

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912046-0001
Claimant	: Surfside Marina
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$6,169.44

### **Facts:**

On February 7, 2012, owner of Surfside Marina (Claimant) reported that there was oil on and around their docks. Approximately 40 gallons of oil was discharged while the vessel, *A Net*, was docked and taking on fuel. After the *A Net* left the dock there was a sheen of oil and oil soaked rugs left behind. The owner of the vessel denied spilling the oil.<sup>1</sup>

### **Responsible Party:**

The owner of the vessel, *A Net*, is Mr. [REDACTED] from Katy, Texas. Mr. [REDACTED] denies spilling oil at the Surfside Marina however oil sample analysis proves that the oil did come from the *A Net*. The National Pollution Funds Center (NPFC or Fund) sent Mr. [REDACTED] a letter informing him of the claim before the Fund and the oil samples taken from his vessel are a match.<sup>2 3</sup>

### **The Claimant and the Claim:**

Surfside Marina contracted with Garner Environmental Services (Garner) to provide emergency response on February 7, 2012, associated with the *A Net*'s discharge of oil on around the docks at Surfside Marina while taking on fuel.

On March 13, 2012 Surfside Marina submitted a removal cost claim to the NPFC for reimbursement of their uncompensated removal costs in the original amount of \$5,669.44 for the time period of February 7, 2012. The NPFC sent the Responsible Party (RP) notification letter, dated March 20, 2012 to Mr. [REDACTED] advising that Claimant presented a claim to the NPFC for certain uncompensated removal costs and that the oil samples taken from the docks and his vessel are a match.

### **Request for Reconsideration:**

On March 29, 2012, Ms. [REDACTED] Marina Director with Surfside Marina requested reconsideration of their claim and requested that the Fund revise the sum certain for their claim to \$6,169.44 in order to reflect an additional five drums that were sent to Aaron Oil Company for disposal.<sup>4</sup> While on Reconsideration, Claimant submitted a Garner invoice that reflects the additional five drums<sup>5</sup> and proof of payment for the additional drums.<sup>6</sup> It is important to note that a total of six drums were disposed of.

<sup>1</sup> Email dated March 5, 2012 to [REDACTED] from [REDACTED]

<sup>2</sup> RP Notification letter dated March 20, 2012.

<sup>3</sup> Oil Sample Analysis Report, Case Number 12-084.

<sup>4</sup> Email from Claimant to NPFC dated March 29, 2012.

<sup>5</sup> Garner Invoice # 118101

<sup>6</sup> Check # 5103 made out to Garner Environmental Services.

### **Applicable Law:**

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 of OPA 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 (NCP) 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 such an incident." 33 USC § 2701(31).

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 Part 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 [Federal On-Scene Coordinator] 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 removal actions were coordinated with the United States Coast Guard, Marine Safety Unit Texas City as evidenced by MISLE Activity # 4240522 and MISLE Case # 583687.
2. The incident involved the discharge and continuing substantial threat of 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 that it has filed no suit in court for the claimed uncompensated removal costs.
4. The claim was timely submitted in accordance with OPA.
5. Claimant presented its removal costs to the RP via email. The NPFC also advised the RP of costs via letter dated March 20, 2012.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of all 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. Analysis and Reconsideration:**

Claimant states in its claim that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of February 7, 2012. The claimant represents that all costs paid by Claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

The NPFC Claims Manager reviewed the Claimant's actual costs invoices and proof of payment to confirm that Claimant had incurred all costs claimed and that the costs were adequately documented and reasonable.

The Claims Manager also confirmed that the removal costs were: compensable "removal actions" under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, and mitigate the effects of the incident); (2) incurred as a result of these actions; (3) incurred removal actions were determined by the FOSC to be consistent with the NCP or directed by the FOSC. The Claims Manager also cross referenced claim submission information to the information in MISLE.

The NPFC verified that the costs were billed in accordance with the rate schedule in place at the time services were rendered.

***Determined Amount:***

The NPFC hereby determines that the OSLTF will pay **\$6,169.44** as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 912046-0001. 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.

Claim Supervisor: 

Date of Supervisor's Review: **4/2/12**

Supervisor Action: ***Approved on reconsideration***

Supervisor's Comments: