

CLAIM SUMMARY / DETERMINATION FORM

Date	: 11/18/2009
Claim Number	: 910033-001
Claimant	: NRC Environmental Services
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$40,018.20

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Sector Los Angeles/Long Beach Case # 459527,¹ reports that on June 25, 2009, the M/V ACE sank at its slip, discharging diesel fuel into the water, creating a sheen. The discharged oil entered Marina Del Ray Harbor, which is a tributary of Santa Monica Bay, both navigable waterways of the US.

The incident was reported to the National Response Center (NRC) on June 25, 2009 at approximately 02:58 pm PST via report # 909790 by Mr. [REDACTED], owner of the M/V Ace and the Responsible Party (RP).² The report described the incident as a 20-foot by 20-foot rainbow sheen in Marina Del Ray Harbor.³ Mr. [REDACTED] contacted NRC Environmental Services (NRCES) for the cleanup and removal of the oil.

AUX [REDACTED], USCG Sector Los Angeles/Long Beach, issued both a Notice of Federal Interest and an Enforcement Summary to Mr. [REDACTED], confirming that he was the RP.⁴ Because of his record and the low amount fuel spilled, the USCG Sector Los Angeles/Long Beach determined that a Letter of Warning be issued in lieu of a civil penalty for this spill.⁵

Description of removal actions performed: On June 26, 2009, NRCES arrived at the spill site and began removal activities. 275 feet of hard boom and 8 inch soft boom were placed around the sunken boat. Divers were secured to board up the aft door, 1st deck. The vessel was raised and dewatered. Once this was finished, the vessel itself was decontaminated by using a hot water pressure wash. The boom was maintained intermittently through July 17, 2009, when there was no longer a threat of oil.⁶

- 3. The Claim:** On October 28, 2009, NRC Environmental Services submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$40,018.20 for the services provided June 26 through July 17, 2009. 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

¹ See, Sector Los Angeles/Long Beach's Coast Guard Case # 459527 opened 6/29/2009

² See, NRC report # 909790 dated 6/25/2009

³ See, NRC report # 885685 dated September 29, 2008

⁴ See, Notice of Federal Interest and Enforcement Summary, both dated and signed by AUX [REDACTED] on 6/25/2009

⁵ See, Warning in Lieu of Civil Penalty, signed by CDR [REDACTED].

⁶ See, NRCES Hazardous Materials Response Report, submitted with the claim on 10/22/2009

submission. The USCG FOSC consisted of AUX [REDACTED] and PO [REDACTED], USCG.⁷

This claim consists of copies of the invoicing and associated dailies, a copy of MISLE Case # 459527, a copy of NRC Report # 909790, copy of the NOFI issued by AUX [REDACTED] a copy of AUX [REDACTED] PI Statement, a copy of the Enforcement Summary for Enforcement Activity # 3553606, a copy of the Letter of Warning issued by CDR [REDACTED] a copy of NRCES Weekly Revenue Sheets, a copy of NRCES Daily Work Reports, a copy of NRCES Hazardous Materials Emergency Response Report, a copy of CEMA Hazardous Materials Spill report, a copy of the Disposal of Non-Hazardous Waste Manifests, a copy of the Demand for Payment to Mr. [REDACTED] from NCES, photographs and internal email correspondence.

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 FOSC, 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].

⁷ See, NOFI, written by AUX [REDACTED] and email from AUX [REDACTED], NPFC, dated 11/12/2009

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 [REDACTED]. 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 Sector Los Angeles/Long Beach’s Case Report # 459527.⁸
2. The incident involved the report of a 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.

B. Analysis:

⁸ See, Sector Los Angeles/Long Beach’s Coast Guard Case # 459527 opened 6/26/2009 and email from AUX [REDACTED], NPFC, dated 11/12/2009

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 the claimant did in fact perform a site assessment with USCG Sector Los Angeles/Long Beach on June 26, 2009. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$40,018.20 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 #910033-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from June 26 through July 17, 2009. 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 \$40,018.20 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910033-001. 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: \$40,018.20

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: