

## CLAIM SUMMARY / DETERMINATION FORM

Date : 7/14/2009  
Claim Number : 909094-001  
Claimant : Oil Mop, LLC  
Type of Claimant : Corporate (US)  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$35,968.25

### FACTS:

- 1. Oil Spill Incident:** On Sunday, July 13, 2008 at 0415, the M/V *Ruby E*, owned by DRD Towing Company (DRD), was heading northbound at 101 LMR light boat (no tow). The *Ruby E* was ahead of the northbound tow, the *Martin Challenger* that was pushing two loaded 30,000-barrel barges, the TTT-310 (lead) and the TTT-261. The *Ruby E* was well forward of the port side of the *Martin Challenger* tow. The upstream current had accelerated the *Martin Challenger* and drifted the bow of the tow within 10' of the *Ruby E*, causing the port bow knuckle of the forward barge, the TTT-310, to collide with the starboard side of the *Ruby E* resulting in an extreme port list of which the *Ruby E* was not able to recover and subsequently sank.

Federal On-Scene Coordination was made with U.S. Coast Guard, LCDR K [REDACTED]. The Coast Guard established a safety zone on the Mississippi River from mile marker 101 to mile marker 102 permitting only one vessel to pass at a time while the, *Ruby E*, was sunken at mile marker 101.8. The Coast Guard worked with the Army Corps of Engineers to fully reopen the waterway to vessel traffic. Coast Guard inspectors were on scene aboard the M/V *General Kelly* which was operated by the Port of New Orleans to assess the incident and develop a salvage plan for the *Ruby E*.

On July 15, 2008 at 1630, using Side Scan Sonar, the *Ruby E* was located sitting in an upright position on the bottom of the river.

- 2. Description of Removal Activities for this Claimant:** The Claimant, Oil Mop, LLC (OMI) was hired by DRD/WQIS for immediate response and cleanup of the oil spill. OMI was on scene beginning July 21, 2008 and remained on scene until July 26, 2008. OMI boomed off the vessel and used absorbent material to collect the released product. The contaminated debris was taken to American Recovery, LLC for disposal.
- 3. The Claim:** On May 22, 2009, Oil Mop, LLC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$35,968.25 for the services they provided to DRD. This claim is for removal costs based on the contracted rate schedule in place with DRD at the time services were provided.

The claim consists of copies of the invoicing and associated dailies, disposal manifest# 239618, contracted rate schedules, and WQIS Incident Reports.

This claim was submitted to the R.P.'s insurance carrier (WQIS), who denied the claim due to the company having an unlicensed Captain on the vessel. Mr. [REDACTED]

from WQIS was on scene July 14 through July 18 observing the initial recovery of the vessel and to observe the diving efforts. Mr. [REDACTED] from MPRG, the R.P's representative and hull surveyor arrived on scene July 18 and remained on scene until July 28, 2008 when the *Ruby E* was floating

**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 the U.S. Coast Guard, LCDR [REDACTED]
2. The incident involved the discharge of "oil" as defined in OPA90, 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 majority of all 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 with the exception of the following:
  - a. OMI invoice 113081462 on 12/2/2008, deny \$650.00 as the response boat was double billed.<sup>1</sup>

#### *B. Analysis:*

The 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 \$35,318.25 of uncompensated removal costs and that the 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# 909094-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of July 21, 2008 through August 15, 2008.

#### *C. Determined Amount:*

<sup>1</sup> Email to Ms. [REDACTED] OMI, dtd July 16, 2009

The NPFC hereby determines that the OSLTF will pay \$35,318.25 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909094-001. 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.

**AMOUNT: \$35,318.25**

Claim Supervisor: 

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: