

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/30/2010
Claim Number	: 910128-001
Claimant	: Enterprise Marine Company, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$19,860.00

### **FACTS:**

- 1. Oil Spill Incident:** The United States Coast Guard Sector San Francisco Case # 504572<sup>1</sup> reports that on June 10, 2010, a heavy sheen was reported coming from a submerged crane barge in the Fulton Shipyard of the San Joaquin River, a navigable waterway of the US. The incident was reported to the National Response Center (NRC) on June 13, 2010 at approximately 22:48 p.m. P.S.T. via report # 944071.<sup>2</sup> It was observed that approximately 10 gallons of fuel were observed in the water with the potential of over 1000 gallons of various fuel oils. Representatives from USCG Sector San Francisco, California Fish and Game and the CA Office of Spill Prevention and Response (OSPR) were on-scene, as well as Mr. [REDACTED] ATOP TRC, Inc., the Responsible Party (RP). The RP contracted with the claimant, Enterprise Marine Company, Inc. (EMC), as well as two other contractors (NRC and IMD), for cleaning and removal of the pollutants, as well as for salvage of the dredge.

The RP was issued both a Notice of Federal Interest and a Notice of Violation by the USCG Sector San Francisco.<sup>3</sup>

- 2. Description of removal actions performed:** The claimant, EMC, arrived on-scene June 10, 2010, and conducted an initial site assessment. It was initially determined that EMC would assist NRC Environmental Services (NRCES), with the bulk of its work in pumping the water out of the dredge in order to re-float it. EMC began work the next day, June 11, 2010, by deploying 160 feet of boom and replacing saturated absorbents in the water with fresh ones. A dive team was deployed, and it was discovered that the forward hatches were closed but left unsecured. After these hatches were secured, EMC began the dewatering process by assisting NRCES in skimming oil from the main engine room. Approximately 1000 gallons of oil was pumped.<sup>4</sup>

On June 12, 2010, dewatering activities continued. Two fabricated hatches were also installed and two 3-inch pumps were deployed to dewater the submerged compartments. It was at this point that the USCG and local authorities recommended abandoning salvage efforts and to begin focusing on oil mitigation.<sup>5</sup>

<sup>1</sup> See Sector San Francisco's Case Report # 504572, opened on 6/10/2010

<sup>2</sup> See NRC Report # 944071, opened 6/13/2010

<sup>3</sup> See NOFI issued by MST2 [REDACTED], dated 6/10/2010 and NOV issued by MST1 [REDACTED] on 6/10/2010

<sup>4</sup> See Witness Statement, written by MST2 [REDACTED] on 7/27/2010 and the EMC Incident Report, submitted with the claim by EMC on 9/22/2010

<sup>5</sup> See EMC Incident Report, submitted with the claim by EMC on 9/22/2010

EMC continued to maintain pumps and water levels on June 13 and 14, 2010, removing and replacing soaked absorbents in the water. The recommended Baker Tanks were also installed. By the end of the day on June 14, 2010, approximately 464 gallons of oil had been pumped into the NRCES tanker and an additional 167 gallons of oil were pumped into the Baker Tank.

EMC and NRCES began demobilizing from the scene on June 15, 2010 by removing all remaining soft oil boom and soaked absorbants. The Dredge was inspected by PO [REDACTED], USCG, and OSPR Captain [REDACTED]. It was deemed safe, thus allowing EMC to conclude its activities pertaining to this incident.<sup>6</sup>

As of this date, the dredge has not been removed from the Fulton Shipyard.<sup>7</sup>

- The Claim:** On September 22, 2010, EMC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$19,860.00 for the services provided June 10 through June 15, 2010. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the signed and notarized general service agreement between EMC and the RP is provided in the claim submission.<sup>8</sup>

This claim consists of copies of the invoicing and associated dailies, a copy of USCG Sector San Francisco Case Report # 504572, a copy of NRC Report # 944071, a copy of the Witness Statement written by MST2 [REDACTED], a copy of the NOFI issued by MST2 [REDACTED], a copy of the EMC Incident Report, a copy of the signed EMC Start Work Authorization form, copies of online news articles, 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".

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<sup>6</sup> See EMC Incident Report, submitted with the claim by EMC on 9/22/2010

<sup>7</sup> See email correspondence between Ms. [REDACTED], NPFC, and MST1 [REDACTED], date 9/29/2010

<sup>8</sup> See General Agreement between Mr. [REDACTED] and EMC, submitted via email by the claimant on 9/29/2010

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 USCG Case # 504572.<sup>9</sup>

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<sup>9</sup> See USCG Sector San Francisco’s Case # 504572, opened 6/10/2010, and email from MST1 [REDACTED] to Ms. [REDACTED], NPFC, dated 9/29/2010

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 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 San Francisco on June 10, 2010. 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 \$19,860.00 of 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 #910128-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from June 10 through June 15, 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 \$19,860.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910128-001. 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: \$19,860.00**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review:

Supervisor Action:

Supervisor’s Comments: