

CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/24/2010
Claim Number	: 910112-001
Claimant	: NRC Environmental Services
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$6,400.88

FACTS:

- 1. Oil Spill Incident:*** The United States Coast Guard Sector Los Angeles/Long Beach Case # 490324,¹ reports that on January 22, 2010, they were notified that the P/C CF# 0747EE (vessel) sank at its slip, discharging approximately one gallon or less of transmission fluid and forming a sheen at the Dolphin Marina at Marina Del Ray Harbor, which is a tributary of Santa Monica Bay, both navigable waterways of the US.

The incident was reported to the National Response Center (NRC) on January 21, 2010 via report # 929479 by Mr. ██████████ owner of the vessel and the Responsible Party (RP).² The report described the incident as a release of materials from a sunken vessel.³ Upon arrival, the USCG observed that there was a visible sheen contained in sausage boom in the water surrounding the vessel. The vessel's stern was submerged in the water. It was also observed that there was no working bilge pump on-board, as repairs were being made on the vessel.⁴ PO ██████████ issued a Notice of Violation to Mr. ██████████ on January 22, 2010, and USCG AUX ██████████, USCG Sector Los Angeles/Long Beach, issued a Notice of Federal Interest and an Enforcement Summary on January 24, 2010, indicating that Mr. ██████████ was the RP.⁵ AUX ██████████ contacted NRC Environmental Services (NRCES) on January 23, 2010 for the cleanup and removal of the oil.

Mr. ██████████ did receive monies from his insurance company, Progressive Insurance (Progressive), which issued a check in the amount of \$11,400.88 (as the RP submitted the NRCES invoice to Progressive for payment). Mr. ██████████ chose to use the insurance check to pay attorney's fees owed to his son and for the destruction of the sunken vessel.⁶

Description of removal actions performed: On January 23, 2010, NRCES arrived at the spill site and, after contacting the RP, began removal activities. Hard boom and soft boom were placed around the berth, with absorbent boom placed inside to recover fuel and oil. Three drums of sorbent material saturated with fuel were recovered. Warren Diving commenced diving around 1400 hours, floating the vessel by approximately 1700 hours. Boom was placed around the vessel and watched overnight.⁷

¹ See Sector Los Angeles/Long Beach's Coast Guard Case # 490324, opened 2/11/2010.

² See NRC report # 929479 dated 1/21/2010.

³ See NRC report # 929479 dated 1/21/2010.

⁴ See PI Statement, written by MST3 ██████████, dated 1/22/2010.

⁵ See Notice of Violation, dated 1/22/2010, signed by MST3 ██████████, and the Notice of Federal Interest, dated 1/24/2010, signed by AUX ██████████.

⁶ See NRCES Presentment of Costs Letter, dated 4/21/2010.

⁷ See NRCES Hazardous Materials Response Report, submitted with the claim on 6/10/2010.

The next day, January 24, 2010, Warren Diving continued operations with the vessel pump-out and hydrocarbon recovery. Once operations were complete, more hazardous materials were collected and removed. Once site operations were complete, the hard boom was removed and equipment loaded.

3. **The Claim:** On June 10, 2010, NRC Environmental Services submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$6,400.88 for the services provided January 23 through January 24, 2010. 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. The USCG FOSCR consisted of AUX [REDACTED] and PO J [REDACTED]

This claim consists of copies of the invoicing and associated dailies, a copy of MISLE Case # 490324, a copy of NRC Report # 929479, copy of the NOFI issued by AUX [REDACTED], a copy of MST3 [REDACTED]'s PI Statement, a copy of the NOV issued by MST3 [REDACTED], a copy of the IAP written by AUX [REDACTED], a copy of NRCES Hazardous Materials Emergency Response Report, a copy of CEMA Hazardous Materials Spill Report # 10-0628, a copy of the Disposal of Non-Hazardous Waste Manifests, a copy of the Letter of Cost Presentment to Mr. [REDACTED] from NRCES, 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 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 coordination has been established via Sector Los Angeles/Long Beach’s Case Report # 490324.⁸
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.

⁸ See Sector Los Angeles/Long Beach’s Coast Guard Case # 490324, opened 2/11/2010.

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 site assessment with USCG Sector Los Angeles/Long Beach on January 23, 2010 and subsequently performed response actions as requested initially by the USCG. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP). The claimant billed all costs in accordance with the contract pricing schedule in place at the time services were rendered

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$12,301.48 and the claimant made payments in the amount of \$5,900.60 leaving an unpaid amount of \$6,400.88 in 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 #910112-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from January 23 through January 24, 2010. 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 \$6,400.88 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910112-001. 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: \$6,400.88

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *6/29/10*

Supervisor Action: *Approved*

Supervisor’s Comments: