

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 913088-0001
Claimant	: Millers Launch, Inc.
Type of Claimant	: Corporation
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$22,864.00

FACTS:

Oil Spill Incident: On October 29, 2012, the M/V JOHN B. CADDELL was discovered aground along Edgewater Street in Staten Island, New York in the vicinity of the Fire Department of New York's facility, Marine Company 9. During the Coast Guard investigation into the grounding, representatives from Coast Guard Sector New York discovered a pollution stream originating from the vessel, approximately 1000 gallons of fuel and oil in the cargo tanks and engine room and numerous holes in the vessel.¹

Responsible Party: Coast Guard Sector New York identified [REDACTED] as the Responsible Party (RP), who owned/operated the M/V JOHN B. CADDELL at the time of the incident and is determined to be the responsible party under the Oil Pollution Act (OPA).

Description of Removal Activities for this Claimant: On November 13, 2013, Millers Launch Inc. contacted USCG Response Team 7 and stated that they were retained by Mr. [REDACTED] of Global West Vessel Specialist to boom the vessel.² USCG log indicates that Millers Launch Inc. has sent a boat out approximately every day to every other day to remove oiled/destroyed sorbent pads and replaced them with new. The log also states the original sausage boom was in place since November 5, 2012.³

The Claim: On September 18, 2013, Millers Launch Inc., presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$22,864.00.⁴

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).

¹ USCG COTP Order 101-10 dated November 4, 2012.

² USCG Unit Log, ICS 214-CG, for Response Team 7, time period 13NOV2012 0600 – 14NOV2012 0600.

³ USCG Unit Log, ICS 214-CG, for Response Team 7, time period 11NOV2012 0600 – 12NOV2012 0600.

⁴ Optional OSLTF Claim Form dated August 1, 2013.

"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 Federal on Scene Coordinator (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 York.
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 uncompensated removal costs.
4. The claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were not for actions in accordance with the NCP and that the costs for these actions are not 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 NPFC has made four attempts⁵ to contact the Claimant in order to request supporting documentation for their claim submission. As of this date, the Claimant has failed to provide the additional information requested by the NPFC. The claims manager has attempted to use Coast Guard records to adjudicate the claim but without the requested material, the NPFC has been unable to thoroughly evaluate this claim.

The Claimant has failed to provide an authorization to proceed or work contract that it has with the responsible party. As such, the NPFC is unable to determine what services the Claimant was retained to perform.

The Claimant has also failed to provide a rate schedule for personnel, equipment and materials. Without this rate schedule, the NPFC is unable to verify the invoiced costs are consistent with the pricing schedule in place at the time services were rendered.

It is important to note that the Claimant did provide a Daily job report that accounts for equipment and materials used as well as personnel hours. However, this report does not provide specific response activities performed by responders. Therefore, the NPFC is unable to determine if the actions taken on a given day are compensable under OPA.

⁵ Emails dated September 19 & 23, 2013 and two voice mails left on October 10 & 15, 2013 with Claimants point of contact, Mr. [REDACTED].

Finally, the Claimant has failed to provide substantiation that the contaminated liquid or solid absorbent material generated from this spill was disposed of in accordance with the NCP as would be evidenced by disposal manifests.

C. Determined Amount:

Based upon the foregoing, the NPFC denies this claim because (1) the Claimant failed to demonstrate that the actions undertaken were compensable "removal actions" under OPA, (2) the Claimant failed to provide proper documentation to support the costs claimed, and (3) the contaminated waste products associated with this incident have not been shown to have been properly disposed of in accordance with the NCP.

AMOUNT: \$0.00

Claim Supervisor:

Date of Supervisor's Review: *10/16/13*

Supervisor Action: ***Denial approved***

Supervisor's Comments: