

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/27/2009
Claim Number	: 909077-001
Claimant	: United States Environmental Services, LLC
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$5,363.50

FACTS:

This is a claim for the reimbursement of uncompensated removal costs by a stiffed contractor, the claimant, United States Environmental Services, LLC (USES) in the amount of \$5,363.50. The incident that is the subject of this claim occurred on or about 16 September 2008 at the Bert Jones Yacht Harbor in Gulfport, Mississippi.

According to the claim submission, the claimant, USES was hired by W.C. Fore Trucking Company when it was believed that a fuel tank on or near a barge they owned and operated had a discharge of approximately 50 – 60 gallons of diesel oil that created a sheen in the waters of the Yacht Harbor an inlet of the Mississippi Sound, a navigable water of the United States.

The incident was reported to the NRC and given the number of 884074. According to claimant's submission, a sheen was noticed in the waters of the Harbor around 10:30 a.m. on 16 September 2008. At the time it looked like the source of the discharge was a BA/BG owned and operated by W.C. Fore Trucking Company (W.C. Fore). W.C. Fore hired the claimant, USES to respond to the incident and clean up the spill.

USES responded to the spill. They deployed boom in the southwest corner of the harbor to contain the spilled fuel. A wash pump was used to move the fuel from under the docks. Once the fuel was contained USES absorbed the fuel from the water with the use of petroleum absorbing pads. The recovered waste fuel and absorbent material was placed into poly bags. All bagged material was placed into 55 gallon drums for off site disposal. After all fuel was recovered, USES returned to its office to decontaminate the equipment. In total USES recovered 5, 55 gallon drums of waste for off site disposal.

On or about 1 October 2008 USES, the claimant transported all recovered waste to the Macland Disposal Center for off site disposal. All of the 5, 55 gallon drums were transported to this facility for disposal.

The claimant contacted both the Mississippi Department of Environmental Quality and the United States Coast Guard (USCG). The claims submission package includes a statement by the USCG, who was the Federal On Scene Coordinator (FOSC) supporting the claimant's statement of facts, indicating that they Sector Mobile was "*on scene and verified that the personnel, equipment, and materials that were on scene were appropriate for the necessary clean-up actions and proper disposal of the recovered product*".

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. Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. 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 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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$ 5,363.50 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim number 909077-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on or about 16 September 2008. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

The United States Coast Guard (USCG) was the FOSC. The claimant presented a statement from the FOSC that indicates that the scope of the response actions associated with the oil spill was in fact necessary to mitigate the ongoing spill and substantial threat of contamination and discharge to the nearby waterway. The Claims Manager and the FOSC has determined that the response actions were reasonable and necessary to continue mitigating the substantial threat.

B. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$ 5,363.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number 909007-001. All costs claimed are for charges paid for 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.

DETERMINED AMOUNT: \$5,363.50

RECOMMENDATION: I recommend offering compensation in the amount of \$5,363.50

Claim Supervisor: 

Date of Supervisor’s review:

Supervisor Action:

Supervisor’s Comments: