

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/03/2009
Claim Number	: P08020-001
Claimant	: The Meredith Management Group Inc.
Type of Claimant	: Corporate (U.S.)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$42,705.20

### **FACTS:**

**1. Oil Spill Incident:** On the morning of July 28, 2008 a caller notified the National Response Center (NRC) that at 0800 local time, two tugs were sunk next to Pier 1 Girard Point, Philadelphia, PA, and had spilled an estimated 1000 gallons of oil which caused a sheen on the Schuylkill River, a navigable waterway of the United States. The tug, Scooby Doo (Vessel Identification Number (VIN) 266173), also known as the Carol Wales and tug, Big Boy (VIN 565591), were later identified as the two sunk tugs that had released the oil. The NRC assigned report # 878673. Meredith Management Group, Inc. was contacted by ██████ insurance broker who requested their assistance in responding to the loss. Meredith provided coordination between ██████ and responders through August 15, 2008 when site safety and security operations were completed. Captain ██████, United States Coast Guard (USCG) Sector Delaware Bay provided FOSC coordination for the incident.

The National Pollution Funds Center (NPFC) notified the responsible parties, Big Momma Tug Company (Tug Scooby Doo) and D&L Tugboat Company (Tug Big Boy) via certified letters dated May 11, 2009, advising them that a claim had been submitted for reimbursement and to provide any circumstances, explanations, or justifications they want considered before the adjudication is completed. In an email dated May 18, 2009, the NPFC notified the responsible party's legal counsel that adjudication of the claim would be completed within the next fifteen days. In an email dated May 19, 2009, Ms. ██████ legal counsel for the RP, responded stating she would be providing comments later in the week.<sup>1</sup> To this date, no information has been received.

**2. Description of removal activities:** Meredith attended Unified Command meetings and provided coordination between ██████ and Clean Venture, the oil spill response organization (OSRO) utilized to clean up the spill. Meredith also produced the site safety plan, a dive safety plan, and provided management of site safety and security. This work, which began July 28, 2008, included interfacing with on-site USCG and site contractors to ensure a coordinated response which included filing daily reports. During this period, Meredith oversaw the safety and security of the OSRO's cleanup efforts and the removal of both vessels from the water in order to minimize the oil pollution impact. During the vessel removal phase, Meredith provided a dive safety officer. All site security, safety and cleanup operations were completed on August 15, 2008.

**3. The Claim:** On May 5, 2009, Meredith Management Group, Inc. submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$47,037.50 for the services provided to the RP's

<sup>1</sup> See email from ██████ @DLALawyers.com dated May 19, 2009.

noted above from July 29, 2008 through August 13, 2008. This sum certain was amended by the claimant to \$42,705.20 in an email dated May 19, 2009.<sup>2</sup> Three invoices were submitted. The first invoice (2831) was submitted to the RPs on August 27, 2008 in the amount of \$27,923.75. This invoice was paid in full. The second invoice (2885) was submitted to the RPs on November 1, 2008 in the amount of \$41,214.25. This invoice was not paid. The third invoice (3019) was submitted to the RPs on December 1, 2008 in the amount of \$4,108.25. This invoice was also not paid. The third invoice was later removed in an amended sum certain by the claimant as a cost because the NPFC found no wording in the claim that implied discounts for prompt payment.

This claim is for removal costs based on the rate schedule in place with Meredith Management Group at the time services were provided. This claim consists of copies of the invoicing and associated dailies, Meredith Management's rate schedule, and the NRC report. 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(a), "all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source..."

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

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<sup>2</sup> See email from [REDACTED] date May 19, 2009.

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. Captain [REDACTED], United States Coast Guard (USCG) Sector Delaware Bay provided FOSC coordination via Polreps that were generated and associated with the Federal Project that was opened for this incident.
2. The incident involved the discharge and continuing substantial threat of 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 in block 7 of the optional OSLTF Claim Form that 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 on October 22, 2008, November 1, 2008 and December 1, 2008 respectively, prior to the submission of the claim. The NPFC also made presentment of costs to the RP on May 11, 2009.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of 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 FOISC, to be consistent with the NCP or directed by the FOISC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager, confirmed that response activities performed daily were signed off by the Spill Management Team, Meredith Management Group. While the Incident Action Plans (IAPs) are helpful in corroborating actions taking place in the field at a given point in time and were utilized as part of the adjudication process, it is important to note that every action taken during response is not fully captured in IAPs or Pollution Reports therefore the NPFC also reviewed the daily reports that were prepared and provided to the Unified Command.

The NPFC has determined \$4,258.25 of costs is denied. The itemized breakdown of denied costs is addressed in the attached Meredith Management –Summary of Costs excel spreadsheet identified as Enclosure 1. The overall denial summary is as follows:

Meredith inv 2885 –	denied \$150.00
Meredith	denied \$4,108.25

With respect to the above, Meredith's claim for \$150.00 for digital camera charges is denied because that item is not addressed in the claimant's rate schedule nor were any receipts provided to support the charge. The NPFC has also denied \$4,108.25 in costs presented as the claimant contends they granted a discount based on prompt payment but there is no documentation that directly supports the rationale for the discount therefore the NPFC is denying this cost as unsubstantiated.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$42,705.20 of uncompensated removal costs and that the 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 # P08020-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of July 28, 2008 through August 15, 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 \$42,705.20 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # P08020-001. 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: \$42,705.20**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *6/3/09*

Supervisor Action: *Approved*