CLAIM SUMMARY / DETERMINATION FORM

Date	:	9/18/08
Claim Number	:	P05005-139
Claimant	:	Sunoco, Inc.
Type of Claimant	:	Corporate (US)
Type of Claim	:	Removal Costs
Claim Manager	[redacted]	
Amount Requested	:	$236,743.08

FACTS:

1. ***Incident.*** On November 26, 2004, between 2100 and 2115 hours, the T/V ATHOS I struck a submerged anchor within Federal Anchorage #9 on the Delaware River (also known as the "Mantua Creek Anchorage"). The Claimants allege that the incident occurred when two tugboats began maneuvering the ATHOS I (pushing from the vessel's starboard side) toward the dock at the CITGO Asphalt Refinery Company terminal in Paulsboro, NJ. (See, TMC (Marine Consultants) Ltd. Report, May 25, 2005, hereinafter the "TMC Report"). The investigation into the incident revealed that the anchor punctured the vessel's hull rupturing the #7 port ballast tank and the #7 center cargo tank, causing an estimated 263,371 gallons of "Bachaquero crude oil" to discharge into the Delaware River, a navigable waterway of the United States. (See, SITREP-POL 50 dated 17 May 2006).

The T/V ATHOS I is a single-bottom hull, double-sided, 37,895 gross ton oil tank vessel with a breadth of 32.2 meters or 105.6 feet. The vessel is owned by Frescati Shipping Company Limited and was managed on the date of the incident by Tsakos Shipping & Trading S.A (hereinafter jointly referred to as the "Responsible Party" or "RP"). (See, Certificate of Financial Responsibility, #841496-15 with effective date of 17 May 2004 and expiration date of 17 May 2007).

2. ***Description of removal activities.*** According to the National Response Center (NRC) report #742509, at 2200 on November 26, 2004, the RP, via The O'Brien's Group, reported the incident to the National Response Center. Coast Guard Marine Safety Office, Philadelphia, responded to the report. (See voluminous SITREP-POL message traffic and NRC report #742508). The RP accepted responsibility for the spill. (See, Claimants' December 1, 2004 letter from [redacted]).

The RP participated in the incident response as part of the Unified Command (UC), under the direction of the Federal On-Scene Coordinator (FOSC), USCG [redacted], COTP, MSO Philadelphia. (See, SITREP P 271013Z NOV 04 ZUI ASN-A14332000007).

The claimant's Emergency Response Teams began response activities immediately following the oil spill incident in order to mitigate the impact of the spill on Sunoco and Sunoco Logistics facilities. Sunoco's locations are:

Sunoco Philadelphia Refinery – Zone PA-3;
Sunoco Marcus Hook Refinery – Zone PA-8;
Sunoco Eagle Point Refinery – Zone NJ-3;

Sunoco Frankford Chemical Plant – Zone PA-2;
Sunoco Logistics docks at Eagle Point – Zone NJ-3;
Sunoco Logistics docks at Hog Island – Zone PA-4;
Sunoco Logistics docks at Fort Mifflin – Zone PA-4.

Activities at these sites included boom operations at docks and water intakes and vessel and equipment cleaning. Lightering of some vessels was also required to allow them to enter the spill area. Sunoco employees and contractors participated in the effort to cleanup oil in the area near the refineries and to prevent damage to the facilities, which resulted in increased overtime hours and fees. Additionally, equipment was purchased or rented for use in these operations. The cleanup and monitoring effort continued for several weeks following the incident.

Several outside contractors were used to assist efforts to protect the area refineries and docks and help in the cleanup efforts. Cleanup efforts required the use of absorbent materials and booms to protect and clear the waterways near the Sunoco refineries. Sunoco Logistics operates three docks along the Delaware River: Eagle Point in NJ, and Fort Mifflin and Hog Island in PA. The Fort Mifflin and Hog Island docks provide crude oil to the Philadelphia Refinery and the Eagle Point dock is the crude discharge point for Sunoco's Eagle Point Refinery.

Clean Venture provided extensive cleaning and repair services to the docks at Eagle Point at the time of the incident and replaced sections of the containment boom. They also replaced the permanent boom in 2007. At Eagle Point, this system consists of dock structures, secondary containment on the transfer manifolds, and floating containment booms in the water. Approximately 6,000 feet of spill containment boom is required to contain the transfer ops at the dock. Approximately 3,000 feet of that is permanent fence boom which is deployed between the dock and the shoreline to capture any leakage that may occur. The permanent boom is kept in place ten months out of the year, being removed in the winter months due to ice and other winter conditions. The containment boom was damaged as a direct result of the oil spill and was replaced at the time of the spill.

The permanent boom that was damaged as a direct result of the oil spill was removed to a cleaning station during the response, under the direction of The O'Brien's Group, although attempts to clean the boom failed therefore requiring replacement.

The removal action at the site was nearing completion on 21 Nov 2005. (See, SITREP 48 dated 21 Nov 2005, which specifically states that a monthly maintenance monitoring plan was signed for areas which had been highly impacted and that final inventory disposal was scheduled for the end of November 2005).

As required by 33 CFR 136.203, the claimant worked closely with the FOSC and Unified Command throughout the response. (See, Incident Action Plans by Zone locations and date). Sector Delaware Bay provided FOSC coordination.

3. ***Claim.*** On 29 October 2007, the sent the National Pollution Funds Center (NPFC) a removal cost claim component for reimbursement in the amount of $236,743.08. The Claimant provided the NPFC 1 binder of invoices containing some 7 tabbed sections to document the $236,743.08 in total removal costs claimed. The NPFC claims manager reviewed each and every submitted proof of payment, invoice, as well as every "daily" sheet submitted to substantiate the invoices. The review of the actual costs, invoices and dailies focused on: (1)

whether the actions taken were compensable "removal actions" under OPA and the NPFC claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize or 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. The NPFC claims manager reviewed the payment records submitted by the Claimants against the claimed costs for each contractor/subcontractor. (See, Enclosure (1) – Sunoco, Inc. Summary of Vendors and Detailed Summary by Vendor spreadsheets, listing the vendors that make up the claim and the amount determined by NPFC to be compensable for each vendor).

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].

<u>DETERMINATION OF LOSS</u>:

A. *Overview:*

1. The FOSC has provided FOSC coordination. A Federal project was opened by the USCG for this incident.
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 most 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 as set forth below and in Enclosure (1).

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.

NPFC CA communicated with the NPFC CM Division and was able to confirm that these costs have not been presented to the FOSC for payment under the Federal Project forwarded to the NPFC by the FOSC as supporting documentation for monies spent. These costs are therefore not duplicative and have been deemed necessary and consistent with the NCP.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur $166,857.51 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# P05005-139. All costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, November 26, 2004 through July 5, 2005, as well as costs paid by the claimant for other vendor(s) for removal actions as that term is defined in OPA and, 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 $166,857.51 as full compensation for the reimbursable removal costs incurred by the Claimants and submitted to the NPFC under claim # P05005-139, as detailed in Enclosure (1). All costs claimed, with the exception of the claimed amounts itemized below, are for charges paid by the Claimant to the vendors listed in Enclosure (1) for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant. NPFC has determined that the following excepted charges are not compensable under OPA:

* SafWay – Tab 5F – Invoice # DO34400 - $925.30. We have received only a proof of payment with no invoice or daily sheet attached with details of services and dates of service and is therefore denied.

* Sunoco Logistics – Tab 6C – Invoice # 0155439-IN and 0115441-IN - $7,554.01 and $46,118.93. These costs were for services from May 4, 2007 through May 23, 2007. It is important to note response was concluded by November 2005; additionally, SITREP 48 dated 17 May 2006 indicates only a passive monitoring phase was ongoing. The claimant has failed to establish why charges for services over a year later are reasonable, necessary, and were directed by the FOSC. These costs are denied.

* Sunoco Logistics – Tab 6B – Invoice # 0090450-IN - $4,274.40. The NPFC has reduced the replacement cost of 3,000’ of containment boom based a depreciation rate of 13% with an estimated shelf life of 15 years. As documented by the claimant, the age of the boom was 2 years old at the time of replacement.

* Clean Venture - Boom Damage – Tab 5H – Invoice # 0095127-IN - $11,012.93. The NPFC has reduced the replacement cost of 2,000’ of containment boom based on a depreciation rate of 50%. The claimant is unable to validate the age of the boom and therefore a 50% allowance is granted as reasonable.

***AMOUNT*: $166,857.51**

Claim Supervisor: [redacted]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: