

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/14/2009
Claim Number	: 909081-001
Claimant	: Avalon Pointe Marina Inc
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$2,942.50

FACTS:

Oil Spill Incident: On Thursday, November 20, 2008, Hertz delivered a JLG Manlift to the Avalon Pointe Marina location that was being rented by Padula Masonry. Upon delivery of the JLG Manlift, an employee of Padula Masonry was to drive the JLG Manlift across the Avalon Pointe Marina yard to the bulkhead to be loaded onto a waiting barge that was launched by Avalon Pointe Marina at the request of Northstar.

Once the JLG Manlift was to be loaded onto the waiting barge, Northstar was going to tow the barge to a work location in Avalon that Padula Masonry was presently working at. As the JLG Manlift was being driven across the bulkhead by the Padula Masonry employee, the barge gave way and the JLG Manlift ended up in the waters of Ingrams Thorofare, a navigable waterway of the US.

After emergency services personnel completed evacuating the injured driver, Avalon Pointe Marina removed the JLG Manlift from the waterway as it was leaking diesel fuel and hydraulic oil. It is important to note that there was no work order or contract between Avalon Pointe Marina and Padula Masonry. After the incident, Avalon Pointe Marina made numerous calls to the office of Padula Masonry. Padula Masonry refused and still refuses to accept calls from Avalon Pointe Marina. The claimant also sent the invoicing to Padula Masonry for payment which to date remains unpaid.

Description of Removal Activities for this Claim: Northstar was on the scene when the incident occurred. Avalon Pointe Marina worked with Northstar to contain the spill with boom and absorbent pads, before removing the manlift from the liftwell. Avalon Pointe Marina used their 70 ton travel lift, a 25 ton travel lift and a fork truck to remove the manlift from the water.

The Claim: On April 3, 2009, Avalon Pointe Marina submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$2,942.50. Upon receipt of the claim, the NPFC issued an RP Notification Letter to Padula Masonry advising that Avalon Pointe Marina had submitted a claim which has identified them as the Responsible Party for the oil spill incident that occurred. To date, no response has been received. It is important to note that Hertz was provided the information for the insurance company for Padula Masonry which Hertz filed a claim with for their loss of equipment and the insurance company has denied the costs because the policy only consists of medical coverage.

The claim consists of an invoice, correspondence with Hertz, and photographs of the incident. The NPFC's review of the actual cost invoice and related documents focused on:

(1) whether the actions taken were compensable “disposal 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 are determined to be consistent with the National Contingency Plan (NCP) or directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

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. Findings:

1. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
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 for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR§ 136.205 as set forth below.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as “Compensation Allowable” under 33 CFR§ 136.205.
7. The claimant’s removal costs included rates in accordance with their published vendor rate schedule.

B. 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 \$2,942.50 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# 909081-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on November 20, 2008. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$2,942.50 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 909081-001 for removal costs.

AMOUNT: \$2,942.50

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *4/20/09*

Supervisor Action: *Approved*

Supervisor's Comments: