

CLAIM SUMMARY / DETERMINATION

Claim Number:	913017-0001
Claimant:	Atlantic Coast Marine Group, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$3,020.00

FACTS:

1. ***Oil Spill Incident:*** On April 29, 2012, Coast Guard Sector North Carolina (Coast Guard) received a report from the Old Town Yacht Club that a large sheen, 75 yards long and 10 feet wide, was in the marina.¹ The caller reported that the large rainbow sheen in the marina that was approximately 3 to 4 inches thick and was diesel fuel. The marina pressured their lines to determine loss of their inventory and determined that there was no loss of diesel from the marina. It was then reported by Gillikan Marine Railways Marina in Beaufort, North Carolina that the sunken vessel, *M/V Sabor A Mi*, was the source of discharging diesel into the Atlantic Intracoastal Waterway (ICW), a navigable waterway of the United States.

The owner of the marina, [REDACTED], informed the Coast Guard that the vessel had been left there at least six years ago and that he tried to call the owner several times, but was not successful.² The Coast Guard responded to find the stern of the vessel had sunk and discharged approximately 150 gallons of diesel into the ICW. Mr. [REDACTED] began the clean-up by deploying hard boom to contain the fuel and absorbent pads to remove the fuel from the water.

2. ***Description of Removal Activities for this Claimant:*** On April 29, 2012, Tow Boat U.S. deployed eleven cases of absorbent boom to assist Mr. [REDACTED] with the clean up. The Claimant notes that it was on-scene for 2.5 hours, and it that time also deployed Tow Boat *Lindsey*, Captain [REDACTED], Captain [REDACTED], Laborer [REDACTED], and a field clerk for the clean-up.
3. ***The Claim:*** On November 30, 2012, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of \$3,020.00 for their oil spill response. The amount includes \$345.00 in personnel costs; \$500.00 for vehicle use; \$975.00 for materials; and \$1,200.00 for disposal. However, he owner of the vessel remains unknown.

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

¹ See NRC Report #1009985.

² See [REDACTED] U.S. Coast Guard Witness/Investigator Statement Form, dated May 5, 2012.

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. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
2. The incident involved 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 statute of limitations for removal costs;
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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 FOOSC, and (4) whether the costs were adequately documented and reasonable.

During the incident, the Claimant provided clean-up services alongside the marina owner in response of the release of diesel fuel discharged from the sunken vessel. Captain [REDACTED] supervised their efforts, while Captain [REDACTED] and Mr. [REDACTED] provided labor, along with a field clerk, deployed boom using Towboat *Lindsey*. The towboat was billed for 2.50 hours. All personnel billed three hours for their services and noted on their cost breakdown that they were on-scene for 2.50 hours.

The NPFC does note that the Claimant billed the tow boat for 2.5 hours at the rate of \$250.00, but listed \$500.00 as the total amount claimed. The \$500.00 total is consistent with the authorized BOA rates listed on their rate schedule at the \$200.00 per hour rate. The NPFC will reimburse the Claimant at the \$200.00 per hour rate for \$500.00.

The disposal of eight drums was handled by Noble Oil Services (Noble). The Claimant requested reimbursement of \$2,000.00 for disposal, at the rate of \$150.00 per drum. However, per the Claimant's December 7, 2012 e-mail to the NPFC, Noble charged

\$147.00 per drum for disposal.³ The Claimant will be reimbursed at the rate of \$147.00 per drum for disposal, for a total of \$1,176.00; denying \$24.00.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,996.00 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 913017-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on April 29, 2012. 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 determines that the OSLTF will pay \$2,996.00 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 913017-0001 for removal costs.

AMOUNT: \$2,996.00

Claim Supervisor: 

Date of Supervisor's review: *12/14/12*

Supervisor Action: *Approved*

Supervisor's Comments:

³ See e-mail to Felita Jackson from Carol Roop, dated December 7, 2012.