

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	913028-0001
<b>Claimant:</b>	Bollinger Quick Repair
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$1,207.88

### FACTS:

**Oil Spill Incident:** On August 21, 2012, Bollinger Quick Repair discovered an unknown oil product in the Harvey Canal adjacent to their facility that was contaminating the dry docks. The contamination prevented Bollinger from docking and un-docking vessels. They reported the incident which resulted in United States Coast Guard Sector New Orleans responding to the oil pollution incident. No responsible party has been identified for this incident.

**Description of Removal Activities for this Claimant:** After the spill was reported to the National Response Center (NRC) and the arrival of the Federal On Scene Coordinator's rep (FOSCR), Bollinger was authorized to use company personnel to perform clean-up activities. Soft boom was deployed to contain the spill and oil pads were used to clean-up the product from the water's surface.<sup>1</sup>

Contaminated debris was collected and transported for disposal to American Recovery, LLC in two drums.<sup>2</sup>

**The Claim:** On January 17, 2013, Bollinger Quick Repair, presented a removal cost claim (the original claim package was submitted as a real or personal property claim) to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$1,207.88.<sup>3</sup> Based on the documentation, the NPFC has recategorized this claim as a removal cost.

### 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".

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

<sup>1</sup> Email from Claimant dated January 23, 2013 providing description of response activity.

<sup>2</sup> American Recovery LLC invoice number 97210 and Waste Manifest number 289023.

<sup>3</sup> NPFC Standard Claim Form and cover letter dated December 3, 2012.

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 (NCP) 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 was provided by USCG Sector New Orleans.
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(2), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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 Claimant is requesting \$230.88 for personnel costs associated with the removal activities that they assert were performed by Bollinger personnel on August 22-23, 2012. According to USCG Sector New Orleans (FOSCR), the incident clean-up was completed on August 21<sup>st</sup>.<sup>4</sup> Based on the USCG statement to the NPFC, all costs after August 21<sup>st</sup> had no federal oversight and were not in accordance

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<sup>4</sup> Email from FOSCR to NPFC Claims Manager dated 28 January 2013.

with the governing claims regulations located at 33 CFR 136.203 and 205 and are therefore denied in the amount of \$230.88.

The Claimant is requesting \$304.00 for personnel costs associated with two employees of United States Environmental Services (USES)<sup>5</sup> who replenished the pollution response equipment at the facility. A total of \$2,300.00 in response equipment was delivered although only \$312.00 was used during this incident therefore the surplus items do not qualify for compensation from the OSLTF. Since the order contained a surplus inventory, not all of the costs are compensable and the NPFC has prorated reimbursement to a ratio of 14%.<sup>6</sup> Based on the foregoing, the OPA compensable cost is \$42.56 and the remaining amount of \$261.44 is denied as not associated with this incident.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$715.56 of uncompensated removal costs and 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 #913028-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on August 21, 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 hereby determines that the OSLTF will pay \$715.56 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913028-0001. 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 Claimants.

AMOUNT: \$715.56

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 1/30/13

Supervisor Action: *Approved*

Supervisor's Comments:

<sup>5</sup> USES Invoice number 065984 dated September 29, 2012.

<sup>6</sup> \$312 in response equipment used divided by \$2300 in equipment ordered to restock equals .135 or 14%.