

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/21/2009
Claim Number	: N08057-039
Claimant	: Weeks Marine, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$12,999.70

### **I. Facts**

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States.

### **II. Responsible Party**

American Commercial Lines LLC (ACL) owned the barge at the time of the incident and is a responsible party under the Oil Pollution Act.

### **III. The Claimant and the Claim**

As a result of this of this incident, oil released and river currents caused a vast geographical area to be impacted by oil, which prompted immediate response which included the booming of extensive portions of the river. The United States Coast Guard (USCG) implemented a safety zone between mile markers 97 and 60 on the Mississippi River and restricted vessel traffic to a safe speed outside of this area as well. At the time of the incident, the claimant, Weeks Marine, Inc. (Weeks), had ongoing operations in the affected geographic area. One of Weeks' vessels was the Dredge R.N. Weeks, which was moored at Bollinger Shipyards. As a consequence of the spill, the hull was oiled requiring cleaning.<sup>1</sup> It is important to note that oil also entered the hopper of the dredge requiring it to also be removed.<sup>2</sup>

On June 29, 2009, Weeks Marine, Inc. submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$12,999.70 for the services provided from July 23, 2008 through July 28, 2008. This claim is for removal costs based on the rate schedule in place at the time services were provided.

This claim consists of copies of the invoicing, receipts associated with the travel expense report for K. Long in the total amount of \$495.10, the vendor rate schedule, a copy of Weeks Marine Position Description sheets, a copy of Meredith Management Group rate sheets, a copy of Weeks Marine rate sheets, NRC report, USCG Sector New Orleans MISLE Case Report # 415733, a copy of Meredith Management Group's Supervisor's Log for 7/23/08 through 7/28/08, a copy Weeks Marine, Inc.'s Captain's Logs, 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.,

<sup>1</sup> See Claim submission forms, submitted by Weeks Marine, Inc. to the NPFC on 6/29/2009

<sup>2</sup> See, Weeks Marine, Inc. Captain's Logs, from July 23, 2008 through July 28, 2008

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.

#### **IV. Description of Removal Actions**

The claimant, Weeks, retained Meredith Management Group, Inc. (Meredith) in order to conduct cleaning of the hull and oversight. Absorbent pads and sorbent boom were used to contain the oil surrounding the dredge and for clean up of the oil. Meredith requested assistance of the Oil Mop, Inc. (OMI) booming team in order to clean the hull of the dredge with a steam cleaner, while Weeks personnel was used to spray down and move oil to one side of the hopper. OMI also cleaned out the inside of the ram-wells both before and after Weeks worked on the dredge. Upon completion of the project, OMI disposed of the contaminated materials and it was determined that the oil spill surrounding the dredge had been mitigated and removed. On July 28, 2008, the USCG Port State Control inspected and passed the R.N. Weeks. After being moored to repair a hole in the R.N. Weeks' hopper, it was cleared for passage by the USCG on August 2, 2008.<sup>3</sup>

#### **V. 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

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<sup>3</sup> See Claim submission forms, submitted by Weeks Marine, Inc. to the NPFC on 6/29/2009 and USCG DECON Vessels Log 1AUG08 Excel Spreadsheet

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].

## **VI. DETERMINATION OF UNCOMPENSATED REMOVAL COSTS:**

### **A. Overview:**

1. The FOSC coordination has been established via USCG Case # 415733.<sup>4</sup>
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 the RP denied liability to pay.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the 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:**

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.,

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<sup>4</sup> See, Sector New Orleans’s Coast Guard Case # 415733 opened 7/23/2008

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 hired Meredith Management Group, Inc. to respond on their behalf as a result of the DM932 oil spill incident. Meredith Management was present on scene from July 23, 2008 through July 28, 2008. The Claims Manager validated the costs associated with the Meredith Management invoicing and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

Based on the documentation provided by Weeks Marine, Inc., the claimant has failed to meet its burden by the preponderance of the evidence that its personnel were properly certified to perform cleanup activities and also to show what actions each member of the RN Weeks crew did while performing the removal of oil from the hopper. Therefore, the Weeks personnel costs totaling \$1,554.60 are denied.

On that basis, the Claims Manager hereby determines that the claimant incurred \$11,445.10 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 # N08057-039. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, July 23, 2008 through July 28, 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 \$11,445.10 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N08057-039. 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: \$11,445.10***

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *10/01/09*

Supervisor Action: *Approved*

Supervisor's Comments: