

CLAIM SUMMARY / DETERMINATION

Claim Number:	913041-0001
Claimant:	Oil Mop, LLC - d.b.a. OMI Environmental Solutions
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$14,726.23

FACTS:

On March 21, 2012, a tug boat, the UTV PORT GIBSON, owned by Crown Point Holdings (CPH) capsized and sank at the dock by CPH's business. CPH is the responsible party (RP) for the vessel and the discharge. The vessel discharged about 300 gallons of bilge oil at Bayou Barataria, an area of the IntraCoastal Waterway, a navigable water of the United States. CPH hired Oil Mop, LLC (OMI or Claimant) to respond to the discharge. OMI placed boom and sorbent pads in the water as the source was secured. CG Sector New Orleans responded to the incident and conducted an investigation.

CLAIMANT and CLAIM:

The Claimant is an oil spill response company that responded to the oil spill resulting from the sinking of the RP's tug boat. OMI presented its claim to the RP on April 11, 2012. To date, the Claimant has not been paid. OMI presented its claim to the Oil Spill Liability Trust Fund on March 18, 2013. OMI seeks its uncompensated removal costs for the services provided in responding to the vessel discharge.

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 NPFCA, 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. CG Sector New Orleans personnel 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 Claimants have 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)(1);
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 invoices and associated other documentation and the Claimants' rate sheets 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 found that Claimants' actions were reasonable and necessary under OPA. The Claimant provided daily work reports and a rate schedule by which the Claims Manager was able to verify OMI's claimed costs, with the exception of the claimed disposal and transportation stop fee. The NPFC has determined that disposal should be paid in accordance with a disposal invoice from American Recovery LLC, but not as presented on OMI's invoice because the claimed amount was not substantiated by the rate schedule. The transportation stop fee was not supported by any documentation, therefore it is denied. The total amount denied for these two items is \$240.00. The rest of the claim is compensable as presented because it represents documented, reasonable removal costs under OPA. The total approved amount is \$14,486.23.

AMOUNT: \$14,486.23

Claim Supervisor:

Date of Supervisor's review: 4/2/13

Supervisor Action: *Approved*