

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/19/2010
Claim Number	: 910073-001
Claimant	: United States Environmental Services, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$12,531.43

FACTS:

- 1. Oil Spill Incident:** On September 2, 2009, the Scenic Yacht Basin, located at 3620 Scenic Drive, Mobile, Alabama, situated on the Dog River, a waterway of the United States experienced a fire involving private, recreational vessels moored at the facility. The fire caused several vessels to sink and release over 200 gallons of diesel fuel and slop oil from the sunken vessels into the Dog River. The Mobile Fire and Rescue Department was notified and responded immediately to extinguish the fire. The National Response Center (NRC) was notified on September 2, 2009 and was issued an Incident report # 916679.

Federal on Scene Coordination (FOOSC) was made with the United States Coast Guard, MSTI ██████████ of USCG Sector Mobile, Incident Management Division. The Coast Guard Response Personnel were on scene with the claimant, United States Environmental Services, LLC (USES) and verify that the personnel, equipment, and materials used were appropriate for the necessary cleanup actions and disposal of recovered oil.¹

- 2. Description of Removal Activities:** On September 3, 2009, Mr ██████████, the owner of the marina, hired USES as the primary contractor to handle the response activities associated with this incident.² The contractor's response activities include but are not limited to the deployment of containment boom, deployment of sorbent pads, sorbent boom, and sweep, as well as perform proper disposal. The claim submission is for the Claimant's costs and covers the period of September 2, September 3, September 4, and September 14, 2009.³ It is important to note that while the marina owner hired USES to handle response, the marina owner is not the owner or operator of the spilled oil therefore not considered an RP under OPA. No RP has been definitively identified.

Disposal of 1.85 tons of diesel contaminated absorbents were handled by Greer Enterprises, LLC in Mobile, Alabama on September 14, 2009 at MacLand Disposal Center in Mississippi.⁴

- 3. The Claim:** On February 16, 2010, USES submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of the uncompensated removal costs in the amount of \$12,531.43 for the services provided to the Scenic Yacht Basin in Mobile, Alabama from September 2, 2009, through September 4, 2009, and September

¹ FOSCR Memo provided by MSTI ██████████

² USES Agreement to Conduct Emergency Response Services document signed by Mr. ██████████ on 9/3/09.

³ USES Daily Invoices.

⁴ Disposal Manifest # 55793.

14, 2009. This claim is for removal costs based on the claimant's emergency response rate schedule in place at the time services were provided.

The claim consists of USES dailies, disposal manifests, contracted rate schedules, FOSC written and signed statement as well as State on Scene Coordination (SOSC) written statement, pictures, and a USES signed Agreement to Conduct Emergency Response Services.

To date, a responsible party has not been located.

The review of the actual cost invoicing and dailies focused on: (1) whether the actions taken were compensable "removable 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(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 has provided FOSC coordination. A coordination statement has been provided from MST1 [REDACTED], USCG Sector Mobile, Incident Management Division.
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 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.

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 “removable 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 and reasonable.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$12,531.43 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 # 910073-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of September 2, 2009, through September 4, 2009, and September 14, 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 \$12,531.43 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 910073-001. 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 present by the Claimant.

AMOUNT: \$12,531.43

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *2/22/10*

Supervisor Action: *Approved*

Supervisor's Comments: