

CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/9/2009
Claim Number	: 909106-001
Claimant	: Environmental Safety and Health Services, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$8,517.35

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Marine Safety Unit Morgan City Case # 402731,¹ reports that on May 8, 2008, at 1600, Cedyco Corporation discharged approximately 15-gallons of crude oil from one of their onshore facilities. The incident occurred due to a cason failure from corroded equipment. The crude oil discharged into Boston Bayou which is a tributary of the Gulf Intercoastal Waterway, a navigable waterway of the US. The discharge created a sheen of oil on the water's surface.

The incident was reported to the National Response Center (NRC) on May 9, 2008 at approximately 12:33 pm EST via report # 870375 by Mr. [REDACTED] of Cedyco Corporation, the potential responsible party (PRP). The report described the incident as a 15-gallon discharge of crude oil from an oil well due to a broken pipe.² The Coast Guard case's Incident Brief states that a cason failed as a result of corrosion. The Coast Guard case further stated that the source was being secured by depressurizing, plugging and abandoning the well. Cedyco Corporation stated to the United States Coast Guard (USCG) that they were going to plug and abandon the well to prevent a reoccurrence.

On May 10, 2008, Marine Safety Unit Morgan City issued a Notice of Federal Interest (NOFI) to Mr [REDACTED] of Cedyco Corporation. According to the claimant, ES&H's Spill Report dated May 9, 2008; the incident was also reported to the State Police on May 9, 2008 and assigned Incident # 08-02676. Upon receipt of the claim, the National Pollution Funds Center (NPFC) Claims Manager sent an RP Notification letter to the potential responsible party, Cedyco Corporation on August 12, 2009 and to date no response has been received.

- 2. Description of removal actions performed:** The claimant, ES&H, arrived on site on May 9, 2008. They followed Coast Guard members from Marine Safety Unit Morgan City to the spill location and they also called the Department of Environmental Quality (DEQ) who advised ES&H that they would arrive at the site the following day. The claimant had responders on site performing cleanup and containment from approximately 11:00 am until 20:00 pm on May 9, 2008. Responders returned the following day, May 10, 2008, and worked from approximately 06:00 am until 13:00 pm at which time active cleanup was completed and performed to the satisfaction of the USCG, DEQ, and Mr. [REDACTED] of Cedyco Corporation (PRP). Although disposal for the sorbent pads and 6" absorbent boom was manifested, it was not charged to CEDYCO due to an oversight

¹ See, Marine Safety Unit Morgan City's Coast Guard Case # 402731 opened 5/12/08

² See, NRC report # 870375 dated May 9, 2008

on ES&H's part, and is, therefore, not included in this claim.³ The claimant was instructed to leave approximately 100 feet of containment boom at the site from May 11, 2008 until approximately June 9, 2008 per Mr. [REDACTED] request.⁴

- The Claim:*** On July 21, 2009, Environmental Safety & Health Consulting Services, Inc. (ES&H) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$8,517.35 for the services provided from May 9, 2008 until June 9, 2008. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of the invoicing and associated dailies, contracted rate schedule, NRC report, ES&H Spill Report, internal email correspondence, photographs as taken by the claimant, third party receipts, ES&H Supervisor's written log, a copy of the USCG Case # 402731, and the Notice of Federal Interest (NOFI) as issued by the USCG. The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

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].

³ See, Email dated September 9, 2009 from [REDACTED], NPFC

⁴ See, Email dated September 9, 2009 from [REDACTED], NPFC

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 FOSC coordination has been established via USCG Case # 402731 along with email sent to Ms. [REDACTED], NPFC Claims Manager, from MST3 [REDACTED] dated August 26, 2009.⁵
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. Presentment of costs to the RP was made by the claimant, prior to the submission of the claim. The NPFC also made presentment of costs to the RP and to date the NPFC has received no response.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that 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.

⁵ See, Email dated August 26, 2009 from MST3 [REDACTED] to Ms [REDACTED], NPFC

B. Analysis:

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.

The Claims Manager confirmed that response activities performed by the claimant were overseen by the USCG, DEQ, and the PRP representative, Mr. [REDACTED]. The NPFC confirmed that Mr. [REDACTED] signed the ES&H dailies during the active removal response between 5/9/08 and 5/10/08.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$8,517.35 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# 909106-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, May 9, 2008 through June 9, 2008. 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 hereby determines that the OSLTF will pay \$8,517.35 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909106-001. 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: \$8,517.35

Claim Supervisor: [REDACTED]

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

Supervisor Action: *Approved*

Supervisor’s Comments: