

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/27/2009
Claim Number	: N09032-001
Claimant	: Environmental Safety and Health Services, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$1,822.00

### **FACTS:**

- Oil Spill Incident:*** The United States Coast Guard Marine Safety Unit Morgan City Case # 408722,<sup>1</sup> reports that on June 17, 2008, at 1200, Cedyco Corporation discharged 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. It is important to note that because this particular location has had numerous incidents, the Coast Guard combined all of the following incident dates into Coast Guard Case # 408722 under Federal Project Number (FPN) N09032 which was officially issued on June 2, 2009. The incident dates are as follows: June 17, 2008 via National Response Center (NRC) report # 874422; August 25, 2008 via NRC report # 881741; March 11, 2009 via NRC report # 899666; April 4, 2009 via NRC report # 901810; May 27, 2009 via NRC report # 906830; and May 31, 2009 via NRC report # 907173.

The incident was reported to the National Response Center (NRC) on June 17, 2008 at approximately 15:28 pm EST via report # 874422 by Mr. ██████████ of Cedyco Corporation, the potential responsible party (PRP). The report described the incident as a discharge of crude oil from an oil well due to unknown causes.<sup>2</sup> The Coast Guard case's Incident Brief states that on June 2, 2009, Marine Safety Unit (MSU) Morgan City conducted a harbor patrol of Boston Bayou and the results of that patrol concluded that the potential responsible party (PRP), Cedyco Corporation, failed to meet the requirement of an Administrative Order # 001-09 which was originally issued back on April 7, 2009. The Admin Order required Cedyco Corporation to continue to clean up oil that was leaking from the wellhead and to provide a plan for securing the source of the spill. Coast Guard personnel made several attempts to contact Cedyco Corporation however the company remains unresponsive

The USCG Case # 408722 states that on June 18, 2008, Marine Safety Unit Morgan City issued a Notice of Federal Interest (NOFI) to Cedyco Corporation. According to ES&H's supervisor's log, Mr. ██████████ called ES&H at approximately 17:00 on 6/17/08 to report a spill. Due to inclement weather, ES&H did not go to the site until 6/18/08. The claimant performed a joint assessment of the alleged spill with USCG personnel from Marine Safety Unit Morgan City. Upon completion of the site assessment, no oil was discovered on land or in the water. Upon receipt of the claim, the National Pollution Funds Center (NPFC) Claims Manager sent an RP Notification letter to the potential

<sup>1</sup> See, Marine Safety Unit Morgan City's Coast Guard Case # 408722

<sup>2</sup> See, NRC report # 874422 dated June 17, 2008

responsible party, Cedyco Corporation on August 12, 2009 and to date no response has been received.

- Description of removal actions performed:** The claimant, ES&H, was called out on June 17, 2008. Upon arrival to the site, the weather was too bad for ES&H to go to the specific location by boat therefore the claimant only charged the PRP for 2 hours at a standby rate along with the standard charge for one unit of Personal Protective Equipment (PPE), one daily charge for a vehicle and the mileage associated with mobilization to the site.

The claimant and the USCG arrived at the site first thing the following morning. Upon completion of their joint site assessment, it was determined that no oil was evident on the water or on land.

- 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 \$1,822.00 for the services provided from June 17, 2008 through June 18, 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 Supervisor's Log, internal email correspondence, and a copy of the USCG Case # 408722. 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].

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 # 408722 along with email sent to Ms. [REDACTED], NPFC Claims Manager, from MST3 [REDACTED] dated August 27, 2009.<sup>3</sup>
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.

---

<sup>3</sup> See email dated August 27, 2009 from MST2 [REDACTED], NPFC

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:***

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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager confirmed that the claimant did in fact perform a joint site assessment with the USCG between June 17 and June 18, 2008.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$1,822.00 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 #N09032-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of June 17, 2008 through June 18, 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 \$1,822.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N09032-001. 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: \$1,822.00**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *9/3/09*

Supervisor Action: *Approved*

Supervisor’s Comments: