

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914003-0001
Claimant	: Environmental Services, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$26,353.32

FACTS:

A. Oil Spill Incident: The United States Coast Guard (USCG) Sector Long Island Sound reports¹ that on June 22, 2013, it received notification of a 65-foot center console, the P/C NINO, with eight people aboard taking on water near Little Goshen Reef in Waterford, Connecticut. The Sector dispatched US Coast Guard Station New London and issued an Urgent Marine Information Broadcast (UMIB), to which the Waterford Police Department responded. All persons were safely removed from the vessel by a 'Good Samaritan' and transferred to the police boat. When USCG personnel arrived on-scene, they observed the bow of the P/C NINO sticking up, with the vessel listing port-side. A rainbow sheen was also observed.

Mr. [REDACTED], owner of the boat and the Responsible Party (RP), a BoatUS member, requested that TowboatUS take care of the boat. TowboatUS had placed containment boom around the vessel to contain any pollution that may escape from the vessel. Unfortunately, the currents in that area made the boom ineffective for two reasons: first of all, the response team could not maintain an effective geometry with the boom, and secondly containment boom suffers from entrainment (a process in which the oil escapes from under the boom) at approximately 0.7 knots of flow. The currents in that area routinely hit 3 knots during maximum ebb. Additionally, the vessel itself had rolled, and diesel was flowing from the starboard side intake vent on the starboard side. Thus, the USCG determined that the vessel had to be removed from the water and a salvage plan was ordered and submitted by Towboat to the USCG. The P/C NINO was taken in tow and moved to a shallower area more suitable for anchor, where it awaited salvage.

The NPFC issued an RP Notification Letter to Mr. [REDACTED] on December 17, 2013.

B. Description of removal actions performed:

The Claimant, ESI, was contacted and hired by TowboatUS for assistance in its response. On June 23, 2013, ESI provided TowboatUS with 500 feet of hard boom, keeping 100 feet itself, and worked to deploy/anchor the boom around the vessel. Sorbent boom was installed within the containment boom as well.

On June 25, 2013, the sorbent boom was pulled, and ESI personnel stood by as the P/C NINO was lifted out of the water. Once this was complete, the USCG cleared ESI to pull the

¹ See USCG Sector Long Island Sound Case Report # 642027, opened 6/22/2013.

sorbent and hard boom from the water. The sorbent boom was collected and placed in 17 drums, where it was taken and disposed of by Clean Water of New York that same day.

On June 27, 2013, ESI returned to powerwash and degrease the hard boom at the shoreline site. The boom was restocked on the trailer and, having completed its tasking for this incident, ESI returned to its shop.

Niether TowboatUS nor the insurance company remitted payment to ESI for its costs associated with this spill. Thus, the RP was notified, but has stated that invoiced costs are currently being disputed with the Claimant.²

C. The Claim: On November 6, 2013, ESI submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$26,353.32 for the services provided from June 23 through June 27, 2013. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

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.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

"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”.

“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”. 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

² See email from Mr. [REDACTED] legal counsel to RP, to Ms. [REDACTED] NPFC, dated 1/31/2014.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

“Claimant” means “any person or government who presents a claim for compensation under this subchapter.” 33 USC § 2701(4).

33 USC § 2712(f), which is entitled “Rights of Subrogation,” provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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 been established via United States Coast Guard Sector Long Island Sound.³

³ See USCG Sector Long Island Sound Case Report # 642027, opened 6/22/2013.

2. 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.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has been identified, but, to date, has not paid the claim. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed 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 Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The USCG was made aware of the incident and the actions ESI performed by both the Claimant and other OSROs performing work for this incident. Claimant provided dailies and invoicing of its personnel and equipment costs, which were deemed reasonable to accomplish the response objective. The NPFC reviewed the contractor rate schedule in place at the time services were rendered. The oversight by the Federal On-Scene Coordinator, LCDR [REDACTED] was confirmed by way of a Statement drafted by him, as well as USCG Sector Long Island Sound Case Report # 642027. Therefore, the work performed has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the spill.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident provided from June 23 through June 27, 2013. ESI represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant. Based on the evidence in this claim submission and affirmation by the FOSC for the actions undertaken by ESI and its contractor, the Claims Manager hereby determines that the Claimant did incur \$25,728.32 of uncompensated removal costs and that that amount is payable by the OSLTF as compensation for the reimbursable removal costs incurred by ESI and submitted to the NPFC under claim #914003-0001.

\$625.00 in claimed rope costs have been denied, as the cost is not provided on the Rate Schedule nor were receipts provided representing the purchase of the requested materials. Should ESI wish to have this cost reconsidered, it would need to provide documentation of how this cost was derived, (i.e., a receipt, an invoice, etc.).

C. Determined Amount: \$25,728.32

The NPFC hereby determines that the OSLTF will pay \$25,728.32 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914003-0001. 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 Claimant.

Claim Supervisor: 

Date of Supervisor's review: *6/10/14*

Supervisor Action: *Approved*

Supervisor's Comments: