

CLAIM SUMMARY / DETERMINATION

Claim Number:	914014-0001
Claimant:	American Pollution Control, Corp. (AMPOL)
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$75,859.00

FACTS:

Oil Spill Incident

On May 29, 2013, Sector New Orleans received a mayday call from the vessel "Ricky B" as it was taking on water 40 miles south of Marsh Island. The Sector issued an Urgent Marine Information Broadcast (UMIB) and Good Samaritan boats "Miss Monica" and "Miss Kathy" responded. The Airborne ATC HC-144, CG AVTRACEN, launched and transferred a dewatering pump to the vessel, "Miss Kathy" however; once the pump was taken aboard the "Ricky B", the pump failed to operate due to water intrusion into the oil and fuel sumps. The "Ricky B" attempted to dewater using their installed bilge pumps with negative results. After the water in the engine compartment reached the top of the stairwell, the crew elected to seal the compartment and abandon the vessel. The Good Samaritan, "Miss Monica" embarked the three people from the vessel and transferred them to a manned rig, South Marsh Island 23G.

MSU Morgan City, Incident Management Division, (IMD) received information from the owners of the "Ricky B," Louisiana Marine Operations, (LMO) that American Pollution Control Corp's (Claimant, AMPOL) motor vessel, AMPOL RESPONDER was expected to be on scene around midnight on May 30 and that a crew boat would be leaving Freshwater City around 0700 on May 31 to conduct a salvage assessment.¹

The towing vessel, "Delta Force,"² initiated a tow of the "Ricky B." After establishment of the tow, UTV "Ricky B" was observed taking on water and sinking, with debris including eight empty 600 gallon fuel totes, four grocery boxes and two life rafts. "Delta Force" reported that the "Ricky B" was completely submerged but the "Delta Force" continued to tow the vessel. "Delta Force" slowed down and cut the tow and the "Ricky B" sank in 48 feet of water. 800 gallons of diesel fuel was reported to be remaining onboard.³

An AIRSTA NOLA over-flight revealed UTV "Ricky B" was completely submerged in 48 feet of water 24 NM southwest of Marsh Island, LA and some sheening was reported. An initial estimate of property damage was listed at or above \$500,000.00, classifying the case as a major marine casualty.⁴

¹ SITREP Activity # 4605619

² Owned by Crosby Tug, LLC

³ SITREP Activity# 4605619

⁴ *id*

On June 14, 2013, Laredo Construction, Inc. was hired as the salvor. On June 19, 2013, the vessel was delivered to Conrad Aluminum, in Amelia, LA.

Responsible Party

Mr. [REDACTED] Louisiana Marine Operations, owns the "Ricky B" and D&B Boat Rentals is the operator of the vessel and both are considered Responsible Parties (RPs). The RP's legal counsel is Mr. [REDACTED] from Duncan & Sevin, L.L.C. who represents the hull and P&I underwriters.

Claim

The Claimant, American Pollution Control Corp. (AMPOL) made presentment to D&B Boat Rentals via email to Mr. [REDACTED] Invoice 14613 in the amount of \$214,361.43, was presented to the RP on July 1, 2013. The RP paid \$164,624.51 of that invoice, leaving a remaining unpaid balance of \$49,736.92. Invoice 14668, in the amount of \$23,803.28, was presented to the RP on July 12, 2013 and invoice 14723, in the amount of \$2,318.80 was also presented on July 17, 2013.⁵

On June 14, 2013, Duncan & Sevin, L.L.C. sent AMPOL a letter that served as a formal demand stating that AMPOL was responsible for monitoring the "Ricky B" while the salvor mobilized on site, including maintaining a continual presence at the vessel and maintain lighted buoys around the vessel. The RP accused AMPOL of losing the line it had attached to the vessel on June 7, 2013 and that AMPOL had "abdicated" its duty and lost contact with the vessel and did not have a buoy on the vessel. In the letter, the RP holds AMPOL responsible for alleged additional expenses and/or further damage to the "Ricky B."⁶

On July 24, 2013, Duncan & Sevin, L.L.C. sent AMPOL a letter⁷ explaining that P&I Underwriters decline to reimburse AMPOL for AMPOL's invoices citing that the Claimant did not perform the duties assigned to it as outlined in the June 14, 2013 correspondence. The letter also states that if P&I Underwriters agree to pay for any AMPOL invoices, that P&I Underwriters will discount the payment by the amount the underwriters incurred for the "M/V Delta Force"⁸ to remain onsite as a result of AMPOL's alleged failure to mobilize timely. The RP also holds AMPOL responsible for a \$55,000.00 invoice from Laredo to the RP as a result of the alleged additional searching.⁹ It is the RP's position that the additional Laredo costs were incurred by the RP because the RP asserts that AMPOL failed to perform the work required of it.

On October 22, 2013, the RP sent AMPOL a letter asserting that the Claimant had not provided proof, to the RP, of the work performed by the Claimant and restates that AMPOL lost the line it had on the "Ricky B" and continues to hold AMPOL responsible for alleged additional expenses incurred as well as damages to the "Ricky B." This letter also states that AMPOL did not meet

⁵ 2014 04 15 Email from AMPOL to Claims Manager.

⁶ 2013 June 14 letter to AMPOL from Duncan & Sevin, L.L.C., signed by Mr. [REDACTED]

⁷ 2013 July 24 letter to AMPOL from Duncan & Sevin, L.L.C., signed by Mr. [REDACTED]

⁸ Owned by Crosby Tugs, LLC, See Dale Martin Offshore Invoice 1020, dated June 10, 2013.

⁹ See Laredo Construction Invoice # 113053174B, which is for \$52,000.00 and not \$55,000.00 as presented in Mr. [REDACTED]'s July 24, 2013 letter to AMPOL.

its contractual obligations owed to D&B and that AMPOL is not entitled to be compensated for its failure to do so.¹⁰

On January 2, 2014, AMPOL submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$75,859.00. On March 12, 2014, the NPFC sent an RP notification letter to D&B Boat Rentals. In response to the RP notification, the RP sent a letter¹¹ to the Claims Manager and stated that the \$164,629.51 paid by the RP was the amount found to be reasonable and properly owed to AMPOL.¹² The letter further states that D&B Boat Rentals and its underwriters, instituted suit against Crosby, C/A No. 13-5551 in the Eastern District of Louisiana. On April 24, 2014, the NPFC called Mr. [REDACTED] Counsel for D&B Boat Rentals, to confirm whether or not they have pending litigation against AMPOL and Mr. [REDACTED] confirmed that the litigation is between D&B Boat Rentals and Crosby.

The RP provided invoices¹³ and Central Maritime, L.L.C. Survey Report No. SK-13-01704 to demonstrate their argument.

Description of Removal Activities

On May 30, 2013, D&B Boat Rentals hired AMPOL to provide support and security in conjunction with oil pollution mitigation to the sinking of the "Ricky B." These duties continued via a verbal contract with the Responsible Parties until June 20, 2013.

While, AMPOL's personnel did work with the RP to develop a response strategy, AMPOL's primary role in the incident was to know the location of the "Ricky B" at all times and to provide a 24-hour secured perimeter around the sunken vessel. On day five of the response, the shrimp boat, "Lucky Dustin" tried to enter the secured area. AMPOL was able to mitigate the threat of another incident by keeping the "Lucky Dustin" and other vessel traffic out of the secured area.¹⁴

AMPOL provided two vessels, the AMPOL RECOVERY and the AMPOL RESPONDER, absorbent materials, containment boom, skimmers, and marker buoys with anchors. Also, AMPOL provided transport for the Inland Salvage divers and acted as their dive platform.¹⁵

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

¹⁰ 2013 October 22 letter to AMPOL from Duncan & Sevin, L.L.C., signed by Mr. [REDACTED]

¹¹ 2014 March 25 Letter from Duncan & Sevin, L.L.C, signed by Mr. [REDACTED] to Claims Manager, [REDACTED]

¹² *id*

¹³ Laredo Construction Invoice # 113053174A, # 113053174B, Dale Martin Offshore Invoice # 1020, and Iberia Marine Service, LLC invoice # 1739.

¹⁴ Day Five of AMPOL's Supervisor Logs dated June 3, 2013.

¹⁵ 2014 02 27 Email between LCDR [REDACTED] Chief of Response, MSU Morgan City to NPFC Claims Manager.

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. Findings of Facts

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
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 period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. Claimant properly presented the claim to the responsible party, who denied full payment.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and has 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 under OPA and 33 CFR § 136.205 as set forth below.

B. Analyses

Responsible Party’s Argument

In a letter directed to the NPFC Claims Manager, the RP asserts that the reason for denying AMPOL’s invoices is a result of AMPOL breaching its agreement with D&B Boats.¹⁶ In the letter, the RP explains that AMPOL was late arriving on-scene which resulted in D&B having to hire another vessel at a cost of \$21,000.00 to monitor the “Ricky B.”¹⁷

The RP further explained in his letter that AMPOL was expected to stand by the “Ricky B” until the salvor, Laredo, arrived to raise the vessel. The RP asserts that Laredo arrived on scene on June 14, 2013 at 1400 to find that the M/V AMPOL RESPONDER was not at the site of the wreck, and was moored to a rig three miles away.¹⁸

Further, the RP argues that AMPOL was not at the site of the sunken vessel from June 7 through June 14 which resulted in D&B incurring an additional \$55,000.00 in costs from Laredo for the alleged extra time it took to search for the sunken vessel. The RP argues that the additional costs

¹⁶ 2014 03 25 Duncan & Sevin letter.

¹⁷ *id*

¹⁸ *id*

would not have been incurred had AMPOL complied with its obligations to D&B and that the AMPOL invoices in the amount of \$75,859.00 were properly rejected.¹⁹

AMPOL's Arrival Time

The RP provided Crosby Tugs, LLC vessel logs to support his argument and states in an email²⁰ that AMPOL did not arrive until 1800 on May 31. However, the vessel logs provide that AMPOL RESPONDER arrived at 1730 on May 31, 2013. Crosby Tugs vessel, DELTA FORCE released at 1800.

AMPOL's Daily Supervisor Log²¹ dated Thursday May 30, 2013 (Day 1) at 1032; AMPOL received a call from the RP to respond to the "Ricky B" incident. The Supervisor Logs demonstrate that the Claimant immediately began to mobilize their personnel and equipment, to include the AMPOL RESPONDER. The Supervisor Log dated May 31, 2013 (Day 2) provides that the AMPOL RESPONDER arrived onsite of the sunken vessel at 1730. At 1842 on May 31, AMPOL deployed anchors and buoys and hooked onto the vessel.²²

June 1, 2013 (Day 3), at 1115, AMPOL RECOVERY, arrived on-scene and hooked onto the vessel and prepared it for tow. At 1700, the AMPOL RECOVERY hooked back up to the ropes and provided security and was ready to deploy containment boom and skimmers in the event of a spill.

The RP disputes that AMPOL was billing to stand by at Fresh Water City from 2030 on May 30 until 1300 on May 31 and invoiced D&B Boat Rentals for that time.²³ The Supervisor Logs demonstrate that on May 30 at 1900, AMPOL personnel were mobilizing and at 2019 the AMPOL arrived at the Martin Docks and they began loading the AMPOL RESPONDER with their equipment. At 2330, the AMPOL RESPONDER was completely loaded and their equipment was secure.²⁴ The RP does not agree with AMPOL for billing D&B Boats for mobilization time. Based on AMPOL's rate schedule²⁵ at page 1 of 4, all personnel and equipment charges are from shop to shop per occurrence. Therefore, the NPFC has determined that it is reasonable that AMPOL would begin billing the Responsible Party immediately at the start of mobilization.

AMPOL's Location

The RP alleges that AMPOL was not at the site of the sunken vessel from June 7 through June 14, 2013.

AMPOL's Daily Supervisor Logs provide that on Day 8, June 6, 2013 at 2320 severe weather conditions were expected and AMPOL thought it prudent to unhook their vessel from the "Ricky

¹⁹ 2014 25 03 Letter to Claims Manager, [REDACTED] from Duncan 7 Sevin, L.L.C.

²⁰ 2014 04 09 Email string between Mr. [REDACTED] and NPFC Claims Manager, [REDACTED]

²¹ American Pollution Control, Corp. Daily Supervisor Log dated 5/30/2013 through June 17, 2013, provided by Claimant.

²² See, AMPOL Supervisor log Day 2.

²³ 2014 04 09 Email string between [REDACTED] and M [REDACTED]

²⁴ See, AMPOL Supervisor's Log.

²⁵ See, AMPOL's 2012 Schedule of Rates.

B.” At 2430, the weather conditions worsened and at 0115, AMPOL headed to Freshwater City until the weather improved.

On Day 9, June 7, 2013 at 0500, AMPOL arrived in Freshwater City where they changed out the crew and obtained more supplies. At 1152, AMPOL was on location and at 1430 they reported sheen but no recoverable product. At 1830, AMPOL continued to provide security.

On Day 10, June 8, 2013, AMPOL was standing-by and prepared for more bad weather. The SITREP provides that the AMPOL RECOVERY reported that the plugs that were installed by the dive crew were working and no sheen had been observed since the plugs were installed.

On Days 11 through 15, AMPOL continued to provide security.

On Day 16, June 14, 2013, at 0630, AMPOL made contact with the jack-up barge, “The Grand,” and assisted with putting them on location. At 0715, Laredo was on scene surveying the wreck. AMPOL went out a half mile while the dive operation was taking place. At 1030, the “Grand” reported that they were unable to locate the vessel. At 1205, AMPOL received word from the “Grand” that the coordinates provided by Captain Mike Dunn assisted Laredo in finding the wreck. At 1939, severe weather conditions were expected.

Invoices

The NPFC Claims Manager 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 costs were adequately documented and reasonable.

Invoice# 14613

This invoice was for Personnel, Equipment,²⁶ Mileage, and third party costs in the initial amount of \$214,361.43 from May 30, 2013 through June 20, 2013. However, the RP paid \$164,624.51 and denied the remaining \$49,736.92 based on the aforementioned arguments.

The NPFC Claims Manager provided a line by line adjudication for the entire invoice because the RP’s onetime payment did not provide what dates or costs were included in said payment. The NPFC approved the invoice in its entirety then subtracted the RP’s payment. The NPFC found the balance of \$49,736.92 to be reasonable, necessary and in accordance with the NCP and payable by the OSLTF, based on the rate schedule, proof of payment for third party charges, and the daily tickets provided by the Claimant.

Invoice# 14668

This invoice is for Personnel, Equipment, and third party costs, in the amount of \$23,803.28 from June 5, 2013 through June 10, 2013. The RP denied this invoice citing that P&I

²⁶ The AMPOL RESPONDER costs were listed under equipment.

Underwriters hold AMPOL responsible for the crew change for the M/V AMPOL RESPONDER.²⁷

The NPFC approved this invoice based on the rate schedule, daily tickets, and proof of payment for the third party charges provided by the Claimant.

Invoice# 14723

AMPOL provided invoice 14723 in the amount of \$2,318.80. This invoice is for demobilization and to lift AMPOL's off shore response equipment off of the AMPOL RESPONDER. Some of the gear was welded to the deck of the AMPOL RESPONDER in order to keep it secure at sea. A crane was used to lift the equipment so it could be transported back to the AMPOL warehouse.²⁸ The RP denied this invoice based on the aforementioned arguments.

The NPFC found this invoice to be reasonable, necessary and in accordance with the NCP and approved the invoice in the amount of \$2,318.80 based on the Claimant's rate schedule and proof of payment.

The NPFC performed a review of all the costs presented for the invoices presented with this claim and has determined that the rates charged were in accordance with the established rate schedule and that the actions taken by all parties responding to the incident were determined by the NPFC to be consistent with the National Contingency Plan (NCP). On that basis, the Claims Manager determines that the NPFC will offer \$75,859.00.

Determined Amount:

The NPFC hereby determines that the OSLTF will offer **\$75,859.00** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 914014-0001. 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: **4/29/14**

Supervisor Action: ***Approved***

Supervisor's Comments:

²⁷ 2013 07 24 Duncan & Sevin letter.

²⁸ See email dated 2014 03 12 from Claimant explaining these charges. Also see A&M Dockside Repair, Inc. invoices. This invoice is for cost and 10% markup based on the AMPOL rate schedule. See check # 52344.