

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/8/2010
Claim Number	: 910045-001
Claimant	: O'Brien's Response Management OOPS
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$5,117.74

FACTS:

1. Oil Spill Incident: On November 13, 2009, O'Brien's Response Management (OOPS) responded to a spill incident of tar balls and mats discovered near Corpus Christi, Texas. Corpus Christi is located on the Gulf of Mexico, a navigable waterway of the United States. Initially, the tar balls and mats were suspected to be from the October 20, 2009 oil spill incident from the vessel *Krymsk*. The Texas General Land Office (TGLO), under the direction of Brent Kosa, activated the Tar Ball Site Safety Plan from the vessel's Incident Action Plan (IAP). After analysis, it was determined that the tar balls and mats were not from the vessel *Krymsk* incident. The source of the tar balls and mats remains unknown.

2. Description of removal actions: As contracted, OOPS provided on site management of the Tar Ball Plan. They provided site management on November 13, 2009 to November 14, 2009. They deployed two response managers and one response supervisor for oversight each day.

3. The Claim: On January 4, 2010, the Claimant submitted a removal cost claim in the amount of \$5,117.74 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated response costs.

The claim consists of the OOPS incident billing summary, work invoice, signed contract between United States Coast Guard MLCLANT and O'Brien's dated March 17, 2005, which includes the rate schedule, the Tar Ball Site Safety Plan; as well as the Reconnaissance-Level Shoreline Assessment Plan prepared for the *Krymsk* incident.

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. Findings:

1. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
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 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.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as “Compensation Allowable” under 33 CFR§ 136.205.

B. *Analysis:*

The NPFC Case Manager has reviewed the actual cost invoices and daily work documentation 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, and (4) whether the costs were adequately documented and reasonable.

The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on November 13, 2009. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by Claimant. The NPFC confirmed the rates charged were in accordance with the rate schedule in place at the time the services were rendered and that the actions taken were reasonable, necessary and consistent with the NCP.

The NPFC Claims Manager reviewed the costs incurred and has determined that the project oversight provided by the claimant to the vessel originally suspected was performed in accordance with the Safety Plans in place at the time response actions were taken; billed in accordance with the pricing mechanism in place with the vessel; and determined reasonable and necessary in order to mitigate the effects of the incident.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$5,117.74 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 910045-001.

AMOUNT: \$5,117.74

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/9/10*

Supervisor Action: *Approved*

Supervisor's Comments: