

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/29/2008
Claim Number	: 908038-001
Claimant	: Water Quality Insurance Syndicate
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$18,246.10

FACTS:

1. Oil Spill Incident: On December 7, 2007, the USCG advised WQIS' assured, the owners of the F/V E.S.S. Endeavor, that they were the responsible party to an oil spill that impacted Farley State Marina in Atlantic City, NJ. The oil affected Clam Creek, a navigable waterway of the US. Following the USCG notice, the owners of the vessel were requested to appoint a cleanup contractor to comply with the requirements issued by the USCG Pollution Investigators. The incident was reported to the National Response Center (NRC) via report # 856591.

2. Description of removal activities: On December 7, 2007, WQIS hired Northstar Marine Inc. to handle the cleanup of the oil. The contractor deployed boom and pads to facilitate cleanup at Dock J of Trump Marina. The contractor performed disposal.

3. The Claim: The National Pollution Funds Center (NPFC) received a removal cost claim in the amount of \$18,246.10 on April 14, 2008. The claim included a NPFC Claim Form, invoicing, disposal manifests, daily logs, NRC report, FOSC email was also provided by Sector Philadelphia, and the vendor rate schedule in effect at the time of the incident.

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. FOSC coordination was made with USCG Sector Philadelphia.
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.

3. In accordance with 33 CFR § 136.105 (e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were indeed reasonable and allowable under OPA and 33 CFR § 136.205.
6. The Claimant's removal costs included rates in accordance with the published vendor rate schedule.

B. Determined Amount:

The NPFC determines that the OSLTF will pay \$18,246.10 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 908038-001.

AMOUNT: \$18,246.10

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: