

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 917021-0001
Claimant	: American Commercial Barge Line LLC
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$14,519.42

**FACTS:**

**1. Oil Spill Incident:** The United States Coast Guard Sector New Orleans reports<sup>2</sup> that on April 6, 2015, the M/V PRIVOCEAN (751 ft bulk carrier) broke free from her mooring at Mile Marker 150 on the Mississippi River (a navigable waterway of the US), drifted across the river striking the UTV TEXAS which was moored. The PRIVOCEAN then started drifting down river and also struck the M/V BRAVO (816.9 foot tank ship), which was discharging heavy fuel oil at the time of the incident. The BRAVO was able to secure discharging operations before breaking free from her moorings.

An estimated 10 bbls of pollution entered the waterway from a severed transfer hose. The Ergon Facility, where the M/V BRAVO was conducting discharging operations, was ultimately shut in, boomed off, and the damage it sustained has since been classified as a major marine casualty.<sup>3</sup>

This incident was reported to the National Response Center via incident #1112742.<sup>4</sup> The Responsible Party (RP) for this incident has been identified as the facility, Ergon-St. James Inc. The NPFC issued an RP Notification Letter to the Facility dated June 2, 2017.<sup>5</sup> To date, no response has been received from the facility in response to its notification letter.

**Description of removal actions performed:** The Claimant, ACBL, has a facility at mile marker 150 on the Lower Mississippi River, which was impacted by the oil spill. ACBL hired a spill management company, Forefront Emergency Services (Forefront), and ES&H who handled cleanup and removal activities.

Forefront personnel ensured the observed sheen did not originate from ACL property and contracted ES&H Consulting Services, Inc. (ES&H)(the Oil Spill Response Organization ) to respond to the Vacherie location. Mr. [REDACTED] with Forefront mobilized with ES&H to assist with documentation and place protective boom to safeguard the fleet from the oil in the water.

<sup>1</sup> See, Email from [REDACTED], ACBL, to [REDACTED], NPFC dated June 9, 2017 amending sum certain to \$7,798.42.

<sup>2</sup> See, USCG Sector New Orleans Case Report # 721673, opened 4/06/2015.

<sup>3</sup> See, MISLE Activity # 5097966, Incident Summary, Update 01, page 2 of 191.

<sup>4</sup> See, NRC Report # 1112742, dated 4/06/2015.

<sup>5</sup> See, NPFC RP Notification letter dated June 9, 2017.

**THE CLAIMANT AND THE CLAIM:**

On May 25, 2017, ACBL submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$14,519.42 for services provided from April 6 through April 12, 2015. This claim is for removal costs based on the rate schedule in place at the time services were provided. On June 9, 2017, the amended its sum certain to \$7,798.42.<sup>6</sup>

**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".

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

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<sup>6</sup> See, Email from [REDACTED], ACBL, to [REDACTED], NPFC dated June 9, 2017 amending sum certain to \$7,798.42.

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. LT [REDACTED], USCG Sector New Orleans, as the Federal On-Scene Coordinator (FOSC) for this incident, determined that the actions undertaken by American Commercial Barge Line (ACBL) and its response contractors, were consistent with the NCP for the payment of uncompensated removal costs 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. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1);
4. A Responsible Party has been identified, but, to date, has not paid the costs associated with this claim. 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 has determined that the majority of costs 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, American Commercial Barge Lines, submitted a well-documented claim to demonstrate that the actions it performed were OPA 90 removal actions, and that the work performed mitigated the effects of the oil spill that was discharged into the lower Mississippi River, a navigable waterway of the US. Upon review of the Coast Guard Case file for this incident, the USCG Sector New Orleans FOSC confirmed in its spill investigation report<sup>7</sup> that the actions performed by the Claimant and its subcontractors in response to this incident were consistent with the National Contingency Plan. Upon adjudication of the claim, the NPFC verified that the rates charged were billed to the RP in accordance with the published rates for both the Claimant’s contractor and its subcontractor. As such, the NPFC has determined which, of the amounts invoiced and paid, were reasonable.<sup>8</sup>

Based on a review of all the supporting documentation and incident information, the Claims Manager determined that the Claimant incurred \$7,288.00 in costs that were reasonable and necessary, and the 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 #917021-0001. Those costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for removal actions by the claimant April 6 through April 10, 2015 that are consistent with the NCP. As the Claimant did not provide supporting documentation for meal costs nor did the Claimant provide its mileage breakdown and as such, \$510.42 in claimed costs are denied due to lack of documentation for meals and claimed mileage. Should the claimant seek reconsideration of these costs, it would need to provide a detailed, itemized receipt of claimed meal costs in the amount of \$22.42 and provide supporting documentation for \$488.00 in claimed mileage. Please see the NPFC Summary of Costs spreadsheet for a breakdown of approved/denied costs.

**C. *Determined Amount:***

The NPFC hereby determines that the OSLTF will pay \$7,288.00 as full compensation for the claimed reimbursable removal costs incurred by the Claimant and submitted to the NPFC

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<sup>7</sup> See, USCG MISLE Investigation Report for Case # 721673, opened 4/06/2015.

<sup>8</sup> See, NPFC Summary of Costs spreadsheet.

under claim 917021-0001. 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. \$510.42 in claimed costs are denied.

**AMOUNT: \$7,288.00**

Claim Supervisor:

[REDACTED]

Date of Supervisor's review: *6/28/17*

Supervisor Action: *Approved*

Supervisor's Comments: