

CLAIM SUMMARY / DETERMINATION

Claim Number:	913073-0001
Claimant:	Environmental Safety & Health Consulting Services, Inc.
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$34,536.72

FACTS:

Oil Spill Incident: On March 12, 2010, after Coast Guard Inspectors¹ found excessive water/oil mixture in the bilges of the TUG BARBARY COAST (565070) and the TUG MR. LESTER (621020). The BARBARY COAST also had hull damage resulting in the ingress of water. The Captain of the Port (COTP) of Mobile, Alabama issued an order to Eagle Tugs, Inc.² to remove all fuel and lubricating oil from the TUG BARBARY COAST and the TUG MR. LESTER as well as the removal of excessive water/oil mixture from the vessel bilges.

To comply with the COTP Orders Eagle Tugs, Inc retained the services of Environmental Health and Safety Consulting Services, Inc. (ES&H).³ The work was completed from January 14-16, 2010. An invoice was delivered to Eagle Tugs, Inc. on April 8, 2010. To date ES&H has not received any payment from Eagle Tug, Inc.

The CG Investigation reported that both vessels were found aground in the vicinity of mile marker 81 on the Black Warrior River and posed a substantial threat of discharge of oil to the environment. Black Warrior River is a navigable waterway of the United States.

Responsible Party: Eagle Tugs, Inc., the Responsible Party (RP), owned the vessels BARBARY COAST and MR. LESTER at the time of the incident and is determined to be the responsible party under the Oil Pollution Act. The National Pollution Funds Center (NPFC) sent a RP Notification letter to the RP on August 5, 2013.

Description of Removal Activities for this Claimant: Between January 14-15, 2010, ES&H responders removed all the oily water from the bilges of both Tugs to a 225bbl barge. Fuel oil was transferred from the fuel tanks of the TUG BARBARY COAST to the TUG MR. LESTER.

On January 16, 2010, ES&H transferred all oily water waste to vacuum trucks and begins to demobilize all equipment. Gulf Marine Chemist, Inc. is contracted by ES&H to gas free four tanks and two barges.

On January 18, 2010, ES&H disposed 5100 gallons of oily water waste and six drums of solid waste.

The Claim: On July 2, 2013, ES&H presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$34,536.72.⁴

¹ USCG MISLE Case #491972.

² COPT Order #008-10 and 009-10.

³ ES&H Work Order dated January 14, 2010.

⁴ NPFC Standard Claim Form dated June 28, 2013.

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 was provided by USCG Sector Mobile
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)(1), 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 \$1,223.75 for personnel costs associated with [REDACTED] (Safety Officer) for his response to the incident on January 14-15, 2010. The Claimant invoiced at an hourly rate of \$55.00 (ST) and \$82.50 (OT). However the provided Emergency Response Rate Schedule states that the hourly rate for the Safety Officer is \$50.00 (ST) and \$75.00 (OT). Therefore the NPFC approves \$1,112.50 as compensable OPA costs and denies the remaining \$111.25.

The Claimant is requesting \$350.00 for seven Level D Personal Protection Equipment (PPE) on January 15, 2010. However on the Daily Price List, maintained by field personnel, state that only six Level D PPE was utilized. Therefore the NPFC approves \$300.00 as compensable OPA costs and denies the remaining \$50.00.

The Claimant is requesting \$10.00 for two units of Hand Cleaner on January 16, 2010. However on the Daily Price List, maintained by field personnel, state that only one unit of Hand Cleaner was utilized. Therefore the NPFC approves \$5.00 as compensable OPA costs and denies the remaining \$5.00.

The Claimant is requesting \$900.00 for the gas freeing of four tanks and two barges on January 16, 2010. No supporting documentation was provided that the Gas Free Certificate was required by the vessel owners or the USCG. Certification was also not required for the emergency removal response. The NPFC determines that this cost is not OPA compensable expense. Therefore the cost of \$900.00 is denied.

The Claimant is requesting \$300.00 for two wash out charges sustained on January 18, 2010. This cost is not on the Emergency Response Rate Schedule and the Claimant was unable to

provide a third party vendor invoice for the service. Therefore the NPFC denies the \$300.00 for wash out charges as unsubstantiated.

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 \$33,170.47 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 #913073-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on January 14, 2010. 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 \$33,170.47 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913073-0001. 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: \$33,170.47

Claim Supervisor

Date of Supervisor's review: 8/7/13

Supervisor Action: *Approved*

Supervisor's Comments: