

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 917008-0001
Claimant	: Alpha Omega Training and Compliance Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$37,545.50

**FACTS:**

**1. Oil Spill Incident:** On October 8, 2016, Alpha Omega Training and Compliance Inc. (“AOTC”) states that the P/C Zubarleen took on water during Hurricane Matthew and was partially submerged. Water started entering the fuel tanks, pushing fuel into the Banana River Marina located in Merritt Island, FL. Approximately 500 gallons of off road diesel were on the vessel prior to it submerging. The Banana River drains directly into the Atlantic Ocean, both of which are navigable waterways of the US.

This incident was reported to the National Response Center via incident #1173737.<sup>1</sup>

**2. Description of removal actions performed:** On October 8, 2016, the Claimant, AOTC, arrived on the scene with a vacuum truck and performed an assessment of the spill. Boom had already been placed around the vessel to help contain the spill at the marina. AOTC deployed pads and boom into the water to begin cleanup activities where fuel was not heavily present. AOTC started pumping petroleum off the surface of the water until it became too dark to work. AOTC informed the RP that they would return in the morning with a full crew and resume cleanup activities.

The following day, AOTC deployed additional hard boom to secure the area and ensure no petroleum product would reach the Banana River. AOTC continued to skim and pad and boom the water until all heavy petroleum product had been removed. AOTC had 3800 gallons of petroleum impacted water. AOTC also had nineteen (19) drums of petroleum contaminated pads and boom, which was to be disposed.

AOTC finished clean up on October 13, 2016, having hand dug along the river to cleanup potential contaminated soil, working the areas within the right of way. Neighbors along the street were concerned that their yards had been potentially contaminated. By October 13, 2016, the final load of petroleum impacted water was delivered to the disposal facility. AOTC removed hard boom from the marina on October 17, 2016 and the cleanup was deemed complete.

**3. Responsible Party:** The owner of the P/C Zubarleen is Mr. ██████████. Mr. ██████████ was on scene during the pollution removal activities. Mr. ██████████ was issued an RP

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<sup>1</sup> See, NRC Report # 1173737, dated 3/21/2017.

notification letter by the NPFC dated March 2, 2017, notifying him of the subject claim with AOTC.<sup>2</sup>

Mr. [REDACTED] subsequently responded to the NPFC by letter dated March 13, 2017. Mr. [REDACTED] writes, "My vessel also my home and residence sank due to storm surge from hurricane Mathew in October 2016, at that time because the vessel was my residence all my belongings were lost or destroyed." Mr. [REDACTED] further states, "the EPA representative and [REDACTED] from alpha omega had me convinced the fee was covered by the national disaster fund and FEMA . . . At this point I was agreeing with whatever the EPA, and alpha omega said I was only trying to help with this disaster . . . Again, I have never signed any agreement nor authorized any action on any of the multiple vessels that sank that day in the marina or surrounding area . . . I do not believe I am solely responsible for all the fuel in the marina and surrounding area during the national disaster of hurricane Mathew."<sup>3</sup>

Lastly, Mr. [REDACTED] asserts that "\$37,545.50 is a gross exaggeration of a small vessel clean-up of less than 300 gallons of fuel, and a great example of price gouging. . ."

In response to Mr. [REDACTED] assertion that he "never signed any agreement nor authorized any action," AOTC states, "We were hired by the client [REDACTED] owner of the vessel Zubarleen. FDEP was on site and gave the RP a list of contractors to call and he called Alpha Omega to respond to the spill."

#### **THE CLAIMANT AND THE CLAIM:**

On March 1, 2017, AOTC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its removal costs in the amount of \$37,545.50 for the services provided from October 8-17, 2016. 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 with the claim.

#### **APPLICABLE LAW:**

Under the Oil Pollution Act of 1990 (OPA 90), 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for the removal costs and damages described in 33 USC § 2702(b) that result from the incident. The responsible party's liability includes the "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".

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<sup>2</sup> See, NPFC RP notification letter to Mr. [REDACTED], dated 3/2/ 2017.

<sup>3</sup> See, letter from Mr. [REDACTED], RP, to [REDACTED], USCG NPFC dated 3/13/2017.

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 at 33 USC § 2701(31) 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].

Under 33 USC §2713(a), all claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party or guarantor of the designated source of the incident. Then, as provided in 33 U.S.C. §2713(d), “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 Director, 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.”

In addition, 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. The Claimant's removal actions were coordinated with the FOSC via USCG MSD Port Canaveral.<sup>4</sup> 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. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
4. A Responsible Party has been identified, but has denied responsibility for the costs as presented.<sup>5</sup> 33 U.S.C. § 2701(32);
5. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs;
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and additional documentation provided by USCG IMD Port Canaveral (FOSC) and the NPFC has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

### **B. Analysis:**

The NPFC Claims Division (CA) reviewed the cost invoices and dailies submitted by the Claimant to determine whether the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA 90 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 were reasonable and necessary.

The Claimant, Alpha Omega Training and Compliance Inc., submitted a claim that demonstrates that the actions performed by AOTC were removal actions and the work performed by AOTC in fact mitigated the effects of the oil spill that was discharged into the Banana River, a navigable waterway of the US. Additionally, the USCG MSD Port Canaveral FOSC confirmed the actions claimed were performed by the Claimant in response to this incident and determined that all of the Claimant's response actions were consistent with the National Contingency Plan (NCP).

Upon adjudication of the claim, the NPFC verified that the rates charged were billed to the RP in accordance with AOTC's published rates. As such, the NPFC has determined which, of the amounts invoiced and paid, were reasonable.

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<sup>4</sup> See, Email from PO [REDACTED], USCG, to Ms. [REDACTED], NPFC, dated 4/21/2017.

<sup>5</sup> See, letter from Mr. [REDACTED] to the NPFC, dated 3/13/2017.

Based on a review of all the supporting documentation and incident information, the Claims Manager has determined that the Claimant did in fact incur \$37,207.99 in uncompensated removal costs that were reasonable and necessary, and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #917008-0001. Those costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for removal actions by the claimant from October 8-17, 2016 that are consistent with the NCP.

Based on billing errors on the part of the Claimant for the liquid disposal costs, \$337.51 in claimed costs are hereby denied as not supported by the rate schedule. It is important to note that the Claims Manager and Claims Supervisor both made several requests for additional information from Florida Department of Environmental Protection (FL DEP) but never received any of the requested information at the time of this writing. Based on a preponderance of the evidence and after the fact FOOSC coordination, the NPFC has determined that \$37,207.99 is OPA compensable.

It is also important to note that the Claimant's OSLTF Claim Form indicated that the account had been forwarded to collections and that also a lawyer was reviewing the case to determine whether or not a lien could be filed.<sup>6</sup> The NPFC followed up and contacted the Claimant on May 8, 2017 and inquired as to what the status was with respect to the lien and collections.<sup>7</sup> The claimant responded to the NPFC via email on May 19, 2017 and advised that no lien has been filed and no action has been taken to initiate a legal action against the RP in this case.<sup>8</sup>

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$37,207.99 as full compensation for the claimed reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 917008-0001. All such costs were incurred by the Claimant for removal actions as that term is defined in OPA 90 and, are compensable removal costs, payable by the OSLTF as presented by the Claimant. The denied costs total \$337.51.

**AMOUNT: \$37,207.99**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/24/17*

Supervisor Action: *Approved*

Supervisor's Comments:

<sup>6</sup> See, OSLTF Claim Form dated 2/20/17, item #7.

<sup>7</sup> See, May 8, 2017 email from [REDACTED] to [REDACTED].

<sup>8</sup> See, May 19, 2017 email from [REDACTED] to [REDACTED] regarding legal status update.