

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/03/2009
Claim Number	: P09019-001
Claimant	: IMS Environmental Services, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	██████████
Amount Requested	: \$36,749.88

FACTS:

- 1. Oil Spill Incident:*** The United States Coast Guard Sector Hampton Roads reports¹ that on August 3, 2009, the F/V Frieda Marie was grounded approximately 100 feet off the beach of Assateague Island near Chincoteague inlet in the Chincoteague National Wildlife Refuge. The vessel discharged approximately one gallon of fuel into the Chincoteague Inlet, a navigable waterway of the US. Additionally, the damaged vessel itself carried 10,000 gallons of diesel fuel and several hundreds of gallons of lube oil onboard, posing a serious threat to this waterway.²

At approximately 12:00 on August 3, 2009, Sector Hampton Roads Pollution Investigators arrived at the spill site to do the initial investigation. They observed a sheen around the vessel. A Notice of Federal Interest (NOFI) was issued to Mr. ██████████ on August 4, 2009, naming him as the Responsible Party (RP). The Captain of the Port (COTP) issued a Notice of Federal Assumption (NOFA) on August 7, 2009, due to the environmental sensitivity of the Wildlife Refuge. Mr ██████ was to have a written plan of action for both the salvage of the vessel and the pollution response.³ The RP obtained the services of IMS Environmental Services, Inc. (IMS) to safely transfer the fuel from the F/V Frieda Marie.

- 1. Description of removal actions performed:*** The claimant, IMS, was hired by Mr. ██████████ to remove the fuel from the tanks of the F/V Frieda Marie. On August 5, 2009, IMS personnel mobilized to the spill site and began to assemble barge set with a crane, outfitting it with equipment. After briefing, the IMS team commenced pumping operations on August 6, 2009, removing approximately 7,000 gallons of diesel fuel. The fuel was off-loaded to a tanker and a vacuum truck. The crew returned to the site later that afternoon to finish pumping activities. On August 7, 2009, the crew began to disassemble the barge set and decontaminate the tanks.⁴ Approximately 9,000 gallons of diesel fuel were removed from the vessel.

When IMS finished the fuel removal, they presented a price to the RP. The RP became financially overwhelmed and discontinued using IMS's services; however, they were still considering future costs for the salvage of the vessel by other contractors and means.⁵ The F/V/ Frieda Marie grounded about 50 yards from the beach of a wildlife sanctuary

¹ See, Sector Hampton Roads's Coast Guard Case # 466743 opened 8/03/2009

² See, PI Statement, filled out by MST2 ██████████ on 10/2/2009

³ See, COTP Order, signed by CAPT ██████████, signed on 8/04/2009

⁴ See, Work Activity Report, submitted by Mr ██████████, IMS, via email to ██████████, NOFC, on 12/03/2009

⁵ See, email from LCDR ██████████ to ██████████, NPFC, dated 12/03/2009

where the plover (an endangered species) was nesting. Taking into consideration the variables ranging from threat to the environment to the RP being either unwilling or unable to finance the remainder of the cleanup, the USCG issued the RP a Letter of Assumption, thus opening Federal Project P09019.⁶

Currently, the F/V Frieda Marie is in-port in Norfolk, VA, awaiting approval sometime in January, 2010, to reef the vessel outside of Delaware's shores. This is a deviation from the original plan to reef the vessel off the coast of New Jersey.⁷

- The Claim:** On November 16, 2009, IMS Environmental Services, Inc. (IMS) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$36,749.88 for the services provided from August 5 through August 7, 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 submission.

This claim consists of copies of the invoicing and associated dailies, contracted rate schedule, a copy of the contract issued by IMS to Mr. [REDACTED], a copy of the USCG MISLE Case # 466743, a copy of USCG Sector Hampton Roads SITREP for the F/V Frieda Marie, a copy of USCG Sector Hampton Roads Letter of Warning signed by LT [REDACTED], a copy of USCG Sector Hampton Roads COTP Order signed by CAPT [REDACTED], a copy of the USCG Hampton Roads PI Statement signed by PO [REDACTED], photographs as taken by the USCG and IMS, a copy of the settlement letter sent to the RP from IMS, a copy of the letter from Mr. [REDACTED], attorney for the RP, 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".

⁶ See, email from LCDR [REDACTED] to [REDACTED], NPFC, dated 12/03/2009

⁷ See, LT [REDACTED] comments, included in email from LCDR [REDACTED] to Ms. [REDACTED], NPFC, dated 12/03/2009

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 # 466743.⁸

⁸ See, Sector Hampton Roads’s Coast Guard Case # 466743 opened 8/03/2009 and email from LCDR [REDACTED] to Ms. [REDACTED], NPFC, dated 12/03/2009

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 did receive a response of acknowledgement from Mr. [REDACTED], Esq., legal representative for the RP.
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 on August 5, 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 \$36,749.88 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 # P09019-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of August 5 through August 7, 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 \$36,749.88 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim P09019-001. 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: \$36,749.88

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: