

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914008-0001
Claimant	: Redwood Shore Diving, Inc. dba Parker Diving Service
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$5,219.88

FACTS:

Oil Spill Incident: On August 22, 2012 at 0900, Sector San Francisco Command Center (SCC) received a report that a 54 foot wooden recreational vessel had partially sank at the Paradise Point Marina in Stockton, CA.¹ The recreational vessel, NEVER SAY NEVER partially sank, after its bilge pump failed. It held approximately 400 gallons of diesel fuel oil that the USCG Federal On-Scene Coordinator-Representative (FOSC-R) considered to be substantial threat of discharging into the San Joaquin River; a navigable waterway of the US.²

Responsible Party: ██████████ is the owner of the vessel and was designated by the Coast Guard as the responsible party (RP) for the incident. Mr. ██████ hired PDS to refloat his vessel to prevent a potential discharge. The National Pollution Funds Center (NPFC) was not able to send an RP Notification Letter to Mr. ██████ as his whereabouts are unknown at the time of this adjudication.

Description of Removal Activities for this Claimant: Parker Diving Service (PDS, Claimant) arrived on scene at 1745 hours on August 22, 2012 and placed sorbent boom and pads around the vessel. PDS divers plugged the vessel's vents, and refloated it. PDS pumped 200 gallons of diesel fuel off the vessel and disposed of all the waste material.

The Claim: On December 18, 2013, Claimant presented its claim for uncompensated removal costs to the NPFC for the sum certain of \$5,219.88. The Claimant invoiced Mr. ██████ a total of \$8,289.88 for its services. Mr. ██████ paid PDS \$3,450.00. PDS added \$68 per month for 10 months (10 x \$68 = \$680) to the outstanding balance of \$4,539.88. PDS calculates the outstanding balance for its services at \$5,219.88 (\$4,539.88 + \$680 = \$5,219.88).

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".

¹ See NRC #1021871

² See MISCLE Case Report 610123 opened August 22, 2012.

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 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 the United States Coast Guard Sector San Francisco Command Center (SCC) in accordance with CFR § 136.203.
2. The incident involved the discharge or substantial threat of a 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 (CM) has thoroughly reviewed all documentation submitted with the claim and determined which removal costs presented were for actions in accordance with the NCP and that the costs for these actions were allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CM reviewed the actual cost invoices 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The USCG FOOSC-R was on-scene for this incident and the Claimant coordinated all actions with the FOOSC-R.³ The Claimant has met its burden pursuant to the governing claims regulations found at 33 CFR 136.203 and 205 to demonstrate that its actions were determined by the FOOSC to be reasonable, necessary and consistent with the National Contingency Plan (NCP).⁴

Usually, the Claimant would provide a daily log showing personnel, equipment and material maintained at the incident site. In this case, the Claims Manager contacted the Ms. Maria Nunn of Parker Diving Services who explained that the responsible party had signed a contract and made partial payments therefore; PDS had no reason to believe at the time that it would have to present a claim for uncompensated removal costs to the NPFC.

The CM filled out a spreadsheet using the information provided in Claimant's invoice G-154. The CM tracked labor categories and rates for each laborer and the start and stop times for each day. Additionally, CM finds that the invoice shows each employee's rate as either straight time or overtime by the hour and day that the employee worked. Daily or hourly charges correspond between the Claimant's invoice and its rate sheet. Equipment costs reflect daily or hourly charges at rates indicated on PDS' rate-sheet. Material costs correspond to the type and quantity invoiced and the charges accurately reflect rates listed on PDS' rate-sheet. Additionally, the invoice shows discounted mobilization and restocking charges.

- The NPFC is able to verify each invoiced line item used for this incident and can calculate OPA compensable costs using the Claimant's rate-sheet.
- The CM's review of Claimant's invoice finds the daily activities correspond to the daily activities outlined in the USCG POL REP 1 for this incident.
- Claimant's invoice identifies each piece of equipment and material that it used daily. The NPFC finds that the invoice contains sufficient details of the daily response activities to support the uncompensated removal activities.

³ Claimant representative, Ms. [REDACTED] stated this fact in email to NPFC on December 19, 2013.

⁴ See USCG POLREP 1 and Closed

- Claimant submitted two signed waste manifests along with a copy of its check showing that this cost was incurred and payment was made accordingly. Claimant provided a billing invoice as proof of payment and a signed waste manifest from the receiving facility. Claimant invoiced disposal cost of \$2,750.00 for 165 gallons of waste liquid and six containers of solid waste material.

The NPFC denies the \$680.02 in charges associated with carrying charges of \$68.00 a month for 10 months due to non-payment by Mr. [REDACTED]. This expense is not an uncompensated removal cost and is therefore denied.

C. Determined Amount:

Based upon the foregoing, the NPFC finds PDS provided adequate documentation demonstrating that it incurred the costs and that these costs are based on fair and reasonable rates as reflected in the line items on its invoice along with waste disposal costs incurred and paid.⁵

On this basis, the Claims Manager hereby determines that the Claimant did incur \$4,539.80 in uncompensated removal costs and that this amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 914008-0001 in accordance with 33 CFR 136.203 & 205.

AMOUNT: \$4,539.86

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *1/29/14*

Supervisor Action: *Determination approved*

Supervisor's Comments:

⁵ See NPFC Spreadsheet attached