

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 913026-0001  
Claimant : O'Brien's Response Management  
Type of Claimant : OSRO  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$11,047.73

**FACTS:**

**Oil Spill Incident:** On March 30, 2012, CG small boat #25654 reported the sighting of a sheen in the vicinity of the M/T Glenross moored at the Sunoco Terminal Berth No. 5 at Nederland, Texas.<sup>1</sup> The body of water involved is the Neches River, a navigable waterway of the United States. Coast Guard Marine Safety Unit (MSU) Port Arthur responded to the incident and assessed the area for the source of the spill. At the time of the incident, the potential source for the sheen was suspected to be the M/T Glenross and as such, the vessel was advised to handle response actions. Sample analysis later confirmed that the M/T Glenross was not the responsible party for the incident.

**Description of Removal Actions:** O'Brien's Response Management responded to this incident and coordinated with USCG FOSC for their spill containment and mitigation efforts.<sup>2</sup> During the time the sheen was discovered in proximity to the M/T Glenross, oil transfer operations were being conducted.<sup>3</sup> Upon the arrival of the USCG FOSC, the oil transfer operations had ceased.<sup>4</sup> Removal actions undertaken were to boom the affected area around the vessel, remove oil and oiled debris, and conduct disposal of oily waste.

**The Claim:** O'Brien's Response Management presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$11,047.73 for their uncompensated removal costs incurred to respond to the incident.

The claim consists of OSLTF Claim Data, email correspondence from [REDACTED] (O'Brien's Response Management) to Nelson Cutinha (International Tanker Management-owner of M/T Glenross), correspondence from the Texas General Land Office to Benckenstein and Oxford, LLP, correspondence from O'Brien's Response Management to International Tanker Management, claimant's invoice 556706 and backup report, lodging and meal receipts, Oil Spill Response Services contract for Tank Vessels, and O'Brien's standard rate sheet in effect at the time of the incident.

The NPFC conducted independent research into the claim and obtained copies of the Coast Guard MISLE report and the NRC report for the incident.

**APPLICABLE LAW:**

"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".

<sup>1</sup> See, Correspondence from USCG Hearing Office to Beckenstein and Oxford, LLP, dated June 1, 2012.

<sup>2</sup> See, Claimant's OSLTF Claim Form, dated December 19, 2012.

<sup>3</sup> See, MISLE Report 3725269, dated March 30, 2012.

<sup>4</sup> See, MISLE Report 3725269, dated March 30, 2012.

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 MSU Port Arthur MST2 [REDACTED] via MISLE Case Number # 495236.
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 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.

***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 FOOSC, to be consistent with the NCP or directed by the FOOSC, 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 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.

O’Brien’s Response Management presented personnel costs in the amount of \$10,125.00, travel costs in the amount of \$745.28, third party costs in the amount of \$8.72, and equipment rental charges in the amount of \$168.75.

Please see Enclosure 1 – Summary spreadsheet of costs for an itemization of all costs presented.

The NPFC has confirmed all costs were billed pursuant to the pricing schedule in place for the vessel at the time of the incident and that the actions undertaken were determined by the FOOSC to be consistent with the NCP. On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$11,047.73 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 913026-0001.

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 \$11,047.73 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 913026-0001. 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.

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *1/22/13*

Supervisor Action: *Approved*

Supervisor’s Comments: