

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 917043-0001
Claimant	: Atlantic Coast Marine Group
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested:	\$15,970.38

FACTS:

- A. ***Oil Spill Incident:*** On September 25, 2016, Atlantic Coast Marine Group (ACMG) was working for the Town of Windsor, NC, assisting business owners and residents that were damaged as a result of Hurricane Matthew.¹ During their response activities, they discovered a lube oil spill in the vicinity of 125 North King Street in Windsor, NC. The lube oil was observed along a street curb that drained into a storm drain, which leads to an outfall, which discharges into the Cashie River, a navigable waterway of the United States. Mr. [REDACTED] of ACMG contacted MST1 [REDACTED], at USCG MSD Fort Macon and informed him of the situation, stating that a sheen was observed on the river. MST1 [REDACTED] stated that ACMG was a reputable and competent oil spill response contractor and maintained a basic ordering agreement (BOA) with CG MSD Fort Macon, ACMG was directed by MST1 [REDACTED] to take reasonable action to mitigate the substantial threat of the lube oil discharging into the Cashie River.² Upon completion of his phone call with ACMG personnel, MST1 [REDACTED] contacted Mr. [REDACTED], a Federal On-Scene Coordinator (FOSC) with the United States Environmental Protection Agency (USEPA) Region 9 since the spill was in the USEPA's jurisdiction. MST1 [REDACTED] contacted the CG National Response Center.³
- B. ***Description of removal actions performed:*** On September 26, 2016, Atlantic Coast Marine Group (ACMG) and its subcontractor, Eastern Environmental Management LLC (EEM), began cleaning up the oil spill. ACMG stated that it and EEM performed response activities that included deploying personnel, along with equipment and supplies. Response included personnel, dump trucks, vacuum trucks, response trailers, containment boom, sorbent materials and a backhoe to perform cleanup of the storm drain and impacted surrounding area. Cleanup activities were conducted from September 26, 2016, through October 04, 2016. Approximately 2,952 gallons of oily water and 300 pounds of nonhazardous petroleum-contaminated debris were collected and disposed of at Eastern Environmental Management.⁴
- C. ***Presentment to the Responsible Party (RP):*** It appears that [REDACTED]/Bond Trucking was initially identified as a potential RP.⁵ However, the record does not contain

¹ See, Letter from Town of Windsor attesting to the activities of Atlantic Coast Marine Group.

² See, Email dated September 28, 2017 from MST1 [REDACTED] to Mr. [REDACTED], NPFC.

³ Id

⁴ See, Eastern-Environmental manifest dated 09/26/2016

⁵ See, North Carolina Department of Environmental Quality Division of Waste Management "Notice of No Further Action" issued to [REDACTED]/Bond Trucking dated 06/21/2017.

any documentation with a fingerprint analysis that links the spilled oil to any source owned or operated by Bond Trucking. In addition, the fact that the oil was found in the aftermath of Hurricane Matthew means it could have come from any number of sources. Therefore, NPFC has determined that the evidence is insufficient to designate a Responsible Party for the incident to which ACMG would have to present its claim.

- D. ***The Claim:*** On September 21, 2017, the National Pollution Funds Center (NPFC) received a claim from ACMG for uncompensated removal costs totaling \$15,970.38. These costs are associated with personnel time and materials, and subcontractor costs expended from September 26, 2016, through October 4, 2016.⁶

APPLICABLE LAW:

"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

⁶ See, claim submitted by Atlantic Coast Marine Group dated 09/21/2017.

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. MST1 [REDACTED] of CG MSD Fort Macon determined the oil spill response to be an emergency and as such, he instructed ACMG to clean up the spill,⁷ and then transferred FOSC responsibility over to Mr. [REDACTED], of the USEPA. However, the EPA did not respond to the incident on-scene, nor hire ACMG to respond.⁸ Therefore, the NPFC has determined that the majority of the actions undertaken by the Claimant are consistent with the National Contingency Plan (NCP). This determination is made in accordance with its Delegation of Authority for Determination of Consistency 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 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 not been identified. 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, and has determined which claimed costs were incurred for removal actions taken in accordance with the NCP, and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

B. Analysis:

⁷ See, 28 Sep 2017 email from MST1 [REDACTED], MSD Fort Macon to Mr. [REDACTED].

⁸ See, 04 Oct 2017 email from Mr. [REDACTED], EPA to Mr. [REDACTED].

The NPFC Claims Manager reviewed the documentation provided by the Claimant. 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 claimed 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 reasonable.

Upon receipt of all requested supporting documentation, the NPFC considered the Claimant’s published rate schedule that was in place at the time services were rendered and produced as part of the claim submission and has determined that it is reasonable in pricing. The NPFC finds the personnel labor categories charged by ACMG are consistent with labor categories charged by most Oil Spill Response Organizations (OSROs).

The rate schedule provides a pricing inventory for all items used during the response at issue and, with the exception of the items below, this claim’s administrative record establishes by a preponderance of the evidence that the rate schedule should be used when determining the total amount of uncompensated removal costs incurred by the Claimant. The NPFC reached this conclusion after carefully weighing all of the evidence in the administrative record.

ACMG is seeking costs that it incurred while responding to an oil spill on September 25, 2016. The costs claimed include costs ACMG paid to its subcontractor(s) for the disposal of oily water, solid waste materials, and other third party costs for materials. The NPFC has determined which of the costs incurred by the Claimant were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the costs it determined to be OPA compensable, were billed in accordance with the rate schedule and/or contractual agreement in place at the time the services were rendered, unless otherwise indicated below.⁹ Given the fact that the CG instructed ACMG to perform the cleanup and the USEPA FOSC never went on scene to monitor or oversee response, the NPFC, pursuant to its Delegation of Authority for determining consistency with the NCP, has determined that most of the actions performed were consistent with the National Contingency Plan (NCP).

The Claims Manager reviewed all claim submission documentation. Some of the documentation provided included ACMG’s BOA and its incorporated rate schedule, an ACMG invoice, an EEM invoice, photographs, a letter from the Town of Windsor, news article, Eastern Environmental rate schedule, sample analysis, ACMG daily work sheets and disposal documentation.

However, during the adjudication process, the NPFC Claims Manager requested additional information from ACMG on several occasions; specifically, the NPFC requested copies of invoices for the disposal of liquids and solid wastes, for which the Claimant requested reimbursement.¹⁰ Disposal charges claimed are broken down as follows:

⁹ See, Summary of Costs spreadsheet.

¹⁰ See, Emails from Mr. [REDACTED] to ACMG dated October 26, 2017 and Email from [REDACTED] of ACMG to Ms. [REDACTED], NPFC dated December 5, 2017.

1. ACMG charge for liquid disposal of 2,950 gals at \$.70 per gal for a total of \$2,066.40.¹¹¹²¹³
2. Eastern Environmental invoice # 75572. Last item is a charge for disposal of 2,952 gals of oily water in the amount of \$1,328.40.
3. Eastern Environmental invoice # 75572, Second to last item invoiced is for the disposal of straw and debris in the amount of \$250.00.
4. ACMG charge for straw and debris disposal in the amount of \$750.00.¹⁴

TOTAL DISPOSAL CHARGES: \$4,394.80

NPFC requested information regarding other items claimed on the ACMG invoice. ACMG did not provide the requested invoices or responsive documentation supporting certain other costs, and as such, the denial of charges are discussed in detail below. The NPFC denies a total of **\$5,624.98** in the claimed costs. A breakdown of items denied are listed below with an explanation as to the rationale why the charge(s) are denied:

- Sorbent pads were invoiced by ACMG at a rate of \$65.00 per case on 9/26/16 when the BOA pricing schedule lists the price at \$60.00 a case. As such, the NPFC denies the overcharged amount of \$10.00.¹⁵
- 5x10 Absorbent boom was invoiced by ACMG on 9/26/16 at a rate of \$185.00 per case when the BOA pricing schedule lists the price at \$105.00 per case. As such, the NPFC denies the overcharged amount of \$160.00 for two cases.¹⁶
- Straw was invoiced by ACMG at a rate of \$8.75 a bale for a total of \$35.00. This item is not listed on ACMG's BOA pricing list and the Claimant failed to provide a receipt for the charges and the Claimant failed to provide a justification of why 4 bales of straw were used.¹⁷
- Oil dry was invoiced by ACMG at a rate of \$20.00 each with six units billed. This item is not on the ACMG BOA pricing list and ACMG did not provide a purchase receipt to substantiate the price charged nor did ACMG provide a justification for the use of this item.¹⁸
- ACMG charged for an Equipment Operator on 9/27/16 in the total amount of \$230.00 to operate the backhoe that was invoiced on this date. The NPFC denies the charge for an Equipment Operator as the BOA pricing schedule includes an Operator in the backhoe pricing.¹⁹²⁰
- ACMG charged mileage for the dump truck on 9/27/16 at a rate of \$.54 a mile for 205 miles in the total amount of \$110.70. ACMG's BOA does not allow separate pricing for mileage - according to the BOA, it is included in the day rate. ACMG's BOA only

¹¹ See, Email dated 12/5/17 from [REDACTED] to [REDACTED], item #2.

¹² See, Eastern Environmental invoice # 75572, last item listed is for the disposal of 2,952 gallons of oily water.

¹³ See, ACMG Recap Summary Sheet for claim, item #2. The second listed charge is for disposal of 2,952 gals of oily water.

¹⁴ See, ACMG Recap Summary Sheet for claim, item #3. The third listed charge is for disposal of straw and debris.

¹⁵ See, NPFC Summary of Costs spreadsheet, line 15.

¹⁶ See, NPFC Summary of Costs spreadsheet, line 16.

¹⁷ See, NPFC Summary of Costs spreadsheet, line 20.

¹⁸ See, NPFC Summary of Costs spreadsheet, line 21.

¹⁹ See, Page 19 of 85 of the ACMG BOA, item # 0005CB1.

²⁰ See, NPFC Summary of Costs spreadsheet, line 28.

allows mileage per page 19 of 85. Mileage is allowed for certain vehicles in section 0008 of the BOA.²¹²²²³

- Sorbent pads were invoiced by ACMG at a rate of \$65.00 per case on 9/27/16 when the BOA pricing schedule lists the price at \$60.00 a case. As such, the NPFC denies the overcharged amount of \$10.00 for two cases.²⁴
- 5x10 Absorbent boom was invoiced by ACMG on 9/27/16 at a rate of \$185.00 per case when the BOA pricing schedule lists the price at \$105.00 per case. As such, the NPFC denies the overcharged amount of \$160.00 for two cases.²⁵
- Miscellaneous plastic was invoiced by ACMG on 10/04/16 at a rate of \$90.00 each. ACMG failed to provide receipts to support the total charge of \$135.00, therefore, that amount is denied.²⁶
- Disposal charge by Eastern Environmental on Invoice # 75572 for straw and debris in the total amount of \$250.00. The NPFC denies this charge as ACMG failed to provide an explanation and justification for the use of straw and explain what solid debris was being disposed of and why.²⁷
- Soil disposal charged by Soil Resources, a subsidiary of Eastern Environmental. ACMG charged this on their Recap Summary sheet, but no invoice has been provided or explanation as to what soil was disposed of and why and there is no proof of payment from ACMG to Soil Resources; therefore, this charge is denied in the amount of \$400.00.²⁸
- ACMG charged \$2,066.40 for what they have categorized as “Disposal fees – Wet”. In an email from Ms. [REDACTED] of ACMG to Ms. [REDACTED] of NPFC, dated 12/5/17, she explains this charge as being a charge in the amount of \$.70 per gallon for the 2,952 gallons of oily water disposal when Eastern Environmental also charged \$.45 a gallon for the disposal of 2,952 gallons of oily water on invoice # 75572. The NPFC allowed the charge of \$1,328.40 by Eastern since they handled the disposal of the oily water. The NPFC deems the charge for disposal by ACMG at a higher price as duplicative and not reasonable. ACMG’s disposal charge is denied in the amount of \$2,066.40.²⁹³⁰
- ACMG charged \$750.00 for what they have categorized as “Disposal fees – Dry”. In an email from Ms. [REDACTED] of ACMG to Ms. [REDACTED] of NPFC, dated 12/5/17, she explains this charge as being an all inclusive charge for the disposal of straw and debris that was also billed by Eastern Environmental in the amount of \$250.00. The NPFC considers this charge unreasonable, unsupported by the record and a duplication of charges billed by its subcontractor.³¹³²

²¹ See, NPFC Summary of Costs spreadsheet, line 32.

²² See, ACMG BOA page 19 of 85.

²³ See, ACMG BOA page 24 of 85.

²⁴ See, NPFC Summary of Costs spreadsheet, line 35.

²⁵ See, NPFC Summary of Costs spreadsheet, line 36.

²⁶ See, NPFC Summary of Costs spreadsheet, line 49.

²⁷ See, NPFC Summary of Costs spreadsheet, line 50.

²⁸ See, NPFC Summary of Costs spreadsheet, line 54.

²⁹ See, Email dated 12/5/17 from [REDACTED] to [REDACTED], item #2.

³⁰ See, NPFC Summary of Costs spreadsheet, line 57.

³¹ See, Email dated 12/5/17 from [REDACTED] to [REDACTED], item #3.

³² See, NPFC Summary of Costs spreadsheet, line 58.

- ACMG charged a 20% markup on Eastern Environmental’s liquid disposal charge of \$1,328.40 in the amount of \$265.68. The NPFC denies the ACMG markup charge in accordance with the terms of the ACMG BOA. Since ACMG provided the BOA as the basis for its costs, section H2 (d) of the BOA states that ACMG would only be allowed to charge markup on third-party costs when it is pre-negotiated with the CG contracting officer. The cost associated with ACMG’s markup in the amount of \$265.68 for the third-party vendor, Eastern Environmental Management, LLC, was not pre-negotiated as required under the BOA section H2 (d), so it is denied.³³
- ACMG charged a 20% markup on the Eastern Environmental invoice for all costs in the amount of \$2,971.00 for a total markup charge of \$594.20. Since ACMG provided the BOA as the basis for its costs, section H2 (d) of the BOA states that ACMG would only be allowed to charge markup on third-party costs when it is pre-negotiated with the CG contracting officer. Since the cost associated with ACMG’s markup in the amount of \$594.20 for the third-party vendor, Eastern Environmental Management, LLC, was not pre-negotiated with contracting officer as required under BOA section H2 (d) it is denied.³⁴
- ACMG charged \$328.00 for backfill. ACMG failed to explain why there was a need for backfill when it stated that it did not do soil remediation and as such, the cost is denied.³⁵

Based on the foregoing, the NPFC has determined that \$10,345.40 is compensable to ACMG, and the remaining \$5,624.98 is denied for the reasons stated above. Should ACMG decide that it wishes to request reconsideration of any of the denied costs, it must provide all missing documentation, justifications, and/or explanations in support of its request. Additionally, with regard to any costs related to solid disposal and remediation, it will need to provide evidence that the actions taken were based on the discreet oil spill and not affiliated with the damage caused by Hurricane Matthew. All costs allowed are for charges incurred 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.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$10,345.40 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 917043-0001.

<p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor’s review: <i>1/24/18</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor’s Comments:</p>

³³ See, NPFC Summary of Costs spreadsheet, line 59.
³⁴ See, NPFC Summary of Costs spreadsheet, line 60.
³⁵ See, NPFC Summary of Costs spreadsheet, line 61.