holds, steel panel pontoon hatch covers and two 40 MT rail mounted cranes. The vessel was built in 1994 at Oshima, Japan and is registered in Hong Kong, China (IMO number 9014078) with a GRT of 29,381.⁸

¹ Claimant's cover letter of 22 July 2011

² Claimant's cover letter of 22 July 2011

³ Claimant's cover letter of 22 July 2011

⁴ Order 2011-040 of the Captain of the Port Columbia River

⁵ Correspondence from Captain of the Port, Columbia River dated 13 March 2011, cancelling 2011-040.

⁶ Order 2011-040 of the Captain of the Port Columbia River, dated 11 March 2011

⁷ Claimant's cover letter of 22 July 2011, page 2

⁸ ██████████ Survey Report, P-14101, page 2

The Removal Actions

The removal operations were undertaken by NRC/Clean Rivers Cooperative at approximately 1130 hours on 11 March 2011 and were completed at 1530 hours on 25 March 2011.

Following an extensive on board investigation, which concluded that the M/V Saga Spray was not the source of the discharge, the reports completed and determined as follows:

- (1) No evidence of any leakage from the vessel's fuel, diesel and lubricating oil compartments;
- (2) No evidence of any oil leakage or oil staining of the vessel's hull following underwater inspection;
- (3) No evidence of an oil leakage from the vessel steering gear or stern tube;
- (4) A similar sheen was observed and photographed on the water at a location upstream from the berth;
- (5) No sheen or other evidence of oil around the vessel was noted while the Saga Spray was berthed at the Kinder Morgan terminal on 13 – 14 March 2011;
- (6) The most probable source of the discharge was a storm sewer at Outfall 46 approximately 2,000 feet upstream of Ash Grove Cement terminal due to a high rainfall on 10 March 2011, as shown on National Weather Service Records attached to the Alexander Gow Report;
- (7) The USCG did not designate the Saga Spray as the source of the discharge pursuant to 33 USC 2714.

NRC/Clean Rivers Cooperative personnel deployed 300' of containment boom from port shoulder to the shoreline. A 100' length sorbent boom was located within the containment boom. Additionally, a 300' length sweep boom was stretched along the starboard side extending from hold no. 10 forward to about hold no. 5.

Samples were taken of the river water/sheen mixtures.

A system was initiated where each tank was sounded at 30 minute intervals and no loss of retention was noted.

Fred Devine Diving was hired to undertake an underwater survey of the vessel's stern. According to the claimant's submission, this underwater inspection found no evidence of an oil leak.⁹

During the underwater inspection, a sample of a droplet of oil was taken soon after it surfaced. The oil captured did not resemble any of the oils on board and therefore it was determined that the sheen on the water was caused by another source.

The Captain of the Port, Sector Columbia River issued order number 2011-040 on 11 March 2011. This order restricted the movement of the vessel. The Captain of the Port amended that order on 11 March 2011 allowing the vessel to shift berth locally within the Portland/Vancouver area. Finally, on 13 March 2011 the Captain of the Port cancelled the order.

The Claim

This claim is being presented by SKULD, North America on behalf of the owners of the vessel, Scorpio Carriers, LTD, and Assuranceforeningen Skuld, its subrogated underwriters for reimbursement of their uncompensated removal costs in the amount of \$32,241.26.

⁹ Claimant submission letter of 22 July 2011

The claimant has included a letter from Anglo-Eastern Ship Management, agents on behalf of the owners authorizing SKULD North America to act as attorney-in-fact for the owners and operators of the M/V Saga Spray.¹⁰ In addition, SKULD North America also provided a letter that authorized them, as underwriters, to act as an attorney-in-fact in connection with this claim before the Fund.¹¹ The cost of removal operations was \$17,463.76 as shown on the Clean Rivers Cooperative invoices as an attachment to the Alexander Gow survey report. Claimant also incurred the costs of investigating the source of the spill in the amount of \$5,535.00 (redacted), the cost of the underwater hull inspection in the amount of \$2,391.00 (Fred Divine Diving & Salvage invoice), and the cost of the DNV survey in the amount of \$6,851.50 (DNV invoice).

The claim was presented to the NPFC on or about 28 July 2011 for reimbursement of uncompensated removal costs to the Fund. No responsible party is identified for this incident.

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].

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;

¹⁰ Correspondence of 25 July 2011 from Anglo Eastern Ship Management, LTD to the USCG, National Pollution Funds Center.

¹¹ Correspondence of 25 July 2011 from SKULD North America to USCG, National Pollution Funds Center.

(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. FOSC coordination was made by Sector Columbia River as required by 33 CFR 136.203 & 205.
2. The incident involved the report of a discharge and substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. No Responsible Party was determined for this incident. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. §2712(h)(2)
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the 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.
7. The Claimant bears the burden of providing all evidence to support the claim. 33 CFR 136.105(a)

B. 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, (4) whether the costs were adequately documented and reasonable.

The NPFC Claims Manager has carefully reviewed this claim submission and has determined that this claimant should be reimbursed in the amount of \$31,537.41. The total amount being denied is \$703.85 as follows:

1. Personnel costs that were charged improperly at an OT rate in the amount of \$697.50; and
2. Disposal fees that were charged at a rate higher than allowed for according to the rate schedule in the amount of \$635.00.

The NPFC claims manager noted that the total claimed amount /sum certain by the claimant of \$32,241.26 was not supported by the documentation it submitted. After careful review of the documentation and calculation of costs on a spreadsheet, it was determined that the total costs incurred were \$32,241.76. However, the claims manager used the amount presented by the claimant as the sum certain (a difference of \$.50 associated with [REDACTED] personnel time).¹²

The mathematical discrepancy can be found in the line item total personnel costs for [REDACTED]. The costs total to \$4,812.50 on one line. However, on the next line the claimant enters \$4,812.00 for a difference of 0.50. No explanation is given for this difference. The NPFC used \$4,812.00 as this is the correct total mathematically.

Based on the contracts and associated rate schedules in place at the time services were rendered and in consideration of the Captain of the Port order demanding the provided services, the NPFC hereby determines \$31,537.41 is OPA compensable for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911100-0001. 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.

DETERMINED AMOUNT: \$31,537.41

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *10/23/12*

Supervisor Action: *Approved*

Supervisor's Comments:

¹² See Alexander Gow Invoice Breakdown