

CLAIM SUMMARY / DETERMINATION on RECONSIDERATION

Claim Number:	H18007-0001
Claimant:	Seabridge, Inc./Shipowners' Mutual Protection & Indemnity Assoc
Type of Claimant:	RP
Type of Claim:	Limit of Liability
Claim Manager:	(b) (6)
Amount Requested:	\$6,494,234.57
Action Taken:	Offer in the Amount of \$6,475,438.61

EXECUTIVE SUMMARY:

On March 23, 2018, the Seabridge deck barge S-2006 (S-2006) under tow from the Seabridge tug CHAMORRO (CHAMORRO) grounded near the entrance of Wake Island and posed a substantial threat to discharge oil into the Pacific Ocean, a navigable waterway of the United States. The S-2006 was immediately re-floated and moved to a mooring buoy outside of the channel pending a damage assessment.¹ Seabridge, Inc. (Seabridge), the owner and operator of the S-2006, responded and hired Resolve Marine Group (Resolve) to oversee the pollution removal activities and salvage operations.² On April 4, 2018, the S-2006 broke from the mooring buoy and grounded onto the shore of Wake Island discharging hydraulic fluid from a forklift secured to the deck of the barge into the Pacific Ocean.³ The discharge of oil was reported U.S. Coast Guard (CG) National Response Center.⁴ On May 9, 2018, the S-2006 was successfully re-floated and towed to sea for scuttling.⁵ Upon scuttling, the CG Federal On-Scene Coordinator (FOSC) issued a decision memo stating that the S-2006 no longer posed a substantial threat to discharge oil into a navigable waterway of the United States and that the Federal response and removal actions specific to the incident were complete.⁶ Shipowners' Mutual Protection & Indemnity Association provided protection & indemnity insurance to Seabridge.⁷ After incurring the removal costs associated with the response and having been subrogated to Seabridge's rights as the responsible party,⁸ Shipowners' Mutual Protection & Indemnity Association along with Seabridge (Claimants) submitted a claim for entitlement to limited liability to the CG National Pollution Funds Center (NPFC) for \$6,494,234.53. The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and concluded that Claimants demonstrated an entitlement to limited liability and determined that \$5,548,655.26 of the requested \$6,494,234.53 was compensable and offered the amount as full and final compensation of this claim⁹ for its uncompensated removal costs and damages under the Oil

¹ Coast Guard Pollution Report Message (CG POLREP/CG-SITREP-POL) 1 DTG P310310Z Mar 2018.

² Letter from Claimants to the NPFC dated June 7, 2019, page 4. This letter was the Claimants first attempt to submit its limit of liability claim to the NPFC but the submission lacked a sum certain. The Claimants were notified and properly re-submitted its limit of liability claim on June 21, 2019.

³ CG-SITREP-POL 3 DTG P070823Z Apr 2018.

⁴ CG National Response Center Report #1208597 dated April 5, 2018.

⁵ CG-SITREP-POL 6 AND FINAL DTG P190029Z May 2018.

⁶ CG Sector Honolulu Decision Memo dated May 12, 2018.

⁷ Shipowners' Mutual Protection & Indemnity Association certificate # 5697/905561/1 effective February 20, 2018 through February 20, 2019, which provided \$100,000,000.00 per incident of protection and indemnity insurance to Seabridge, Inc.

⁸ Assignment of Rights letter from Seabridge, Inc. to the Shipowners' Mutual Protection & Indemnity Association dated September 23, 2019.

⁹ 33 CFR 136.115.

Pollution Act (OPA) that exceed its limit of liability.¹⁰ On January 22, 2020, the NPFC received the Claimants' timely request for reconsideration.¹¹

Requests for reconsideration are considered *de novo*. The NPFC has thoroughly reviewed the original claim, the request for reconsideration, all information provided by the Claimants, information it obtained independently, and the applicable law and regulations. Upon reconsideration, the NPFC concludes that the facts established within the NPFC's initial determination as well as information provided by the Claimants within their request for reconsideration or obtained independently by the NPFC support the Claimants' request for reconsideration and offers to reimburse the Claimants \$6,475,438.61 for uncompensated removal costs incurred as a result of the oil spill incident, as outlined in the original determination and below.

I. CLAIM HISTORY:

On June 21, 2019, the Claimants presented a claim for entitlement to limited liability to the NPFC for \$6,494,234.53.¹² The NPFC thoroughly reviewed the original claim, all information provided by the Claimants or obtained independently, the relevant statutes and regulations, and ultimately determined that \$5,548,655.26 of the \$6,494,234.53 was compensable and denied the remainder of the claimed costs.¹³ The NPFC's initial determination is hereby incorporated by reference.

On January 22, 2020, the NPFC received the Claimants' timely request for reconsideration.¹⁴

On January 24, 2020, the Claimants notified the NPFC of additional removal costs incurred by the Claimants and not considered by the NPFC within their initial determination. Specifically, the Claimants identified \$2,078,568.76 of incurred CG oversight costs and made the NPFC aware that they had only offered \$2,078,568.72 as reimbursement toward those incurred costs. The NPFC acknowledged the oversight and added \$.04 to the Claimants' sum certain which amended the Claimants' sum certain to \$6,494,234.57.¹⁵ Consideration of those costs are addressed in the NPFC's Legal Analysis Request for Reconsideration section below.

II. REQUEST FOR RECONSIDERATION

¹⁰ 33 U.S.C. § 2703(a) and 33 U.S.C. § 2704(a).

¹¹ Letter from Claimants to the NPFC dated January 22, 2020, requesting reconsideration of the NPFC's determination dated November 26, 2019.

¹² Claim submission cover page dated June 21, 2019, with a sum certain identified as \$6,382,267.76. *See also*, letter from Claimants to NPFC dated September 24, 2019, updating its claim to include an uncompensated removal cost invoice to London Offshore Consultants in the amount of \$111,966.77 and amending its sum certain to include payment of that invoice to \$6,494,234.53.

¹³ NPFC determination issued to Seabridge, Inc./Shipowners' Mutual Protection & Indemnity Association dated November 26, 2019.

¹⁴ Letter from Claimants to the NPFC dated January 22, 2020, requesting reconsideration of the NPFC's determination dated November 26, 2019.

¹⁵ Email from Claimants to NPFC dated January 24, 2020, identifying a difference in costs incurred by the Claimants for CG oversight costs and the costs offered by the NPFC as an uncompensated pollution removal cost and amending their sum certain to include that difference in cost to \$6,494,234.57.

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim. The claimant has the burden of providing all evidence, information, and documentation deemed necessary by the NPFC to support the claim.¹⁶ When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by the Claimant in support of its request for reconsideration. The written decision by the NPFC is final.¹⁷

On January 22, 2020, the Claimants timely requested reconsideration of the NPFC's initial determination and provided information in support of costs denied by the NPFC.¹⁸ Specifically, the Claimants provided a written declaration from Mr. (b) (6) who had represented the Claimants during the response and had served as the person responsible for the review and approval of Resolve's invoices.¹⁹ Additionally, Mr. (b) (6) had been the person responsible for the negotiation of any component of salvage not categorized or outside the scope of Resolve's rate schedule. As described within his declaration, Mr. (b) (6) divided the charges denied by the NPFC into categories and provided opinion as to why those charges should be compensable.

III. ANALYSIS ON REQUEST ON RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim in accordance with our governing claims regulations at 33 CFR 136.115(d).

The NPFC has thoroughly reviewed and considered the Claimants' request for reconsideration and because the claimant has met its burden, finds the following costs reimbursable as described below:²⁰

1. NPFC Initial Determination - Charges in the amount of \$152,010.00 for 1.5" Dyneema, 3" Dyneema and 3" blue steel mooring lines were denied, as the costs were not on the Resolve rate schedule or contract. Additionally, the charges were not supported by any type of purchase invoice or receipt.²¹

¹⁶ 33 CFR 136.105(a).

¹⁷ *Id.*

¹⁸ Letter from the Claimants to the NPFC dated January 22, 2020, requesting reconsideration of the NPFC's determination dated November 26, 2019.

¹⁹ Mr. (b) (6) was employed by London Offshore Consultants Inc. ("LOC"), and appointed by Shipowners as the company representative to oversee the salvage efforts in Wake Island on behalf of Shipowners and its member, Seabridge. In his capacity as the company representative, he was responsible for reviewing and approving all invoices from the salvage contractor (Resolve) and negotiating any additional components of the salvage operation that were not necessarily within the scope of the Resolve rate schedule.

²⁰ As documented on page 3 of Claimant's request for reconsideration dated January 22, 2020, the Claimants are not contesting \$12,976.45 of costs denied by the NPFC as documented in NPFC's determination issued to Seabridge, Inc./Shipowners' Mutual Protection & Indemnity Association dated November 26, 2019, page 10, for line items III B (7-9). As such, those costs were not evaluated and remain denied by the NPFC. Additionally, the \$.04 difference for CG oversight costs incurred by the Claimants and not considered by the NPFC in their initial determination is approved.

²¹ NPFC determination issued to Seabridge, Inc./Shipowners' Mutual Protection & Indemnity Association dated November 26, 2019, page 10, III B (1).

Claimants' Response - Charges totaling \$152,010.00 for 1.5" Dyneema, 3" Dyneema and 3" Blue Steel Mooring Lines should be approved. Mr. (b) (6) explained that these lines were considered salvor's equipment and as such, were not part of Resolve's inventory but instead had to be supplied from a salvor's warehouse. Mr. (b) (6) confirmed that the lines were critical for the refloating operation of the S-2006 and that he had personally approved the use of these lines. He stated that he had negotiated the rate for the lines with the salvage master based upon his past experience from previous salvage jobs. He further stated that it wasn't uncommon to have no further supporting documentation for this type equipment as the costs for salvor's equipment were generally negotiated for weekly use on an ongoing basis.²²

NPFC Determination upon Reconsideration - Charges totaling \$152,010.00 for 1.5" Dyneema, 3" Dyneema and 3" blue steel mooring lines are approved. Claimants provided a written declaration from a qualified expert who had represented the Claimants during the response and served as the person responsible for the review and approval of Resolve's invoices as well as negotiator of any component of salvage not categorized or outside the scope of Resolve's rate schedule. As described above, these lines were considered salvor's equipment and as such, were not part of Resolve's inventory but instead were supplied from a salvor's warehouse and were critical for the refloating operation of the S-2006. And as detailed by the Claimants' expert, he had negotiated the rates for these lines with the salvage master based upon his past experience from previous salvage jobs.

2. NPFC Initial Determination - Daily charges in the amount of \$250,412.50 for the tugs AMERICAN EMERALD and AMERICAN CONTENDER were denied, as the American Marine rate schedule did not identify a daily rate for these vessels. Instead, the NPFC utilized the hourly rate of \$800.00 as identified within the American Marine rate schedule and approved the hourly rate based upon the maximum number of hours worked by vessel personnel on the given day. The amount denied represented the difference between what was claimed and what the NPFC approved.²³

Claimants' Response - Daily charges totaling \$250,412.50 for the Tugs AMERICAN EMERALD and AMERICAN CONTENDER should be approved. Mr. (b) (6) explained that both of these tugs had been hired for 24 hours per day support and were required to be immediately available for any emergency. Mr. (b) (6) confirmed that he negotiated the daily rate for both tugs based upon their size and horsepower as well as from his experience and rates charged from previous salvage jobs. He further stated that the negotiated daily rates for both tugs were significantly less than the equivalent 24 hours at the hourly rates charged on the Resolve rate schedule.²⁴

NPFC Determination upon Reconsideration: Daily charges totaling \$250,412.50 for the Tugs AMERICAN EMERALD and AMERICAN CONTENDER are approved. The Claimant's expert explained that both of the tugs had been hired for 24 hours per day

²² Declaration of Mr. (b) (6) dated January 21, 2020, pages 3-4, provided as an exhibit to the Claimants' request for reconsideration dated January 22, 2020.

²³ NPFC determination issued to Seabridge, Inc./Shipowners' Mutual Protection & Indemnity Association dated November 26, 2019, page 10, III B (2).

²⁴ Declaration of Mr. (b) (6) dated January 21, 2020, pages 4-5, provided as an exhibit to the Claimants' request for reconsideration dated January 22, 2020.

support and were required to be immediately available for any emergency. The Claimant's expert also confirmed that he negotiated the daily rate for both tugs based upon their size and horsepower as well from past experiences and rates charged from previous salvage jobs. Additionally, the Claimant's expert confirmed that the negotiated daily rates for both tugs were significantly less than the equivalent 24 hours at the hourly rates charged on the Resolve rate schedule.

3. NPFC Initial Determination - Charges in the amount of \$390,000.00 for the Weeks Barge 192 were denied, as the American Marine rate schedule did not identify a daily rate for this vessel. Instead, the NPFC utilized the hourly rate of \$175.00 as identified within the American Marine rate schedule for a barge and approved that hourly rate for a 24-hour day. The amount denied represented the difference between what was claimed and what the NPFC approved.²⁵

Claimants' Response – Daily charges totaling \$390,000.00 for the Weeks Barge 192 should be approved. Mr. (b) (6) explained that the Weeks Barge 192 was more than a “dumb” empty deck barge but instead was fully outfitted as a crane barge for effecting the wreck removal operations. Specifically, he stated that he had negotiated the daily rate based upon his experience and the rates charged from previous salvage jobs. He further stated that the daily negotiated rate included the barge equipment, the 300 ton Crawler crane and various grab equipment required for the salvage of the barge and that no other charges were added to the cost of this asset.²⁶

NPFC Determination upon Reconsideration - Daily charges totaling \$390,000.00 for the Weeks Barge 192 are approved. The Claimants' expert explained that the Weeks Barge 192 was fully outfitted as a crane barge for effecting the wreck removal operations and that he had negotiated the daily rate based upon his experience and the rates charged from previous salvage jobs. The Claimants' expert further stated that the daily negotiated rate included the barge equipment, the 300 ton Crawler crane and various grab equipment required for the salvage of the barge and that no other charges were added to the cost of this asset.

4. NPFC Initial Determination - Fuel charges in the amount of \$94,536.53 for the tugs AMERICAN EMERALD and AMERICAN CONTENDER were denied, as the American Marine rate schedule documented fuel costs for those vessels were included in their hourly rate. Additionally, fuel charges in the amount of \$6,114.15 for the tug MOANO HOLO were denied, as the cost charged were in excess of the unit price established within the charter between GP Energy Company and American Marine. Lastly, uplift charges applied to the purchase of fuel in the amount of \$20,130.14 were denied, for fuel charges incorrectly claimed by the Claimants.²⁷ These charges total \$120,780.82.

²⁵ NPFC determination issued to Seabridge, Inc./Shipowners' Mutual Protection & Indemnity Association dated November 26, 2019, page 10, III B (3).

²⁶ Declaration of Mr. (b) (6) dated January 21, 2020, page 6, provided as an exhibit to the Claimants' request for reconsideration dated January 22, 2020.

²⁷ NPFC determination issued to Seabridge, Inc./Shipowners' Mutual Protection & Indemnity Association dated November 26, 2019, page 10, III B (4-6).

Claimants' Response – Fuel charges in the amount of \$120,780.82 for the tug's AMERICAN EMERALD, AMERICAN CONTENDER, MOANO HOLO and corresponding uplift charges should be approved. Mr. (b) (6) reiterated that the rates applied to the AMERICAN EMERALD and AMERICAN CONTENDER were negotiated rates for 24 hours per day support as the tugs were required to be immediately available for any emergency. Mr. (b) (6) further stated that the negotiated daily rates for both tugs were significantly less than the equivalent 24 hours at the hourly rates charged by Resolve on their rate schedule and that as such, the reduced daily tug rate didn't include fuel consumed by either tug.²⁸

NPFC Determination upon Reconsideration - Fuel charges and corresponding uplift charges totaling \$114,666.67 for the tugs AMERICAN EMERALD and AMERICAN CONTENDER are approved. The Claimants' expert explained that the rates applied to the AMERICAN EMERALD and AMERICAN CONTENDER were negotiated rates for 24 hours per day support as the tugs were required to be immediately available for any emergency. The Claimants' expert further explained that the negotiated daily rates for both tugs were significantly less than the equivalent 24 hours at the hourly rates charged by Resolve on their rate schedule and that as such, the reduced daily tug rate didn't include fuel consumed by either tug. Fuel charges in the amount of \$6,114.15 for the tug MOANO HOLO are approved as the Claimants provided evidence that the rate per gallon charged for fuel was the unit price established within the charter between GP Energy Company and American Marine.

5. NPFC Initial Determination – The claim for \$19,400.00 for the purchase of a new air compressor was denied because there was no justification for the purchase of the air compressor.²⁹

Claimants' Response – The purchase charge for a replacement air compressor in the amount of \$19,400.00 should be approved. Mr. (b) (6) explained that per contractual agreements in salvage, any equipment that is lost or sacrificed is replaced. Additionally, and as documented on the Wreckhire 2010 agreement between the Claimants and Resolve, any portable equipment sacrificed, lost or destroyed during the services shall be replaced at the full package cost. Mr. (b) (6) described this as a common practice and revealed that the air compressor lost was intentionally left on the S-2006 to keep it afloat while towing it for scuttle and was sacrificed in the sinking operation so as not to endanger the crew trying to recover the air compressor while the barge was sinking.³⁰

NPFC Determination upon Reconsideration - The regulations implementing OPA allow compensation for uncompensated and reasonable removal costs.³¹ NPFC will compensate claimants for equipment lost during a response if the loss is supported by a

²⁸ Declaration of Mr. (b) (6) dated January 21, 2020, pages 6-7, provided as an exhibit to the Claimants' request for reconsideration dated January 22, 2020.

²⁹ NPFC determination issued to Seabridge, Inc./Shipowners' Mutual Protection & Indemnity Association dated November 26, 2019, page 10, III B (7). Note, the charges denied by the NPFC for this line item totaled \$24,708.23 and included the denial of purchase for a new air compressor and diaphragm air pump. However, the Claimants are not seeking reimbursement on reconsideration for the purchase of the diaphragm pump totaling \$5,308.23.

³⁰ Declaration of Mr. (b) (6) dated January 21, 2020, page 7, provided as an exhibit to the Claimants' request for reconsideration dated January 22, 2020.

³¹ 33 CFR 136.203; 33 CFR 136.205.

preponderance of the evidence. To determine reasonableness, the NPFC will depreciate the value of equipment lost and offers the depreciated amount as compensation.

In an effort to determine the reasonable value of this item, the Claimants were asked to provide information specific to the air compressor lost.³² In response, the Claimants identified the air compressor as a 2007 Sullair 185 CFM portable tier 4 air compressor with Caterpillar diesel engine which was purchased new in 2007.³³ The replacement cost for the same compressor when it was lost in 2018 would have been \$19,400.00. The Claimants stated that at the time of loss, the air compressor had been operated for approximately 3,000 hours and operated and maintained within the manufacturer's recommendations.³⁴ Research conducted by the NPFC revealed that the estimated working life of a properly maintained and operated 2007 Sullair 185 CFM portable tier 4 air compressor is 10,000 hours.³⁵ As such, the NPFC will depreciate the value of the lost compressor by 30%. Depreciating the value of the air compressor lost during the response by 30% provides a reasonable replacement value of \$13,580.00 based on 2018 replacement pricing.

IV. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the claimants' request for reconsideration for its uncompensated removal costs is approved in the amount of \$6,475,438.61.

This determination is a settlement offer;³⁶ the claimants have 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁷ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁸ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

AMOUNT APPROVED: \$6,475,438.61

³² Email from the NPFC to Claimants dated January 24, 2020. *See also*, email from NPFC to Claimants dated January 31, 2020.

³³ Email from the Claimants to NPFC dated January 31, 2020.

³⁴ Email from the Claimants to NPFC dated February 6, 2020.

³⁵ Summary of conversation between the NPFC and Sullair America dated January 31, 2020.

³⁶ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR 136.115(a).

³⁷ 33 CFR 136.115(b).

³⁸ *Id.*

(b) (6)

Claim Supervisor:

(b) (6)

Date of Supervisor's review: *April 3, 2020*

Supervisor Action: *Revised offer on reconsideration approved*