CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912079-0001
Claimant	: Environmental Safety & Health Consulting Services, Inc.
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $12,514.97

FACTS:

Oil Spill Incident: On 29 September 2010, the 68 foot F/V Hippy Boy, Official Number 543302 (originally reported as the vessel Kippy Boy), grounded on Timbalier Island, Louisiana. The vessel's hull was breeched, undetermined cause, resulting in flooding of the vessel and a discharge of an unknown quantity of oil into the environment that created an approximate one nautical mile long sheen.

The NPFC sent an RP Notification letter to Ms. [redacted] dated July 18, 2012 advising a claim was presented by ES&H. On July 26, 2012, the NPFC was contacted by [redacted] who was acting as the RP's point of contact due to the language barrier. The RP has no money and wanted to know if she could make arrangements with the Claimant. The NPFC advised the RP that she is free to negotiate with the Claimant as she deems appropriate.

Description of Removal Activities for this claimant: The Responsible Party (RP) contracted Environmental Safety & Health Consulting Services, Inc. (ES&H) on 30 September, 2010 to handle response and cleanup of the spill. ES&H arrived on scene and deployed 400 feet of 18 inch containment boom and 400 feet of absorbent boom to the area. The F/V Hippy Boy was litered by transferring diesel fuel to the M/V M&M.

The Claim: On July 12, 2012, ES&H presented a removal cost claim to the National Pollution Funds Center (NDFC) for reimbursement of their uncompensated removal costs in the amount of $12,514.97.

ES&H is claiming personnel expenses of $3,920.50 and equipment costs of $8,594.47.

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."

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. FOSC coordination was made by Marine Safety Unit Houma via email on July 24,2012 with MST2 [redacted] as the FOSC representative.
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 removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that most of the 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:

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

During the review of the supporting documentation for the claim, a difference was discovered between the ES&H daily price list sheet and the daily supervisor's log for 30 September 2010; the daily price list documents a charge for 180 vehicle miles and the daily supervisor log has an entry "1145 Arrived At Harbor Lights marina, 29 miles (58) Round Trip X3." This calculates out to be a total of 174 vehicle miles. Compensation was based on the ES&H rate schedule of $0.75 per mile for 174 miles. All other costs were validated and the NPFC has determined the costs were reasonable, necessary to performed in accordance with the national Contingency Plan (NCP).

On that basis, the Claims Manager herby determines that the Claimant did in fact incur $12,510.47 of uncompensated removal costs and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912079-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on 30 September 2010. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay $12,510.47 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912079-0001. 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 Claimants.

AMOUNT: $12,510.47

Claim Supervisor [redacted]

Date of Supervisor's review: *8/13/12*

Supervisor Action: ***Approved***

Supervisor's Comments: