

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/2/2009
Claim Number	: 910032-001
Claimant	: Oil Mop, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$14,225.84

### **FACTS:**

**1. Oil Spill Incident:** On Saturday, August 23, 2008, Oil Mop, LLC (Oil Mop) and Armant Environmental Services LLC (Armant), also known as Active Carbons LLC, entered into an emergency contract agreement requesting that Oil Mop provide labor, equipment, supplies and materials to control, contain and clean up the oil discharge at 2141 Toth Road in Vacherie, Louisiana, the place of business of Armant. Fifty gallons of oil spilled on land and into a ditch that leads to bayous that are tributaries to the Lac Des Allemands, a navigable water of the United States.

**2. Description of Removal Activities for this Claim:** Oil Mop began the clean up on Sunday, August 24, 2008. Oil Mop worked to contain the spill with containment boom and absorbent pads and continued their efforts until the spill containment was complete. They deployed an eight member crew, three trucks, and a spill trailer for the containment and clean up.

**3. The Claim:** On October 22, 2009, Oil Mop submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated removal costs in the amount of \$14,225.84. The NPFC issued a Responsible Party (RP) Notification Letter to Armant advising that Oil Mop had submitted a claim which has identified the company as the RP for the oil spill incident. It is important to note that Oil Mop was informed by the RP that they can't pay the invoice.

The claim consists of invoices, daily field logs, signed Emergency Service Contract, and claimant's response information form. 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) FOSC; 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. Overview:**

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 majority 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.

The Claims Manager's review of the supporting claim documentation from Oil Mop revealed that certain labor rates on the invoice are not consistent with the Oil Mop Rate Schedule dated January 1, 2008. The claimant will be compensated for the established rates based on the Oil Mop Rate Schedule provided in support of this claim submission.

The daily field log provided in support of OMI's invoice itemizes the labor on August 24, 2008 as:

- Supervisor, Mr. [REDACTED], billed correctly;
- Operators (3), Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], also billed correctly;
- Technicians (4), Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], were billed at an incorrect OT rate. These technicians were billed at an hourly rate of \$67.50 per hour which is not consistent with the OT rate for a technician as identified on the Oil Mop Rate Schedule. The rate schedule identifies the OT rate for a technician as \$54.00 an hour therefore the NPFC has reduced the OT rate for these technicians from \$67.50 hr as billed to \$54.00 hr each for the 12 hrs each they worked on August 24, 2008 which brings the total denied amount to \$486.00 for incorrect billing;
- As for the fourth Technician, Mr. [REDACTED], he was billed at an incorrect rate as well. This technician was billed at an OT rate of \$60.00 hr vice the \$54.00 hr OT

rate in accordance with the Oil Mop Rate Schedule therefore the NPFC has reduced the OT rate accordingly for 4 hrs which brings the total denied amount for this person to \$24.00 for incorrect billing.

Based on the information provided above, the NPFC denies \$510.00 in over billing.

**C. *Determined Amount:***

The NPFC determines that the OSLTF will pay \$13,715.84 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 910032-001 for removal costs.

**AMOUNT: \$13,715.84**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *12/3/09*

Supervisor Action: *Approved*

Supervisor's Comments: