

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N12052-0001
Claimant	United States Environmental Services
Type of Claimant	OSRO
Type of Claim	Removal Costs
Claim Manager	[REDACTED]
Amount Requested	\$3,148.00

***FACTS***

On July 24, 2012, United States Environmental Services (USES) responded to a sunken vessel fuel oil spill. The spill resulted in the release of an unknown amount of fuel oil into Lake Ponchartrain, a navigable waterway of the United States.<sup>1</sup>

***Description of Removal Activities for this Claimant***

On July 24, 2012, the USCG contacted USES to perform cleanup on behalf of the Responsible Party (RP). The owner of the vessel, Mr. [REDACTED] (RP) was contacted by the USCG and informed of his responsibility for cleanup. Mr. [REDACTED] refused to sign the USES agreement for services, and refused responsibility for cleanup, citing that the vessel had been sold and the title had not yet been changed.<sup>2</sup> The contractor deployed boom and dewatered the vessel. The cleanup was completed on July 24, 2012 under the oversight of USCG MST2 [REDACTED] as the Federal On Scene Coordinator Representative (FOSCR).

***The Claim***

On March, 5, 2013, USES presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$3,148.00.

The claim consists of the OSLTF Claim Form, NRC Report, invoice for USES services rendered, invoice for subcontractor R&S Towing, dailies for the response, Authorization to Proceed document, BOA Contract/Release, email correspondence among USES employees related to the claim, and customer contract. Additional supporting documents include USES standard rates in effect at the time of the incident response.

***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages resulting from that incident. 33 U.S.C. § 2702(b). A responsible party's liability includes "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 "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil" 33 USC § 2701(23).

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."

<sup>1</sup> USES Optional OSLTF Claim Form, dated March 5, 2013.

<sup>2</sup> USES Email correspondence, dated November 8, 2012.

Pursuant to 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].

Pursuant to 33 USC § 2713(d), “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.”

Pursuant to 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.

Pursuant to 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.”

Pursuant to 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.”

## ***Determination of Loss***

### ***Overview***

1. FOSC coordination was made by USCG Sector New Orleans MST2 [REDACTED]
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 USC § 2701 (23), that presented a substantial threat 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. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable pursuant to OPA 90 and 33 CFR § 136.025 as set forth below.

### ***Analysis***

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

Upon review of the claim submission, the NPFC has determined that the removal costs presented and incurred were billed appropriately at the time services were rendered and in accordance with the pricing schedule. The NPFC has been able to confirm the actions performed by the Claimant with the USCG. The NPFC sent an RP Notification Letter to Mr. Davis and to date, no response has been received.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$3,148.00 of uncompensated removal costs and that 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 #N12052-0001.

***Determined Amount***

The NPFC determines that the OSLTF will pay \$3,148.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to NPFC under claim #N12052-0001. All costs presented to the OSLTF in this claim are for removal actions as defined in OPA 90 and 33 CFR 136, and are compensable removal costs.

**AMOUNT: \$3,148.00** [REDACTED]

Claim Supervisor: [REDACTED]
Date of Supervisor's review: <i>4/9/13</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: