

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/12/2009
Claim Number	: 909073-001
Claimant	: United Kingdom P & I Club and Prime Marine Management
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$41,116.35

FACTS:

1. Oil Spill Incident: On or about March 7, 2005, the M/V PUMA, managed by Prime Marine Management, was in the Port of Jacksonville, Florida engaging in cargo operations and obtained bunkers. The Port of Jacksonville is located on the St. Johns River, a navigable water of the United States. During the bunkering operations a small amount of bunkers spilled onto the vessel's deck, but none reached the water. The vessel's representatives notified the Coast Guard (CG) of the spill. Since it appeared that no oil had reached the water, the CG did not restrict the vessel's operations and allowed it to depart the port once bunkering operations were complete. Later that day a homeowner along the water contacted the CG stating that he saw oil along the river bank. The vessel's local agent was served a CG Notice of Federal Interest identifying the vessel as the source of the oil in the river and was also issued an Administrative Order instructing the vessel's interests to clean up the spill.

While the vessel interests denied responsibility for the spill into the water, they complied with the CG Order and initiated cleanup operations by calling out several individuals and companies. The removal response was executed quickly and was complete by the end of March 11, 2005.

The vessel interests hired a laboratory to analyze oil samples from the river and from the PUMA. None of the spill samples matched the samples taken from the PUMA. The CG and Florida Department of Environmental Protection (DEP) investigations concluded that the PUMA was not the source of the oil in the river. Therefore, by letter dated September 25, 2007 the CG notified the vessel interests that the PUMA was not the source of the discharge. By letters dated December 16 and December 19, 2005, the Florida DEP notified the vessel interests that the spill was reclassified as a mystery spill.

2. Claim: Since the spill is a mystery, no responsible party has been identified to which claims must be submitted. The claimants, Prime Marine Management and United Kingdom P & I Club, the subrogated insurer of the vessel, thus presented this claim for response and removal costs to the NPFC directly. The claim was received by the NPFC on February 11, 2009.

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. The FOSC has determined the incident to be a "mystery spill."

2. The incident involved the discharge of “oil” as defined in OPA 90, 33 USC § 2701(23), to navigable water.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant certified that no suit has been filed in court for the claimed uncompensated removal costs.
4. The original claim and the request for reconsideration were submitted timely.
5. The NPFC has thoroughly reviewed all documentation submitted with the claim.

B. Determined Amount:

The NPFC hereby determines that the OSTF will pay \$41,116.35 as full compensation for the reimbursable removal costs incurred by the claimant. All costs claimed are for charges paid by the Claimants for removal actions performed as defined by OPA and are compensable removal costs payable by the Oil Spill Liability Trust Fund.

AMOUNT: \$41,116.35

Claim Supervisor: [REDACTED]

Date of Supervisor’s review:

Supervisor Action:

Supervisor’s Comments: