

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	917006-0001
<b>Claimant:</b>	ECM Maritime Services, LLC
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$3,989.66

### FACTS:

**Oil Spill Incident:** On October 08, 2016, ECM Maritime Services, LLC (ECM) was notified by M/V Buena Ventura of a sheen of oil spotted on the waters at the Weyerhaeuser Salt Dock in Longview, Washington. The oil spill impacted the Columbia River, a navigable waterway of the United States. ECM contacted Maritime Fire & Safety Association (MFSA) for site assessment and monitoring, who in response contacted Clean Rivers Cooperative, Inc. (CRC) for response management services. CRC responded along with USCG Sector Columbia River personnel, who were sent to evaluate the spill and conduct an investigation. The investigation conducted did not reveal the source of the oil spill.<sup>1</sup>

**Description of Removal Activities for this claimant:** CRC contacted NRC Environmental Services, Inc. (NRCES) to assist in response management services. CRC and NRCES released equipment and personnel to contain the oil sheen. Further on-water surveying conducted by CRC saw no oil sheen on the water and it was then determined that no further oil spill was likely.<sup>2</sup>

**The Claim:** On January 18, 2017, ECM Maritime Services, LLC submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$3,989.66.<sup>3</sup>

### 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

<sup>1</sup> See ECM Maritime Services, LLC Claim Package dated January 05, 2017.

<sup>2</sup> See Incident Briefing ICS 201-OS.

<sup>3</sup> See ECM Maritime Services, LLC Claim Package dated January 05, 2017.

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. MSTC ██████████ of USCG Sector Columbia River provided FOSC coordination 33 U.S.C § 2702(b)(1)(B) and 2712(a)(4)<sup>4</sup>;

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<sup>4</sup> See Email sent by Chief ██████████ to Claims Manager ██████████, dated January 17, 2017.

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 the need for a copy of the CRC contract with NRCES supporting any/all costs paid by the Claimant to CRC for NRCES activity and/or stipulation, and the need for a NRCES Rate Schedule supporting the costs paid by the Claimant to CRC for NRCES personnel. The claimant was emailed the additional information request by the NPFC Claims Manager, and provided two extensions on the due date for additional information requested<sup>5</sup>. Claimant failed to provide contractual agreement between CRC and NRCES, making NRCES subcontractor fees ineligible for payment under OPA and 33 CFR § 136.209. Claimant provided a Rate Schedule for NRCES whose costs did not support the costs paid by the Claimant. NPFC used costs supported by the NRCES Rate Schedule provided by the Claimant to make decisions for approval and denial for costs paid by the Claimant to CRC for NRCES personnel.

***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 in accordance with the NPFC delegation of authority for determination of consistency, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination are OPA compensable based on the supporting documentation provided. The NPFC has determined that \$3,420.41 is supported by the record and fully documented. The NPFC has denied the following amounts:

**Denied Items:**

1. Costs paid to CRC for NRCES Project Manager [REDACTED] in the amount of \$150.00/hour, was approved for \$125.00/hour as supported by the NRCES Rate Schedule provided by the Claimant. As such, all amounts invoiced in excess of \$125.00 hr are denied as not supported by the record;
2. Costs paid to CRC for NRCES Vessel Operator [REDACTED] in the amount of \$48.00 hour, was approved as supported by the NRCES Rate Schedule provided by the Claimant. As such, all amounts invoiced in excess of \$48.00 hr are denied as not supported by the record;
3. Costs paid to CRC for NRCES Deckhand [REDACTED] in the amount of \$45.00 hour, was approved as supported by the NRCES Rate Schedule provided by the Claimant. As such, all amounts invoiced in excess of \$45.00 hr are denied as not supported by the record;

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<sup>5</sup> See Emails sent by NPFC Claims Manager [REDACTED] to Mr. [REDACTED] and Mr. [REDACTED] titled 2017 01 18 Claim 917006-0001 Additional Information Request.



4. The 15% NRCES Subcontractor Fee paid to CRC in the amount of \$200.12 is denied in its entirety as no supporting evidence was provided to support any/all stipulations comparative to NRCES costs.

It is important to note that the Claimant only provided a portion of the NRCES rate schedule and as such, any terms and/or conditions that describe allowances for increased pricing and/or markup were not provided and as such, the NPFC is denying anything not supported by the rate schedule in place at the time services were rendered. Should the Claimant decide to request reconsideration of any denied amounts, it **MUST** provide a complete copy of the rate schedule that provides for the amounts being claimed.

**Overall Denied Costs** = \$569.25<sup>6</sup>

The NPFC hereby determines that the OSLTF will pay \$3,420.41 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916007-0001. 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: \$3,420.41**

<p> Claim Supervisor:  Date of Supervisor's review: <i>2/24/17</i> Supervisor Action: <i>Approved</i> Supervisor's Comments:</p>
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<sup>6</sup> See Claim 917006-0001 ECM Maritime Spreadsheet for specifics regarding the amounts approved and denied by the NPFC.