

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	913085-0001
<b>Claimant:</b>	Environmental Safety & Health Consulting Services
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Cost [REDACTED]
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$2,902.70

### **Facts of the Incident as provided by the Claimant**

The Claimant reports that they were contacted on September 14, 2011 by Mr. [REDACTED] of Graystone Construction, who requested the assistance of Environmental Safety & Health Consulting Services (ES&H) for the environmental aspect of a salvage project they were going to begin. On September 15, 2011, the Claimant states they sent two employees to the location to gather more information. While ES&H was at the site location, Mr. [REDACTED] provided ES&H the USCG contact information and requested they contact the USCG. ES&H contacted the USCG and was informed by the USCG that the local fire department had responded to the site location on two separate occasions due to fires which is how the USCG originally became involved with Graystone Construction.

ES&H states they were advised by USCG that they had mobilized to the site some time prior to September 14, 2011 and the USCG recommended that Graystone Construction contract an OSRO to assist in the creation of a pollution control plan and to be prepared to deploy any spill control devices should the need arise. On September 16, 2011, ES&H submitted a work/safety plan to USCG for review and approval of the upcoming salvage project. USCG notified ES&H a few days later approving the plan and requested when a start date was determined that ES&H notify him accordingly.

ES&H and Graystone Construction agreed on a start date of September 26, 2011. USCG met ES&H at the site location on September 26, 2011. ES&H deployed 200' of containment boom and provided standby personnel and equipment should the need arise. Graystone Construction attempted to remove the vessel from the waterway using a crane while both ES&H and USCG were present on scene. All attempts to raise the vessel were unsuccessful therefore Graystone Construction postponed the salvage project until further notice.

ES&H's containment boom remained in the water per a verbal agreement between Graystone Construction and the USCG. On October 23, 2011, ES&H visited the Graystone Construction site location and was informed the salvage project was still on hold. On December 20, 2011, ES&H decided since they had no further contact with Graystone Construction, they would demobilize the containment boom from the project. Upon their arrival on site, ES&H noticed the vessel had been removed from the water and the salvage/demolition had been completed.<sup>1</sup>

### **The Claim & the Claimant**

On September 11, 2013, the Claimant, ES&H, presented a removal cost claim to the National Pollution Funds Center (NPFC) for its uncompensated removal costs in the amount of \$2,902.70. The Claimant's invoicing originally totaled \$3,402.70 although Graystone Construction made a payment in the amount of \$500.00 via check # 1485408309 dated August 26, 2013.

---

<sup>1</sup> See email from ES&H to NPFC dated September 30, 2013.

Under the terms of the Agreement between ES&H and Graystone Construction, Graystone agreed to pay ES&H \$1,000.00 as a deposit for salvage of the vessel. The Agreement was signed and dated 23 October 2011. There is no explanation as to why the Agreement was signed over a month after the work began.

According to the claim submission and under the terms of the Agreement, on September 26, 2011, boom was deployed and personnel were on stand-by in the event of a pollution incident.

After an initial review of the claim submission, the NPFC Claims Manager determined additional information would be needed in order to properly adjudicate the claim. The NPFC made a request for additional information to both the Claimant and to the Coast Guard Unit known to have jurisdiction over the incident.

#### **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].

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 only been provided in part by Marine Safety Unit Morgan City. Actions undertaken on Day One and the use of containment boom has been validated by the Coast Guard Unit although all other costs are denied accordingly;
2. The incident involved the report of a discharge and/or substantial threat of a discharge of “oil” as defined un OPA 90, 33 USC 2701 (23), to navigable waters;
3. No Responsible Party has been determined for this incident. 33 USC 2701 (32)
4. The Claimant has presented all costs to Graystone Construction but was unsuccessful in reaching resolution for payment. Graystone made one payment to the Claimant in the amount of \$500.00 on or about August 28, 2013;
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that only some of the removal costs presented were presented for actions in accordance with the NCP, or whether the costs for these costs were reasonable and allowable under OPA and 33 CFR 136.205.

### **B. Analysis:**

Under 33 CFR 136.105(a) and 136.105 (e)(6). The Claimant bears the burden of providing the NPFC all evidence, information and documentation deemed necessary by the Director, NPFC to support claim. The NPFC considered all documentation presented by the Claimant.

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.

On 26/27 September 2013, the NPFC contacted both the Claimant and the United States Coast Guard Marine Safety Unit Morgan City and requested additional information on the issue of which entity ordered the salvage of the vessel and the rationale for such an action.

An evidenciary statement provided by the Claimant, ES&H, appears to support a finding that the U.S Coast Guard was aware of the intended salvage project and as such, approved the site safety work plan prior to work being performed. There was no FPN opened and no Activity or Case opened in the Coast Guard’s MISLE system.

While the United States Coast Guard was not involved in the salvage project to be undertaken by Graystone Construction, the USCG did make the decision to approve the work/safety plan prior to the

salvage operation in an attempt to ensure a plan was in place to mitigate a discharge or substantial threat of a discharge of oil into a navigable waters. The USCG was present during the first day of operations as was ES&H in accordance with the safety plan approved by the USCG.

With respect to a possible responsible party(RP), the NPFC does not have evidence who the vessel in question was owned by at the time Graystone Construction decided to perform a salvage project in order to sell the metal and as such, the NPFC makes no identification of an RP nor has the USCG.

Upon further review of the detailed invoicing, the NPFC has determined the only costs for which it will compensate the Claimant is for Day One, September 26, 2011 in the amount of \$1,004.80 and the cost associated with the containment boom in the amount of \$2,500.00. The NPFC then reduced the amount payable by \$1,500.00 for the credit issued by ES&H on the contractor invoicing and also by \$500.00 for the payment made to ES&H by Graystone Construction in August 2013.

Based on the foregoing, the NPFC hereby determines that the OSLTF will pay \$1,504.80 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 913085-0001. All costs claimed are for charges incurred 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.

**AMOUNT: \$1,504.80**

Claim Supervisor:

Date of Supervisor's review: *10/28/13*

Supervisor Action: *Approved*

Supervisor's Comments: