

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/18/2010
Claim Number	: 910076-002
Claimant	: Southern Marine Towing
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$13,000.00

FACTS:

- 1. Oil Spill Incident:** On December 4, 2009, Southern Marine Towing (SMT) was contacted by the Hamilton County (TN) Haz-Mat Team to respond to the sinking of a pleasure craft belonging to Mr. [REDACTED], the RP. The boat sunk in the inlet between Lake Site Marina and Harbor Lights Marina, discharging an unknown amount of diesel fuel into the Tennessee River, a navigable waterway of the US. The incident was reported to the National Response Center (NRC) on December 4, 2009 at approximately 13:25 pm local time via report # 925264 by Tennessee Wildlife Resources Agency.¹
- 2. Description of removal actions performed:** The claimant, SMT, arrived on site December 4, 2009. Upon arriving on-scene, SMT was advised that the boat was leaking fuel and would need to be raised. At approximately 15:00 hours on December 4, 2009, Capt. [REDACTED] (SMT) made contact with the RP, who agreed and signed a salvage contract before SMT performed any work.² Mr. [REDACTED] had advised both SMT and Marion Environmental Inc (Marion) who was hired to handle the clean-up and removal of the fuel. Mr. [REDACTED] advised that he had recently filled the tank with fuel. In order for Marion to be able to remove all of the fuel from this boat, SMT needed to raise it first. Due to weather conditions, both parties agreed that this would be done the following day, December 5, 2009.

On December 5, 2009, SMT performed the salvage operations, using one boat, one wrecker, three divers and two pumps, starting at approximately 10:00 hours and commencing at approximately 14:00 hours. On December 9, 2009, Marion informed SMT that they had completed fuel and oil removal activities.

- 3. The Claim:** On March 4, 2010, SMT submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$13,000.00 for the services provided December 4 and December 5, 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, a copy of NRC Report # 925264, a copy of Hamilton County HAZMAT Team Incident Report, a copy of Captain [REDACTED] Incident Narrative, a copy of the USPS return receipt and

¹ See NRC Report # 925264, dated 12/04/2009

² See Standard Form Yacht Salvage Contract, signed by the RP, Mr. [REDACTED] on 12/04/2009, submitted with the claim by SMT to the NPFC on 3/04/2010

tracking information, a copy of MEI's claim submission to the NPFC (Claim # 910076-001), a copy of the Tennessee Boating Accident Report, the original SMT Invoice for Mr. [REDACTED], a copy of the Standard Form Yacht Salvage Contract, photographs 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 FOOSC, 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 NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
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 also made presentment of costs to the RP and to date the NPFC has received no response.
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 FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

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 \$13,000.00 of uncompensated removal costs in order to remove and further mitigate the substantial threat of discharge 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 #910076-002. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from December 4 and December 5, 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 \$13,000.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910076-002. 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: \$13,000.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/18/10*

Supervisor Action: *Approved*

Supervisor's Comments: