

CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/24/2009
Claim Number	: 909090-001
Claimant	: NWFF Environmental Inc.
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$7,681.59

FACTS:

1. Oil Spill Incident: On December 14, 2008, United States Coast Guard Station Siuslaw River Sector Portland received notification via the National Response Center (NRC) Report # 892490 of a partially submerged vessel.¹ The vessel was reported to have taken on water. The vessel was tied to the pier at Florence Marine Construction. NWFF Environmental (NWFF) received a call from United States Coast Guard Petty Officer ██████████ to respond to the partially submerged vessel in the Siuslaw River in Florence, Oregon. The Siuslaw River is a navigable water of the United States. The owner of the vessel, ██████████, president of Florence Marine Construction (Florence Marine), was notified. When NWFF arrived at the site, Mr. ██████████ was present. NWFF conducted a situation survey and determined that there was evidence of prior bailing operations by the owner using transfer pumps and that all sea water and oil water that was bailed was collected in the owner's liquid barge for disposal through their waste stream.

Petty Officer ██████████ of the United States Coast Guard (USCG) Sector Portland responded to the discharge at Florence Marine Construction Harbor as the Federal On-Scene Coordinator's Representative (FOSCR). The NPFC issued an RP Notification letter to Mr. ██████████ and as of the date of this determination, no response has been received in response to that notification.

2. Description of removal actions: On December 14, 2008, NWFF put down oil containment boom to secure the tug until sunrise. They then contacted the USCG to report no oil had been released; that oil containment was in place; and the vessel was secure. The USCG and Mr. ██████████ released NWFF until morning to report back at 7:00 am to reassess the tug and make a determination as to the plan of action for clean up.

On December 15, 2008, NWFF returned to the incident site at 6:30 am and conducted a situation survey of the tug. They determined that the condition of the tug had not changed and there was no oil in the water. At 7:00 am, USCG PO ██████████ arrived at the site and PO ██████████ was in attendance via phone for the morning briefing regarding the plan of action for the clean up. USCG agreed with NWFF on the status of the tug and determined that Florence Marine could take over control of the clean up operations. At 8:00 am, NWFF informed Mr. ██████████ that USCG decided to pass control of the incident site to him. NWFF discussed operational options with him with regards to the tug being secured and no longer required oil spill protection. A final inspection of the tug was conducted with the marine mechanic who confirmed the condition of the tug to be sound

¹ See, NRC Report # 892490

and not taking on more than the average amount of sea water. NWFF then removed the containment boom from the water.

USCG issued a Notice of Federal Interest to Mr. [REDACTED] as a result of the incident.

3. The Claim: On May 14, 2009, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement in the amount of \$7,681.59 for their uncompensated removal costs. The claim consists of an incident summary, invoices of work performed and supplies used for the incident, photographs, and correspondence to Florence Marine. The Claims Manager obtained a copy of the Coast Guard MISLE case for this incident, a well as the NRC Report.

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 provided by PO [REDACTED], a member of the United States Coast Guard Sector Portland Oregon.
2. The incident involved the substantial threat of 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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

In reviewing the NWFF invoice # 5636, the claimant billed for a fuel surcharge, but did not provide receipts or any other type of documentation as proof of the cost the fuel with the claim submission. In the claimant's e-mail of September 22, 2009, the claimant advised that they did not maintain "all of the billable project notes" as this clean up "was not a USCG managed response." In the same e-mail, the claimant also informed that they "do not have copies of fuel receipts as we bill based on a fuel surcharge of 15% of the

rental cost on response vehicles." The claimant did not provide receipts for the rental equipment and noted on the provided rate schedule (NWFF Environmental Emergency Response Equipment Sheet) that \$0.00 is the cost for rented equipment. Therefore, compensation for the fuel surcharge of \$105.30 for December 14, 2008 is denied, as well as the fuel surcharge of \$129.60 for December 15, 2008.

The claimant also billed for \$436.68 for lodging for December 14, 2008, but did not provide the motel receipts. Claimant's rate schedule lists the total cost (including their 21.4% mark up) for the "Motels" for three days. Compensation for lodging is also denied.

Therefore, the NPFC has adjusted the amount payable to \$7,010.00, for a total denied amount of \$671.58.

Based on the NPFC's denial of \$671.58, the NPFC determines that the OSLTF will pay \$7,010.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909090-001.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$7,010.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909090-001.

AMOUNT: \$7,010.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *10/01/09*

Supervisor Action: *Approved*

Supervisor's Comments: