

CLAIM SUMMARY / DETERMINATION

Claim Number:	917032-0001
Claimant:	Rapid Marine Fuels
Type of Claimant:	Corporate (US)
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$9,595.00

FACTS:

On December 12, 2016, the P/C ELUSION, owned by Mr. ██████████, discharged approximately 20 gallons of waste oil into Dickinson Bayou at Collins Marine in Texas City, Texas. The discharge was caused by corrosion breakthrough on the hull allowing the vessel to fill with water and leak waste oil from the engine room.¹

Resolute Environmental initially responded however the tanks on the vessel were left filled with fuel and petroleum products. Mr. ██████████ hired the claimant, Rapid Marine Fuels, to evacuate the tanks and dispose of the petroleum contaminated materials that were collected by Resolute Environmental.

Texas General Land Office, Oil Spill Prevention and Response Division, (TGLO) conducted an investigation in February 2017. TGLO determined that the steel recreational vessel, approximately 76' (GLO Tracking number 2-1473) was in a wrecked, derelict or substantially dismantled condition.² TGLO also determined that the vessel had no intrinsic value and because of the vessel's condition, the vessel posed an unreasonable threat to public health, safety, and welfare, threat to navigation, and a hazard to the environment. TGLO's Director, ██████████, recommended that the vessel be disposed of in accordance with OSPRA§40.108.

Eventually the vessel was towed to Texas Marine by Ballinger.⁴

THE RESPONSIBLE PARTY (RP):

The vessel owner and Responsible Party (RP) is ██████████ of Holland, Michigan. The NPFC sent an RP notification letter to ██████████ on July 21, 2017. On August 1, 2017, the NPFC spoke with ██████████ at length and gave him until Friday, August 4, 2017 to provide his written response to the incident and advised the him to provide a detailed narrative regarding the specifics of his contractual relationship with Rapid Marine.⁵

On August 4, 2017, the NPFC received a letter ██████████ (RP). In the letter, ██████████ stated that he had a verbal contract with Rapid Marine whereby they agreed that Rapid Marine would pump-out the vessel's water and diesel from the vessel's tank(s) in exchange for Rapid

¹ See Texas General Land Office, Incident Report, Spill Number 2016-3794

² See TGLO Preliminary Report 2-1473.

³ See TGLO Preliminary Report 2-1473.

⁴ See August 1, 2017 phone log between ██████████ and ██████████ of NPFC.

⁵ See August 1, 2017 phone log between ██████████ and ██████████ of NPFC.

Marine taking ownership of the diesel so that it was free to sell the diesel on the open market. [REDACTED] further stated that TGLO in its capacity as the State On Scene Coordinator (SOSC) estimated that there was approximately 3,000 gallons of diesel on board. [REDACTED] advised that when the water and diesel were removed, it turned out that there was only 450 gallons of diesel vice the original 3,000 gallons that were estimated. [REDACTED] stated that the contents of the tanks was removed on December 20, 2016 and there was no money exchanged or anticipated for the transaction that was performed. Once the pump-out was concluded, [REDACTED] stated that Rapid Marine offered to dispose of the petroleum contaminated sorbents and oiled materials which they required a \$4,000.00 payment to perform the work. [REDACTED] agreed based on the price quote and made a credit card payment on this date.⁶

[REDACTED] produced a copy of a text message dated December 20, 2016 at 2:01pm that states if he made a \$4,000 payment, Rapid Marine would make it happen and the message stated if it ended up being a little bit more since he didn't know yet, then he would give [REDACTED] thirty (30) days more to pay the additional costs.⁷ [REDACTED] goes on to say that Rapid Marine only charged \$3,235.00 for the cleanup and disposal BUT when he received Rapid Marine's invoice, they ended up charging him \$10,360.00 for the pump-out of the fuel and water from the tanks that they originally agreed would be at no charge since [REDACTED] agreed to let them take ownership of the fuel to resell.

In closing, [REDACTED] states he received a quote from Resolute Environmental that ended up being substantially less than what Rapid Marine eventually charged him after they breached their verbal terms of agreement and if he had known that was going to be the case, he would have went with Resolute Environmental since they were his response contractor and preferred choice.⁸

CLAIM AND CLAIMANT:

The claimant is Rapid Marine Fuels (Rapid Marine) out of Laporte Texas. Rapid Marine seeks reimbursement of its alleged uncompensated removal costs in the amount of \$9,595.00 for its remaining invoice balance associated with their response to the incident to remove the fuel and water from the vessel's tanks and for disposal of petroleum contaminated sorbents and oiled material. The Claimant's invoice # 2988 had an original balance due of \$13,595.00 however, [REDACTED] (RP) paid \$4,000 on the invoice leaving a remaining balance of the \$9,595.00.

The claimant provided the following upon submission of its claim to the NPFC: a copy of an OSLTF Claim Form (unsigned) at the time the claim was presented to the NPFC, Rapid Marine Invoice # 2988, Disposal Manifest # 009837809 which has typed information scratched out and hand written items and pricing written on it, Disposal Manifest # 009837812 which has typed information scratched out and hand written items and pricing written on it, Disposal Manifest # 009837813 with handwritten writing on it, and a copy of the \$4,000 payment made by [REDACTED].

⁶ See August 4, 2017 letter to NPFC from [REDACTED].

⁷ See Rapi Marine text message of December 20, 2016 with [REDACTED].

⁸ See August 4, 2017 letter to NPFC from [REDACTED].

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 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 [REDACTED] from MSU Texas City, IMD, provided vessel information but has **not** provided evidence that the response and actions undertaken by the Claimant were consistent with the National Contingency Plan (NCP). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a discharge or substantial threat of discharge of oil 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. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified that no suit has been filed in court for the claimed costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that no costs are compensable at this time under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the documentation provided. The review focused on: (1) whether a discharge or substantial threat of a discharge to a navigable waterway occurred; (2) 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 an incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

Upon adjudication of the claim, the NPFC finds that the facts and evidence as presented, do not substantiate the claim. On July 20, 2017, the NPFC requested additional information to support the claimant’s alleged uncompensated removal costs and required the claimant to have its additional information to the NPFC offices no later than July 27, 2017.⁹ It is important to note that the Claimant has not provided the documentation that is necessary for the NPFC to move forward with the proper adjudication of the claim. The claimant bears the burden of providing all

⁹ See letter to [REDACTED] dated July 20, 2017 from [REDACTED], USCG, Claims Manager.

evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.¹⁰

Claimant's initial claim submission contained an unsigned OSLTF Claim form and the form was not properly completed by the claimant. The NPFC provided the Claimant with a new OSLTF form and advised the claimant to follow the directions on page 20 of the associated Claimant's Guide that it also provided in order to assist the claimant in answering the questions on the form. The NPFC further instructed the claimant to sign the form and explained that each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts.¹¹

On August 1, 2017, the claimant provided a signed version of the OSLTF form that they initially submitted to the Fund.¹² None of the other requested information was provided by the claimant. The NPFC issued an official request for additional information dated July 20, 2017 that requested the following information:

- Signed and properly completed OSLTF Claim Form;
- Detailed description of damages to the environment (response);
- Contact information to [REDACTED] (RP);
- Proof of presentment of costs to the RP;
- Copy of any and all communications with the USCG (Chief [REDACTED]) and information on who oversaw the response actions performed;
- Provide a copy of the published rate schedule in place at the time services were rendered;
- Copy of all daily field logs; and
- Proof of payment to third party contractors (disposal).

The only item addressed by the claimant to the NPFC's request for information was a signed claim form. No other information has been provided to date. Based on 33 CFR 136.203, a claimant must establish that the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. The Claimant provided no documentation that shows any involvement by the USCG in its capacity as the FOSC. Although it is evident that MSTC [REDACTED] could provide minimal details regarding the vessel, the fact remains that there is no evidence that indicates that the response and cleanup was directed by an FOSC. Should the claimant request reconsideration, it will need to provide written FOSC coordination for the actions undertaken by them and the claimant will also have to demonstrate that proper disposal was performed in accordance with the National Contingency Plan (NCP). See 40 CFR §300.310 **Phase III—Containment, countermeasures, cleanup, and disposal.**

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and Area Committee guidelines may identify the disposal options available during an oil spill response and may describe what disposal requirements are mandatory or may not be waived by the OSC. ACP guidelines should address: the sampling, testing, and

¹⁰ 33 CFR 136.105(a) and 136.105(e)(6)

¹¹ 33 CFR 136.105(b)

¹² See Signed OSLTF Claim Form received by the NPFC on August 1, 2017.

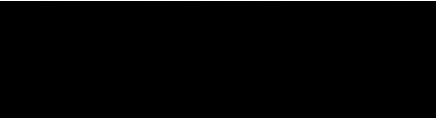
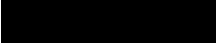
classifying of recovered oil and oiled debris; the segregation, temporary storage, and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses; and procedures for obtaining waivers, exemptions, or authorizations associated with handling or transporting waste materials. The ACPs may identify a hierarchy of preferences for disposal alternatives, with recycling (reprocessing) being the most preferred, and other alternatives preferred based on priorities for health or the environment.

Further, the NPFC requested basic information in order to properly adjudicate the claim; a Rapid Marine Fuels published rate schedule and daily field logs that support the invoices that pertain to this claim, proof of payment for any third party contractors as well as the disposal invoice from the landfill and proof of payment for the disposal invoice with an itemization of the costs charged and amounts actually disposed of in accordance with disposal regulations. The information requested are general requirements for a claim under 33 CFR 136.105(a)(b)(c)(d)(e)(1) – (7).

If the Claimant requests reconsideration of this claim, it must provide all of the evidence that the NPFC Claims Manager requested including but not limited to, written FOSC coordination and all items outlined above from the NPFC’s July 20, 2017 letter that has not yet been provided by the claimant. The claimant will also have to address and provide a detailed response to the information provided by [REDACTED] as set forth in the previous section of this Determination entitled “The Responsible Party.”

The NPFC hereby determines (1) Claimant must obtain a FOSC written coordination statement outlining that the actions taken by the Claimant were consistent with the NCP, (2) Claimant must provide proper supporting documentation to substantiate the amounts claimed as identified in this Claim Summary / Determination Form, (3) Claimant must provide a response to the facts as provided by the Responsible Party, and (4) Claimant must demonstrate evidence of proper disposal and proof of payment of invoices associated with the proper disposal as invoiced by the Claimant.

Based on the foregoing, this claim is denied.


Claim Supervisor: 
Date of Supervisor’s review: <i>8/7/17</i>
Supervisor Action: <i>Denial Approved</i>