

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/3/2009
Claim Number	: 909101-001
Claimant	: Aransas County Navigation District
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$3,082.99

### **FACTS:**

**1. Oil Spill Incident:** On January 22, 2009, the Aransas County Navigation District (ACND) received reports of a smell of diesel around Cove Harbor. They located a sunken commercial fishing vessel *My Girls* at 140 Cove Harbor North, in Rockport, Texas. ACND then notified the owner of the vessel, Mr. ██████████, and also contacted the National Response Center (NRC). The incident was reported to the NRC via report # 895487.<sup>1</sup> It was determined that the hull of the vessel had been punctured by debris in the water when the tide went out, creating a two inch gash in the hull, causing the vessel to sink and discharge approximately 30 gallons of oil into Cove Harbor, a tributary of the Aransas Bay. The Aransas Bay is a navigable water of the United States. Due to the direction of the wind, the oil remained along the shore line, with the majority of it gathered in one location, creating a rainbow sheen. The State on Scene Coordinator (SOSC), Mr. ██████████ of the Texas General Land Office (TGLO), and MST2 ██████████ of the United States Coast Guard (USCG) Sector Corpus Christi responded to the discharge at Cove Harbor as the Federal Scene Coordinator's Representative (FOSCR).

In his January 22, 2009 USCG/TGLO Witness Statement, taken at the incident site, Mr. ██████████ identified himself as the responsible party.

**2. Description of removal actions:** When TGLO and the Coast Guard arrived at the incident site, Mr. ██████████ with the assistance of ACND, were providing immediate response and cleanup of the spill by placing boom and absorbent pads around the vessel, along the shore line, and in the vicinity where the large concentration of product was located. All pads were recovered and disposed of in accordance with the National Contingency Plan (NCP). The gash in the vessel was subsequently patched and the vessel was dewatered. The Coast Guard remained on scene throughout the removal activities. The Coast Guard issued a Notice of Federal Interest to Mr. ██████████ as a result of the incident.

**3. The Claim:** On June 4, 2009, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement in the amount of \$3,082.99 for their uncompensated removal costs. The claim consists of the ACND incident billing summary, invoices of work performed and supplies used during the clean up, disposal manifest and proof of payment. The Claims Manager obtained a copy of the Coast Guard MISLE case for this incident.

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<sup>1</sup> See, NRC Report # 895487

## **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. The FOSCR coordination was provided by MST2 [REDACTED], a member of Coast Guard Sector Corpus Christi.
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 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 ACDN invoice # 20090001, the claimant billed for the use of a truck at \$14.56 for six hours, with a total of \$101.92. However, the actual total at the rate of \$14.56 for six hours is \$87.36. Therefore, the NPFC has adjusted the amount payable to \$87.36, for a total denied amount of \$14.56.

Based on the NPFC's denial of \$14.56, the NPFC determines that the OSLTF will pay \$3,068.43 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909101-001.

#### **C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$3,068.43 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909101-001.

**AMOUNT: \$3,068.43**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *9/10/09*

Supervisor Action: *Approved*

Supervisor's Comments: