

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 7/28/2009
Claim Number	: 909095-001
Claimant	: Oil Mop, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$8,049.57

### **FACTS:**

- 1. Oil Spill Incident:** On January 3, 2009, the M/V *Destiny* sank, causing oil to discharge into the Atchafalaya River, in Berwick, Louisiana. The Atchafalaya River is a tributary of the Mississippi and Red Rivers. The Atchafalaya River is a navigable water of the United States. At 4:30 pm, Lisa ██████, the owner of the shrimp boat *Destiny*, phoned Oil Mop, LLC (Oil Mop) to contract the clean up of the fifty gallons of discharged diesel fuel. Oil Mop informed Ms. ██████ of the oil spill reporting protocol. Ms. ██████ never called the Louisiana State Police to report the oil spill incident. Oil Mop contacted the State Police to report the oil spill based on the information provided by Ms. ██████
- 2. Description of Removal Activities for this Claim:** Oil Mop worked to contain the spill with containment boom and absorbent pads, beginning on January 3, 2009 and continued their efforts the next day until the spill containment was complete. American Recovery, LLC (American Recovery) was contracted by Oil Mop for the disposal, as noted on the American Recovery Waste Manifest #254430.
- 3. The Claim:** On May 22, 2009, Oil Mop submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated removal costs in the amount of \$8,049.57. Upon receipt of the claim, the NPFC issued a Responsible Party (RP) Notification Letter to ██████ advising that Oil Mop had submitted a claim which has identified her as the RP for the oil spill incident. To date, no response has been received. It is important to note that Oil Mop made numerous attempts to charge the credit card provided by the RP, but the charges were denied.

The claim consists of an invoice, internal correspondence, daily field logs, miscellaneous food receipt, and proof of payment to the disposal company. 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) FOOSC; 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 NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the National Contingency Plan (NCP) for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990. (See, Delegation of Authority from COMDT ltr 5760/3 of 27 July 1992).
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.

**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.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$8,049.57 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# 909095-001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on January 3, 2009. 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 \$8,049.57 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 909095-001 for removal costs.

**AMOUNT: \$8,049.57**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *8/5/09*

Supervisor Action: *Approved*

Supervisor's Comments: