

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 913005-0001
Claimant : Tow Boat U.S. Tampa Bay – Cedar Key
Type of Claimant : OSRO
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$57,255.01

FACTS:

Oil Spill Incident: On March 21, 2012, the M/V Tropical Lightning sank at her mooring due to fire damage at the Madeira Marina in Madeira Beach, FL.¹ Fire damage and the subsequent sinking of the vessel resulted in the release of approximately 20 gallons of diesel fuel into the marina harbor.² USCG MISLE Case 587689 identified vessel owner [REDACTED] (deceased) as the Responsible Party (RP). The Claimant therefore has been unable to present a claim to the RP for uncompensated removal costs associated with this claim.

Description of Removal Actions: Tow Boat U.S. Tampa Bay – Cedar Key responded to this incident and coordinated with Florida's SOSOC and USCG FOSC for their spill containment and mitigation efforts.³ Tow Boat U.S. Tampa Bay – Cedar Key subcontracted with SWS Environmental to boom the affected area around the vessel, remove fuel and oiled debris, and conduct disposal of oily waste.

The Claim: Tow Boat U.S. Tampa Bay – Cedar Key presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$57,255.01.

The claim consists of OSLTF Claim Data, Tow Boat U.S. Tampa Bay – Cedar Key memo to the NPFC requesting reimbursement of their uncompensated removal costs, NRC Report 1006391, Florida DEP memo to SWS, and Florida DEP incident report 2012-4C-46823. As well, Tow Boat U.S. Tampa Bay – Cedar Key Time and Material List and invoice 12-23 with daily reports, SWS invoice 110489 and daily reports, SWS fee schedule, Clark Environmental disposal invoice, and waste disposal manifests.

The NPFC conducted independent research into the claim and obtained copies of the MISLE report, FOSCR Pollution Investigator statement, proofs of payment, and evidence photos of the incident.

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

¹ See, OSLTF Claim Submission, dated October 16, 2012.

² See, Florida Department of Environmental Protection Report, dated April 2, 2012.

³ See, Tow Boat U.S. Tampa Bay – Cedar Key Memo to NPFC, dated October 12, 2012.

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:

Overview:

1. FOSC coordination was made by USCG Sector St Petersburg MST2 [REDACTED], via MISLE Case Number # 587689.
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. 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 majority of 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.

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.

The NPFC has determined that the removal costs presented and incurred were billed appropriately at the time services were rendered. The NPFC has also determined that some of the costs incurred were not presented appropriately in the claim. The NPFC performed independent research into the incident and obtained copies of the Coast Guard Pollution Reports and a copy of all evidence in the Coast Guard MISLE system.

Tow Boat U.S. Tampa Bay – Cedar Key presented personnel costs in the amount of \$12,917.89, equipment costs in the amount of \$5,066.00 and subcontractor costs in the amount of \$39,274.39.

Cost documentation presented for Day Two of the Tow Boat U.S. invoice totaled to \$20,318.15. The amount presented on the summary invoice for the same date was \$20,315.18. The NPFC is approving the amount requested vice the actual total amount of Day Two.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$57,255.01 of uncompensated removal costs and that 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 913005-0001.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$57,255.01 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 913005-0001. 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.

Amount Approved: \$57,255.01

Claim Supervisor:



Date of Supervisor's review: *11/13/12*

Supervisor Action: *Approved*

Supervisor's Comments: