

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/14/2009
Claim Number	: 909103-001
Claimant	: United States Environmental Services, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$38,581.89

### **FACTS:**

**1. Oil Spill Incident:** On July 2, 2007, a fire at the Covenant Cove Marina (Covenant Cove), at 7001 Val Monte Drive, Guntersville, Alabama, damaged and sank approximately twelve pleasure vessels of various sizes, causing a discharge of oil (engine oil) and creating the potential for additional discharges to occur until the dock and debris from the vessels were removed from Guntersville Lake, Guntersville, Alabama. Guntersville Lake, a tributary of the Tennessee River, is a navigable water of the United States. The incident was reported to the National Response Center (NRC) via report # 840651.<sup>1</sup> Boom and absorbents were applied to the inlet of the marina, as well as continued efforts to extinguish the structure fire. Due to the gasoline and mixtures of gasoline and oil from the vessels, the owner of the Covenant Cove requested hazardous materials support, assistance and remediation from the United States Environmental Services, LLC (USES). [REDACTED], Director of the Marshall County Emergency Management Agency, contacted USES on behalf of the owner. USES was hired for the clean up.

**2. Description of removal actions:** USES began the clean up on July 5, 2007. USES contained the oil initially released as a result of the fire. They removed the debris, vessels and motors that posed a continuing threat of oil discharge.

From July 5, 2007 to July 9, 2007, USES deployed a supervisor with at least three recovery technicians; two pickup trucks; a work boat; a centrifugal trash pump; and an excavator. On the final day, July 10, 2007, the disposal was performed. USES deployed a supervisor and one recovery technician; two pickup trucks; Greer Enterprises handled disposal; and Saginaw Recycling was used for transportation of the disposal.

Disposal Manifests are included with the claim submission.

**3. The Claim:** On June 19, 2009, the Claimant submitted a removal cost claim in the amount of \$38,581.89 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated response costs. The claim consists of the USES incident billing summary, invoices of work performed and supplies used during the clean up, disposal manifests and proof of payment.

The claimant has communicated with Covenant Cove and submitted the claim to them on July 31, 2007. Covenant Cove informed the claimant that the charges were excessive

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<sup>1</sup> See, NRC Report # 840651

despite that fact that the cost was billed in accordance with the rate schedule in place at the time the services were rendered. Claimant's follow-up calls to Covenant Cove have gone unanswered.

**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 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 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 some 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.

#### **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.

The Claims Manager’s review of the cost documentation reveals overtime charges for Thursday, July 5, 2007, Friday, July 6, 2007, and Monday, July 9, 2007. According to the claimant’s rate schedule, straight time rates apply from 0800 to 1700, Monday through Friday. Claimant requests compensation for eleven-hour, overtime work days for Saturday, July 7, 2007 and Sunday, July 8, 2007. Claimant also requests compensation for Tuesday, July 10, 2007 in which the supervisor and the technician worked an eight-hour day, but the claimant requests compensation for subsistence for a total of \$50.00 for

the two employees. The claimant will be compensated for removal costs based on the rate schedule provided with the claim submission.

According to the USES daily work report of Thursday, July 5, 2007, [REDACTED], [REDACTED] began work at 05:30 and ended their work day at 19:30. Six hours of overtime was billed. However, based on the rate schedule, from 05:30 to 08:00 equates to 2.5 hours of overtime, 08:00 to 17:00 is straight time, and from 17:00 to 19:30 equates to 2.5 hours of overtime, which yields a total of 5.0 hours of overtime for [REDACTED]. USES employee A. Farmer worked from 07:30 to 19:30 that day. From 07:30 to 08:00 equates to 0.50 hours of overtime, from 08:00 to 17:00 is straight time, and from 17:00 to 19:30 equates to 2.5 hours of overtime, which yields a total of 3.0 hours of overtime. Therefore, the NPFC has adjusted the amount payable for personnel to \$3,374.00 from \$3,665.00 requested by the claimant, denying \$291.00.

The USES daily work report for Friday, July 6, 2007 notes that [REDACTED] began work at 07:30 and ended work at 19:00. From 07:30 to 08:00 equates to 0.50 hours of overtime, 08:00 to 17:00 is straight time, and from 17:00 to 19:00 equates to 2.0 hours of overtime, which yields a total of 2.5 hours of overtime. Therefore, the NPFC has adjusted the amount payable for personnel to \$2,236.50 from \$2,947.50 requested by the claimant, denying \$711.00.

The USES daily work report for Monday, July 9, 2007 notes that [REDACTED] began work at 07:30 and ended work at 18:30. From 07:30 to 08:00 equates to 0.50 hours of overtime, 08:00 to 17:00 is straight time, and from 17:00 to 18:30 equates to 1.5 hours of overtime, which yields a total of 2.0 hours of overtime. Therefore, the NPFC has adjusted the amount payable for personnel to \$2,118.00 from \$2,355.00 requested by the claimant, denying \$237.00.

Claimant requested reimbursement for weekend overtime charges of eleven hours for Saturday, July 7, 2007 and Sunday, July 8, 2007. Claimant will be compensated for ten hours of overtime each day for each employee. As documented on the claimant's weekday dailies, the supervisor and technicians took an hour lunch each day, and noted on the dailies that they worked eight hours from 08:00 to 17:00. The same rationale applies to eleven-hour workdays. Therefore, the NPFC has adjusted the amount payable for personnel to \$3,385.00 from \$3,676.00 requested by the claimant for July 7, 2007, denying \$291.00; and adjusted the amount payable for personnel to \$3,385.00 from \$3,676.00 requested by the claimant for July 8, 2007, denying \$291.00, for a total amount denied of \$582.00.

The claimant also requested compensation for per diem at \$25.00 each for one supervisor and one technician, for a total amount of \$50.00 for Tuesday, July 10, 2007. However, the rate schedule indicates that this applies when work exceeds twelve hours (when overnight accommodations are not required). The July 10, 2007 daily documented the hours worked by [REDACTED] as eight hours each. The NPFC has adjusted the amount payable for personnel to \$688.00 from \$738.00 requested by the claimant, denying \$50.00.

Based on the NPFC's denial of \$1,821.00 for personnel charges, the NPFC determines that the OSLTF will pay \$36,710.89 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909103-001.