

CLAIM SUMMARY / DETERMINATION

Claim Number:	913008-0001
Claimant:	Oscar Niemeth Towing
Type of Claimant:	Corporation
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$3,978.74

INCIDENT FACTS:

On October 2, 2011, an oil sheen was observed around the Tug LION and Tug TIGER in the Port of Richmond, California in the San Francisco Bay, a navigable water of the U.S. The U.S. Coast Guard responded. Coast Guard personnel requested a neighboring business, Oscar Niemeth Towing (ONT), to place oil boom across the basin to contain the oil. The boom successfully contained the sheen until boom was placed by an OSRO. The responsible party (RP) has been identified as Alecio Shipping Inc.

CLAIMANT AND CLAIM:

The Claimant is ONT. It is a tug operator in the Port of Richmond in San Francisco Bay. ONT seeks reimbursement of the removal costs it incurred to install its oil boom at the CG's request. The removal costs include labor for installing the boom and boom rental for the 38 days it remained in place until an OSRO installed its own boom.

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:

A. Overview:

1. MST2 [REDACTED] of Sector San Francisco provided FOSC coordination.
2. The incident involved the report of a discharge and substantial threat of a 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 period 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 which 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:

The Claims Manager reviewed the invoice and associated other documentation and the Claimant's rate sheet in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether the actions taken were compensable "removal actions" under OPA and its 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 Claims Manager verified that the CG initiated contact with ONT and the FOSC directed the Claimant to install its emergency response 14" hard boom across the basin in which the RP's tugs were moored. The use of ONT's boom for 38 days was to prevent or minimize the spread of oil in the navigable water.

The NPFC finds ONT's costs necessary and reasonable for this response. ONT, as a Good Samaritan volunteer, was asked by the CG to assist and supply the boom and labor to install it. ONT had no responsibility for the incident. The activities were directed by the CG and the claimed costs fall within the Claimant's published rates.

The Claims Manager hereby determines that the OSLTF should pay the full claim as presented in the amount of \$3,978.74 as full compensation for the uncompensated removal costs incurred by the Claimant and submitted to the NPFC. All costs claimed were incurred by the Claimant for removal actions taken, as defined under OPA and payable by the OSLTF as compensable removal costs.

AMOUNT: \$3,978.74

Claim Supervisor:

Date of Supervisor's review: *12/10/12*

Supervisor Action: *Approved*

Supervisor's Comments: