

CLAIM SUMMARY / DETERMINATION

Claim Number:	S13004-0001
Claimant:	Global Diving and Salvage Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$11,871.77

FACTS:

- 1. Oil Spill Incident:** On March 14, 2012, Coast Guard Sector Puget Sound (Sector Puget Sound) was notified by an e-mail from the Washington State Department of Ecology (WAE CY) that the vessel *Minesweeper/YMS-439* was sinking in Skagit Bay in Everett, Washington.¹ The sinking vessel, with a large hole in the port stern area, was docked at the Seacrest Marina at the time of the incident. Sector Puget Sound coordinated with WAE CY for incident response. Federal On-Scene Coordinator Representative (FO SCR) MSTC ██████████ called Global Diving and Salvage, Incorporated (Global Diving) to respond. When the Sector Puget Sound Response Team arrived at the incident site, Global Diving was already on scene. The responsible party, vessel owner ██████████ was located and notified of the incident. Mr. ██████████ took over the contract with Global Diving.
- 2. Description of Removal Activities for this Claim:** Global Diving performed an assessment of the vessel and completed a 100 percent space accountability. They confirmed that the vessel had two fuel tanks; and that one tank had three gallons of fuel and the other tank was empty. Mr. ██████████ had Global deploy boom around the vessel. Sector Puget Sound notified WAE CY of the response activity and then closed their case in MISLE. Per the Claimant, they continued mitigation measures until the Sector Puget Sound determined that the measures were no longer needed.²
- 3. The Claim:** On May 15, 2013, the Claimant submitted a removal cost claim in the amount of \$11,871.77 to the National Pollution Funds Center (NPFC) for reimbursement of the remainder of their uncompensated removal costs, for the services provided to ██████████. On April 16, 2012, Global Diving submitted the claim to Mr. ██████████. He made two partial payments. The first payment was made on May 22, 2012 in the amount of \$250.00. The second payment of \$500.00 was made on June 2, 2012. On May 20, 2013, the NPFC sent Mr. ██████████ an RP Notification letter to inform him of the claim received from Global Diving.³ However, he did not respond.

¹ United States Coast Guard MISLE Case Report for Case #586834, dated March 14, 2012.

² National Pollution Funds Center Optional OSLTF Claim Form for Claimant Global Diving and Salvage Incorporated.

³ ██████████ NPFC, letter to ██████████ dated May 20, 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. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
2. The incident involved 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 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 which of the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has reviewed the actual cost documents 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, and (4) whether the costs were adequately documented and reasonable.

Upon review, the Claims Manager hereby determines that there are discrepancies with regards to the Claimant’s invoice, daily worksheets, and the rate schedule provided. For work performed on Wednesday, March 14, 2012, the Claimant billed [REDACTED] (AJ),

skilled laborer, for 3 hours at the standard rate of \$42.00 per hour, for a total of \$126.00. However, the daily worksheet indicates that he worked 1.5 hours at the standard rate (1400 to 1530). The Claimant will be reimbursed \$63.00 for his work. For skilled laborer [REDACTED] the Claimant billed 3.5 hours, at the rate of \$55.00 per hour, for a total of \$192.50. However, the daily worksheet notes that he had 1.5 hours of overtime, as he was noted as off work at 1700. The Claimant will be reimbursed \$82.50 for Mr. [REDACTED]'s 1.5 hours of overtime worked. Also, Mr. [REDACTED]'s 2.0 hours of overtime billed for "Mob/Travel/Shop" for a total of \$110.00 was not on the daily worksheet, and is denied. The Claimant billed 1.0 hour of standard time, at the rate of \$42.00 per hour, for [REDACTED]'s "Mob/Travel/Shop" task, but it was not on the daily worksheet. The \$42.00 billed is denied. [REDACTED]'s two hour "Mob/Travel/Shop" task, at the overtime rate of \$55.00 per hour, for a total of \$110.00, was billed by the Claimant. However, that task was not noted on the daily worksheet regarding Mr. [REDACTED]; and is denied.

Regarding the Marine Vacuum Service, Incorporated (Marvac) disposal billed for \$75.00, the Claimant's daily worksheet notes Marvac information with "\$50?" for that day.⁴ On July 8, 2013, the NPFC requested cost documentation for the disposal costs from the Claimant.⁵ On July 16, 2013, the Claimant responded by informing that the Marvac disposal was charged per gallon.⁶ Again, on August 27, 2013, the NPFC made a second request for the Marvac cost documentation.⁷ The Claimant provided cost documentation that noted the cost was \$25.00. The Claimant will be reimbursed \$25.00.

For March 16, 2012, Claimant billed for both [REDACTED] and [REDACTED] for 1.0 hour each of overtime, at the rate of \$55.00 per hour. Both costs, a total of \$110.00 are denied, as they are not on the daily worksheet.

The Claimant billed using Diving/Salvage rates from their rate schedule for "Mob/Travel" work performed on Thursday, July 19, 2012, but used Environmental/Remedial rates for all other work days for the skilled laborers. The Claimant will be reimbursed at the Environmental/Remedial rates. Therefore, [REDACTED]'s billing of 1.0 hour for "Mob/Travel" at the \$65.00 per hour overtime rate will be reimbursed at \$55.00 per hour; and his billing of 1.0 hour of "Mob/Travel" at the standard rate of \$55.00 per hour will be reimbursed at the rate of \$42.00 per hour. [REDACTED]'s 1.0 hour for "Mob/Travel/Shop" at the overtime rate of \$65.00 per hour, will be reimbursed at the \$55.00 per hour rate; and his 1.0 hour for "Mob/Travel" at the standard rate of \$55.00 per hour will be reimbursed at the \$42.00 per hour rate. And again, regarding the billing of [REDACTED], his billing of 1.0 hour at the overtime rate of \$65.00 per hour for "Mob/Travel" will be reimbursed at the rate of \$55.00 per hour; and his 1.0 hour of "Mob/Travel/Shop" at the standard rate of \$55.00 will be reimbursed at the \$42.00 per hour standard rate. A total of \$69.00 is denied were work services provided on July 19, 2012.

⁴ Global Diving & Salvage, Inc. Daily Log for Tuesday, March 13, 2012.

⁵ [REDACTED] electronic mail to [REDACTED], dated July 8, 2013.

⁶ [REDACTED] electronic mail to [REDACTED], dated July 16, 2013.

⁷ [REDACTED] Phone Notes, dated August 27, 2013.

Therefore, based on the NPFC's denial of \$664.00, the NPFC determines that the OSLTF will pay \$11,207.77 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # S13004-0001.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$11,207.77 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number S13004-0001 for removal costs.

AMOUNT: \$11,207.77

Claim Supervisor

Date of Supervisor's review: *9/4/13*

Supervisor Action: *Approved*

Supervisor's Comments: