

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 913024-0001
Claimant	: Redwood Shore Diving, Inc., d.b.a. Parker Diving Service
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$9,967.00

FACTS:

- 1. *Oil Spill Incident:*** On October 28, 2012, a 35-foot Chriscraft (the P/C Mania II) was discovered sunk and leaking fuel at its berth in South Beach Harbor. South Beach Harbor is located in San Francisco Bay, a navigable waterway of the United States. This spill was reported to the National Response Center via report # 1028583.¹ USCG Sector San Francisco responded on-scene to monitor that cleanup was complete.²

The owner of the vessel, Mr. [REDACTED], the named Responsible Party (RP), was issued a Warning by the USCG on November 7, 2012.³ The RP orally told the Claimant, when it attempted to get a denial of payment in writing, that, as he had already signed the vessel over for disposal, he would no longer sign for anything on this vessel.⁴ The NPFC issued a RP Notification Letter which Mr. [REDACTED] has failed to respond to.⁵

- 2. *Description of removal actions performed:*** The Claimant, Redwood Shore Diving Inc., d.b.a. Parker Diving Service (Parker), responded to the spill site and placed boom around the affected area. The vessel was raised and the fuel pumped from it. Approximately 55 gallons of gasoline were pumped from the vessel and disposed.
- 3. *The Claim:*** On December 18, 2012, Parker submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$9,967.00 for the services provided from October 28 through October 30, 2012. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

¹ See NRC Report # 1028583, dated 10/28/2012.

² See USCG Sector San Francisco Case Report # 618603, opened 10/29/2012.

³ See Letter of Warning, issued by USCG Sector San Francisco, and dated 11/07/2012.

⁴ See Email from Ms. [REDACTED], Redwood, to Ms. [REDACTED], USCG, dated 1/21/2013.

⁵ See NPFC RP Notification Letter dated December 19, 2012.

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 has been established via USCG Sector San Francisco Case Report # 618603.⁶
2. The incident involved the report 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 statute of limitations. 33 U.S.C. § 2712(h)(2).
5. The Claimant sought and was denied payment by the RP. The NPFC also sent notification, but, as of this date, it has received no response. 33 U.S.C. § 2701(32).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that 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:

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 Claims Manager validated the costs incurred and determined what, of these costs, were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from October 28 through October 30, 2012. The Claimant represents that the costs it paid are compensable removal costs, payable by the OSLTF as presented by the Claimant.

After a review of the file and the USCG Case documents for this incident, the response by Parker has been determined to be reasonable and necessary to mitigate any further damage to

⁶ See USCG Sector San Francisco Case Report # 618603, opened 10/29/2012.