

CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/27/2010
Claim Number	: 910125-0001
Claimant	: Bollinger Marine Fabricators
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$3,103.33

FACTS:

Incident: On May 18, 2010 personnel at Bollinger Marine Fabricators discovered diesel oil on the surface waters in four of its boat slips. Bollinger Marine Fabricators (BMF) is located along the Intracoastal Canal at Bayou Bouef near Mile Marker 88.5 on the Mississippi River. Bayou Bouef is a navigable waterway of the United States and subject to the Oil Pollution Act of 1990 and its governing regulations.

The Facility Environmental Representative contacted the National Response Center to report the unknown sheen (report # 940608).¹

The acting Federal on Scene Coordinator Representative (FOSCR) was USCG Marine Science Technician (MST3), ██████████ of Marine Safety Unit, Morgan City, Louisiana. He visited BMF's boat slips the day of the incident and took samples for identification. No match was found relating to any other discharged diesel oil and the investigation was closed.²

Description of Removal Activities for this Claim:

1. BMF hired Environmental Equipment, Inc. (EEI) of 626 Hobson Street in Houma, Louisiana to drive to Amelia, La and clean the oil from its four boat slips.
2. EEI responded with six employees who worked six hours. Two Equipment Operators at \$35 per hour and four Technicians at \$30 per hour for a total of \$1,140.00.
3. EEI brought its work truck, 20-foot utility trailer, and 18-foot workboat with outboard.
4. EEI used three, 8-foot sorbent booms to contain the mystery oil.
5. EEI applied 400 sorbent pads to remove the oil.
6. EEI used one box of pillow bags.
7. Four drums for \$95 for disposal/ see waste manifest

Claim: On August 11, 2010, the National Pollution Funds Center (NPFC) received BMF's claim for uncompensated removal costs with a sum certain of \$3,301.33. Part of the claim was BMF's invoice from EEI of \$2,740.00 and, the other part was for personnel time associated with Traci Dufrene in the amount of \$363.33.

NPFC's review of the actual cost invoices and dailies focused on: (1) whether the actions taken were compensable "disposal 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 are determined to be consistent with the National Contingency Plan (NCP) or directed by the (Federal On-Site Coordinator) FOOSC; and (4) whether the costs were adequately documented and reasonable.

¹ See email from ██████████ to M. E. ██████████ dated August 25, 2010 in the file and PDF in CPS

² See email dated August 17, 2010 in Part 5 of the claim file and PDF in CPS.

The Claims Manager found EEI's invoice for labor, equipment and materials matched its rate schedule dated May 10, 2010. All rates were effective at the time services were provided.

APPLICABLE LAW:

"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].

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:

Overview:

1. MST3 [REDACTED] provided FOSC coordination and took samples of the mystery oil.
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), into navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has indicated on the claim form (Optional OSLTF Claim Form) that no suit has been filed in court for its uncompensated removal costs.
4. The claim was submitted within the statute of limitations for uncompensated removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that most of the removal costs presented were for actions in accordance with the National Contingency Plan and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

Analysis:

The NPFC 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 Part 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 services provided were billed in accordance with the rate schedule and that the response was consistent with the NCP. After review of the costs presented, the NPFC has determined that the 10.5 hours of personnel time for [REDACTED] is denied as unsubstantiated. The Claimant has failed to provide a detailed description of the work performed by this person and has also failed to produce the pricing mechanism which indicates where the personnel labor cost was derived from.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$2,740.00 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #910125-001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on May 18, 2010. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Determined Amount:

The NPFC determines that the OSLTF will pay \$2,740.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 910125-001. 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 Claimant.

AMOUNT: \$2,740.00

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *9/7/10*

Supervisor Action: *Approved*

Supervisor’s Comments: