

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912037-0001
Claimant	: Southern Marine Towing
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$26,000.00

FACTS:

1. **Oil Spill Incident:** On September 3, 2011, the recreational vessel *Spontaneous* sunk and released 50 gallons of diesel at the Guntersville Marina, in Guntersville Alabama. The incident was reported to the National Response Center (NRC) on September 7, 2011.¹ The caller reported that the diesel had created a sheen of 500 feet on Guntersville Lake, a tributary to the Tennessee River. The Tennessee River is a navigable waterway of the United States. Shortly after the incident, the Claimant contacted the Marina to obtain the vessel owner's information needed to make contact with him to inquire about raising the vessel, but the Marina refused to provide the information.²

According to the Claimant, as noted in the claim submission, on January 22, 2012 they were contacted by Marion Environmental Incorporated (Marion) informing them that after four months, the vessel was still releasing diesel. Marion provided them with the vessel owner's contact information. The Claimant then contacted the Alabama Department of Emergency Management to match the owner information provided by Marion. Then, on January 23, 2012, the Claimant called [REDACTED] Federal On-Scene Coordinator (FOSC) of the United States Environmental Protection Region 4.³ FOSC [REDACTED] instructed the Claimant to raise the vessel and do any necessary fuel containment and clean-up resulting from raising the vessel. This verbal instruction was followed up for confirmation by an e-mail exchange between the FOSC and the Claimant.

2. **Description of Removal Activities for this Claim:** On January 25, 2012, the Claimant arrived on scene and deployed divers to assess the current condition of the vessel. They observed that all the windows were broken or busted; and that the vessel had created "suction" on the bottom due to being in the water for such a long period of time. As they lifted the vessel, it began to break apart. They then re-bagged and re-positioned the air bags before continuing salvage operations. Early morning on January 26, 2012, the vessel was raised.
3. **The Claim:** On February 27, 2012, Southern Marine Towing submitted a removal cost claim to the NPFCA, for reimbursement of their uncompensated removal costs in the amount of \$26,000.00 for their salvage operations of the *Spontaneous*.

The Claimant determined that Mr. [REDACTED] was the owner of the vessel and sent him Invoice # 012512-S for services dated January 30, 2012. On February 6, 2012, Mr. [REDACTED] responded by writing a letter to inform the Claimant that he was not the owner

¹ See NRC Report 988724.

² See 02/27/12 Southern Marine Towing claim submission statement.

³ See 01/23/12 e-mail exchange between [REDACTED] and [REDACTED] FOSC EPA confirming instruction for vessel salvage.

of the vessel; he was not responsible for any debt incurred; and that he denied owing the invoice amount.⁴

The National Pollutions Funds Center's (NPFC) review of the actual cost invoices and dailies focused on: (1) whether the actions taken were compensable "disposal 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 are determined to be consistent with the National Contingency Plan (NCP) or directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

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].

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."

⁴ See 02/06/12 letter from [REDACTED] to Southern Marine Towing.

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:

1. Federal On-Scene Coordination was provided by FOSC [REDACTED] of the Environmental Protection Agency Region 4.
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 claimed uncompensated removal costs.
4. The claim was submitted within the six-year statute of limitations for claims. 33 U.S.C. § 2712 (h)(2).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented cannot be confirmed to be in accordance with the NCP and that the costs for the 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 Case Manager has reviewed the actual cost invoice 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 FOOSC, and (4) whether the costs were adequately documented and reasonable.

The Claimant seeks reimbursement of their uncompensated costs associated with salvage and response operations for a 52 foot sunken vessel billed at the rate of \$500.00 per square foot for a total of \$26,000.00. The Claimant provided Invoice # 012512-S, dated January 30, 2012. However, the Claimant did not provide supporting cost documentation or a rate schedule to show how the \$26,000.00 amount was derived.

On April 23, 2012 the NPFC called the Claimant ([REDACTED]) and requested a breakdown of the costs noted on the invoice and a rate schedule. The Claimant asked that the request be made to him via e-mail.⁵ The e-mail request was sent that same day when the telephone conversation ended.⁶ On May 2, 2012, the NPFC received a fax of the Claimant's Salvage Rates document.⁷ That document listed that sinking/recovery rates range from \$100.00 per foot to \$500.00 per foot, depending on a list of several variable conditions noted on the document.

On May 17, 2012 the NPFC received an e-mail from the Claimant ([REDACTED]) informing that their billing of salvage costs are based on a per foot price not specifically broken down; and that the NPFC would receive a fax of a copy of an invoice that would show what the salvage job would have cost if they had broken down the billing for salvage of the vessel.⁸ The Claimant faxed Invoice # 3198, dated January 27, 2012 addressed to Mr. [REDACTED]. This invoice had a handwritten statement "NOT THE ACTUAL BILL" on page one; and a handwritten statement "this is not the actual bill for Mr. [REDACTED] but what the price would be if we did break it down" on the second page.

On June 26, 2012, the NPFC requested the Claimant provide the daily work log for the salvage job, as Invoice # 3198 and the salvage rate sheet did not provide the information needed to understand how all the items relate to the lump sum of \$26,000.00 billed on Invoice #012512-S.⁹ On June 27, 2012, the Claimant ([REDACTED]) responded that the invoice which stated 'not the actual bill' is basically the daily work log; the time and equipment are broken down line by line for the actual labor and equipment that was used on the job; but they don't bill by item rather instead bill by the foot for salvages.¹⁰ The Claimant also explained that the job was billed at \$500.00 per foot because the windows were broken or busted out; suctioned on the bottom; the vessel began to break apart; and that there was an extreme amount of fuel in the water that made it difficult for divers and hard to raise the vessel. However, the Claimant did not provide information to distinguish why the \$100.00 to \$400.00 rates were not applicable to this particular salvage job based on the variable conditions noted on the salvage rate schedule.

The NPFC has no means to validate the invoiced items with the contemporaneous daily worksheet provided. It is important to note that the Claimant's "not actual bill" itemizes labor categories but does not indicate the names of the personnel, start or stop times nor does the alleged rate schedule provided identify rates for personnel or equipment as charged nor does the rate schedule call for mob and demob fees as identified on the revised invoiced submitted to the NPFC. The Claimant has also not confirmed that each

⁵ See 04/23/12 phone note of telephone call to [REDACTED]

⁶ See 04/23/12 e-mail from Felita Jackson to [REDACTED]

⁷ See Southern Marine Towing Salvage Rates sheet for salvage operations.

⁸ See 05/17/12 e-mail from Southern Marine [REDACTED] to [REDACTED]

⁹ See 06/26/12 e-mail from [REDACTED] to [REDACTED]

¹⁰ See 06/27/12 e-mail from [REDACTED] to [REDACTED]

of the employees who worked were paid on payroll consistent with the billings by day per person. The Claimant also claimed \$687.00 in hotel/travel expenses but has not provided itemized accounting for this charge

Therefore, the claim is denied due to the Claimant's failure to provide documentation necessary to support the claim for reimbursement of \$26,000.00 pursuant to 33 CFR 136.105(a) and 136.105(e)(6) and as such, the NPFC is unable to determine the validity of the charges as presented.

AMOUNT: \$0.00

Claim Supervisor:

Date of Supervisor's review: *8/21/12*

Supervisor Action: *Denial approved*

Supervisor's Comments: