

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/28/2009
Claim Number	: 909103-002
Claimant	: United States Environmental Services, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$17,969.39

### **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 initially responded on July 2, 2007 and July 3, 2007 for which this claim pertains. USES filed an initial claim for compensation which they were paid for the time period of July 5, 2007 through July 9, 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.

**3. The Claim:** On October 27, 2009, the Claimant submitted a removal cost claim in the amount of \$17,969.39 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated response costs incurred between July 2, 2007 and July 3, 2007. The claim consists of the USES incident billing summary, invoices of work performed and supplies used during the clean up, rate schedule, NRC Report, proof of payment statement and third party invoices.

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 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.

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

## 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 NPFC determines that the OSLTF will pay \$16,893.39 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909103-002 for the time period of July 2, 2007 through July 3, 2007. It is important to note that the claimant requested \$17,969.39 but amended their invoices to reflect \$16,893.39 therefore the difference is denied. In the future, the NPFC would like to advise the claimant to submit all costs associated with an incident at one time unless the NPFC has been advised in advance that additional costs for an incident will be submitted incrementally.

**AMOUNT: \$16,893.39**

Claim Supervisor:



Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: