

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N14006-0001
Claimant	: Water Quality Insurance Syndicate
Type of Claimant	: Corporate
Type of Claim	: Limit of Liability/Removal
Claim Manager	: ██████████
Amount Requested:	\$1,402,236.99

INCIDENT:

On November 22, 2013, the STEPHEN L. COLBY departed St. Louis, Missouri, transiting northbound light (without a tow) on the Upper Mississippi River (UMR). It was headed to Clinton, Iowa to pick up 15 dry cargo barges.¹ Nine crewmembers were on board.² On November 23, the vessel took on fuel and lube oil, resulting in a total of 92,120 gallons of oil on board.³ The recorded draft readings on the bow and stern were both nine feet.⁴

At approximately 1100 CST on November 25, 2013, the Pilot/Mate ██████████ relieved the navigational watch from the Master.⁵ At about 1515; the vessel arrived in the lock chamber at Lock 14 and completed the lockage at 1540 along with another towing vessel, the UTV AARON F. BARRETT. The STEPHEN L. COLBY exited the lock first. Mate ██████████ attests to operating the UTV STEPHEN L. COLBY between 6.2 and 6.3 mph at the time.⁶ At approximately 1555, as the vessel was navigating in Pool 14, Pilot ██████████ heard a scrape and felt a shudder throughout the vessel. He sent his Chief Engineer to investigate. The Chief Engineer observed water rushing into the engine room.⁷ With water rushing into the pump room and the engine room at an uncontrollable rate, Pilot ██████████ notified the Coast Guard on VHF Radio that the vessel was taking on water and that they were abandoning ship. He then intentionally grounded the vessel on the right descending bank of the UMR.⁸ The vessel eventually came to rest on the river bottom in about 20 feet of water with two-thirds of the vessel

¹ See summary of interview between Mr. ██████████ and LTJG ██████████ dated 27 Nov 2013, MISLE Case 4759481, Exhibit MBL-006.

² See UTV STEPHEN L. COLBY Crew List dated 25 Nov 2013, MISLE Case 4759481, Exhibit MBL-012.

³ See receipt for the purchase of 41,520 gallons of #2 diesel fuel from Economy Boat Store to Marquette Transportation Company dated 23 Nov 2013, MISLE Case 4759481, Exhibit MBL-026. See also receipt for the purchase of 400 gallons of lube oil from Chevron Products Co. to Marquette Transportation Company dated 23 Nov 2013, MISLE Case 4759481, Exhibit MBL-025. See also UTV STEPHEN L. COLBY Daily Engine Room Log dated 23 Nov 2013, MISLE Case 4759481, Exhibit MBL-024.

⁴ See CG Report of Marine Casualty (CG-2692) dated 29 Nov 2013, MISLE Case 4759481, Exhibit MBL-002.

⁵ See summary of interview between Mr. ██████████ and LTJG ██████████, MSD Quad Cities dated 27 Nov 2013, MISLE Case 4759481, Exhibit MBL-006. See also 96 Hour Work/Rest History for Mr. ██████████ for dates 21 – 25 Nov 2013, MISLE Case 4759481, Exhibit MBL-015.

⁶ See summary of interview between Mr. ██████████ and LTJG ██████████, MSD Quad Cities dated 27 Nov 2013, MISLE Case 4759481, Exhibit MBL-006.

⁷ See summary of interview between Mr. ██████████ and LTJG ██████████, MSD Quad Cities dated 27 Nov 2013, MISLE Case 4759481, Exhibit MBL-006. See also witness statement prepared by Mr. ██████████ dated 26 Nov 2013, MISLE Case 4759481, Exhibit MBL-007.

⁸ See summary of interview between Mr. ██████████ and LTJG ██████████, MSD Quad Cities dated 27 Nov 2013, MISLE Case 4759481, Exhibit MBL-006. See also witness statement prepared by Mr. ██████████ dated 26 Nov 2013, MISLE Case 4759481, Exhibit MBL-007. See also witness statement of Mr. ██████████, Pilot onboard the UTV AARON F. BARRETT dated 3 Dec 2013, MISLE Case 4759481, Exhibit MBL-018.

submerged in the vicinity of Mile Marker (MM) 496.2, LeClaire, Iowa. The vessel discharged approximately 62,000 gallons of diesel fuel and lube oil into the river, a navigable waterway of the United States.⁹

Coast Guard Sector Upper Mississippi River and Marine Safety Detachment (MSD) Quad Cities responded to the incident and provided oversight of the spill cleanup. Marquette Transportation Company, as owner and operator of the UTV STEPHEN L. COLBY, is the responsible party for the oil-pollution incident under OPA.

THE CLAIMANT AND THE CLAIM:

The Claimant is the Water Quality Insurance Syndicate (WQIS or Claimant). WQIS is the subrogated insurer of the Uninspected Towing Vessel (UTV) STEPHEN L. COLBY and Marquette Transportation Company, the owner and operator of the vessel. On July 17, 2015, WQIS submitted a limit of liability claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund), claiming oil pollution removal costs in the amount of \$1,402,236.99 (Removal costs of \$2,256,636.99 allegedly spent minus the \$854,400.00 liability limit), incurred as a result of an oil-pollution incident under the Oil Pollution Act of 1990 (OPA).¹⁰ On May 24, 2016, the NPFC upheld the Claimant's limitation on liability.¹¹ This determination will focus on the OPA allowable pollution removal costs incurred by the Claimant during their response to the oil spill from the COLBY.

DESCRIPTION OF REMOVAL ACTIVITIES:

On November 25, 2013, the LeClaire Fire Department responded to the grounding of the COLBY by deploying 1300 feet of hard boom and 1000 feet of sorbent boom around the sunken vessel. ES& H Consulting, as the primary oil spill response organization (OSRO) and designated Qualified Individual (QI) for the vessel responded and subcontracted Enviromark, Emergency Management Services (EMS) and SWS Environmental Services (SWS) to assist with the oil spill response operations. An additional 2000 feet of containment boom and 2000 feet of sorbent boom were placed down river in an effort to collect oil escaping from the containment boom surrounding the sunken vessel. Vacuum trucks and response vessels with skimmers were deployed for on water recovery operations. Divers were deployed to plug fuel vents on the sunken vessel and the Coast Guard closed the Upper Mississippi River from MM 493 to MM 591.¹²

Between November 26 – November 28, 2013, CG Sector Upper Mississippi River re-opened the Mississippi River from MM 493-MM591 after a hydrographic survey conducted by the US Army Corp of Engineers failed to reveal any unknown obstructions in the river.¹³ Another 4000 feet of containment boom was placed down river of the sunken vessel and additional response vessels with skimmers were brought on-scene to assist with on water recovery efforts. Ribbons

⁹ See CG POLREP 7 dated 4 Dec 2013.

¹⁰ See OSLTF Claim Form dated July 10, 2015. Total removal costs paid by claimant were \$2,256,636.99. The vessel's gross tonnage is 597. At the time of the incident the statutory limit on liability for this vessel was \$1,000 per gross ton (\$597,000) or \$854,400, whichever is greater. 33 C.F.R. 138.230(a)(5).

¹¹ See NPFC Limit of Liability Determination to WQIS dated May 24, 2016.

¹² See CG POLREP 1 dated November 27, 2013.

¹³ See CG POLREP 2 dated November 28, 2013.

of unrecoverable oil were reported as far as one mile south of the sunken vessel. A lightering barge was brought alongside the COLBY and lightering operations began with oversight of the CG National Strike Team personnel. OSROs continued their on water oil skimming operations and reported to recovering approximately 25,800 gallons of an oily water mix to date.¹⁴

On November 29, 2013, lightering operations on the COLBY were completed. Contractors estimated to recovering approximately 20,500 gallons of oil/diesel fuel from the sunken vessel. Approximately 4333 gallons of diesel fuel and lube oil were left on-board the vessel for the eventual transit to a shipyard for permanent repair.¹⁵ Salvage equipment arrived on-scene and CG Upper Sector Mississippi River required OSROs to remain on-scene for the duration of the salvage. With cold temperatures and overnight ice formations anticipated in the forecast, empty hopper barges were placed upriver of the sunken vessel to act as an ice sheering fence to protect the oil containment boom. Boom tending and on water oil recovery continued with OSROs reported to recovering approximately 39,800 gallons of an oily water mix to date.¹⁶

Between November 30 – December 1, 2013, salvage operation began with an A frame barge brought into place alongside the sunken vessel and a lifting cable secured in location by divers. Two of the four OSROs were released by Marquette. Containment boom was reduced to 3100 feet but skimmers and vacuum trucks continued on water recovery operations. OSROs reported to recovering approximately 49,600 gallons of oily water to date.¹⁷

Between December 2 – December 11, 2013, salvage operations continued with additional lifting cables secured in location by divers. A 2nd A frame barge was brought alongside the COLBY to assist in the lifting of the sunken vessel. Windows were boarded and dewatering of ballast tanks and voids commenced. Once empty, salvage hatch covers were installed on all fuel and ballast tanks and dewatering was commenced in the engine room, pump room and steering gear room. Boom tending and on water oil recovery continued. On water oil recovery descriptions were changed as OSROs were reported to recovering 38,000 gallons of oil and 142 cubic yards of oiled sorbent material to date.¹⁸¹⁹²⁰²¹

On December 12, 2013 the COLBY was re-floated with 4,333 gallons of diesel fuel still on-board and towed to a dry dock in Wood River, IL for permanent repairs. Boom tending and on water oil recovery concluded with OSROs demobilizing their crew and equipment and reporting to recovering a total of 38,910 gallons of oil and 255 cubic yards of oiled absorbent material (for a total of 65,630 gallons of oil) from the Mississippi River.²²

APPLICABLE LAW:

In general, OPA provides that “...each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the

¹⁴ See CG POLREP 3 dated November 29, 2013.

¹⁵ See CG POLREP 9 (Final) dated December 12, 2013.

¹⁶ See CG POLREP 4 dated November 30, 2013.

¹⁷ See CG POLREP 5 dated December 1, 2013.

¹⁸ See CG POLREP 6 dated December 2, 2013.

¹⁹ See CG POLREP 7 dated December 4, 2013.

²⁰ See CG POLREP 8 dated December 6, 2013.

²¹ See CG POLREP 9 (Final) dated December 12, 2013.

²² See CG POLREP 9 (Final) dated December 12, 2013.

navigable waters or adjoining shorelines...is liable for the removal costs and damages... that result from such incident.” 33 U.S.C. § 2702(a).

"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. LTJG [REDACTED], CG MSD Quad Cities, as the Federal On-Scene Coordinator Representative (FOSCR) for this incident, determined that the actions undertaken by Marquette Transportation were consistent 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 the 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. 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 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 to be consistent with the NCP, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of these costs incurred by the Claimant were reasonable and necessary to mitigate the effects of the incident. Specifically, the NPFC adjudicated all of the approved oil pollution removal costs in the amount of \$2,256,636.99 and determined that \$106,300.65 of these costs were not OPA compensable. The NPFC removed the non OPA compensable costs from the claimed amount leaving an approved amount of \$2,150,336.34. The NPFC then removed the vessel’s liability limit of \$854,400.00 from the approved amount leaving a final approved amount of \$1,295,936.34. As such, the NPFC has determined that \$1,295,936.34 of claimed costs are OPA compensable.

All denied amounts as identified in Enclosure (3) to this determination are itemized in the attached spreadsheet and summarized as follows below:

1. SWS personnel and equipment billed as on-scene but not supported;
2. Living Land and Water’s excessive and unsupported personnel costs;
3. MAGI’s response costs to an oil spill not associated with this claim;

4. Lack of information from Marquette documenting the movement of the JACOB M. ECKSTEIN;
5. Lack of documentation supporting mileage and delivery costs for Riverboat Dive Store;
6. Excessive or unexplained charges by Altofer;
7. Excessive or unexplained charges by Sunbelt Rentals;
8. The lack of published rates for Teds Boatarama;
9. The lack of published rates and breakdown of personnel and equipment costs for B & B Services;
10. Unexplained fleeting and mobilization costs for Upper Mississippi Fleeting;
11. Environmental Management Services personnel billed as on-scene but not supported;
12. Environmental Restoration personnel billed as on-scene but not supported;
13. The lack of published rates by ES & H. In addition, personnel costs for activities not associated with OPA allowable pollution removal activities;
14. LeClaire Fire Department personnel on-scene long after lightering operations and billed without explanation;
15. Duplicate LeClaire Public Works support costs associated with the rental of barricades, purchase of rock salt and lighting;
16. The lack of published rates for Enviromark. In addition, personnel and equipment billed as on-scene but not supported.

The NPFC therefore determines that the OSLTF will offer \$1,295,936.34 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N14006-0001. 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.

AMOUNT: \$1,295,936.34

Claim Supervisor:  

Date of Supervisor's Review: *May 26, 2016*

Supervisor Action: *Approved*

Supervisor's Comments: