

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 11/1/2010
Claim Number	: 911002-0001
Claimant	: Bollinger Quick Repair LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$904.00

### **FACTS:**

**1. Oil Spill Incident:** On June 2, 2010 a rainbow sheen with a strong diesel odor was discovered on the Harvey Canal in Harvey, Louisiana, along the waterfront of Bollinger Quick Repair, LLC (Bollinger). The Harvey Canal is a navigable waterway of the United States. An employee of Bollinger reported the spill to the National Response Center (NRC).<sup>1</sup> It was determined that 0.2 gallons of oil was discharged. The source and Responsible Party (RP) are unknown.

**2. Description of Removal Activities for this Claimant:** Per the claim submission, “In an attempt to protect Bollinger property and the property of others, the facility manager utilized several 40 hour HAZWOPER trained Bollinger employees to remove the product from the water using absorbent pads.”<sup>2</sup> The clean-up continued through June 3, 2010. Disposal was also completed.

**3. The Claim:** On October 15, 2010, Bollinger submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$904.00.

This claim consists of employee labor activity report; copies of American Recovery Non-Hazardous Waste Manifests; waste invoice; the completed Spill Response Notification Form; a copy of NRC Report #942577; and Coast Guard MISLE case documents obtained by the Claims Manager.

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

<sup>1</sup> See NRC Report # 942577.

<sup>2</sup> See Bollinger Letter dated October 6, 2010 to the NPFC.

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 National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
2. The incident involved the 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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

**B. Analysis:**

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

The CG MISLE Case Report noted that 0.2 gallons of oil was discharged in the vicinity of Bollinger Quick Repair, LLC. The Claimant deployed nine employees to clean up the spill. Based on the determined amount of oil, the Claimant used excessive personnel resources. The NPFC will compensate the Claimant for four employees and the disposal costs of \$500.00. For the work performed on June 2, 2010, the Claimant will be compensated for [REDACTED] for 4 hours at \$19.75 per hour; and for [REDACTED] for 3 hours at \$26.00 for a total of \$157.00. However, the Claimant will not be compensated for the work of [REDACTED] for 2 hours at the rate of \$19.75 per hour, or for the 3 hours work of [REDACTED], at the same rate, for a total of \$98.75.

The Claimant will be compensated for the work performed on June 3, 2010 by [REDACTED] for 4 hours at \$19.75 per hour; and by [REDACTED] for 4 hours at \$26.00 per hour for a total of \$183.00. The Claimant will not be compensated for the 2 hours of work at the rate of \$19.75 per hour by [REDACTED] or for the 3 hours of work at the rate of \$26.00 per hour by [REDACTED], for a total of \$117.50.

The NPFC will not reimburse the Claimant for the “air” clean-up work performed by Philip Dupre for 4 hours on June 2, 2010 at the rate of \$19.75 per hour, nor for his 1.5 hours on June 3, 2010, for a total of \$108.63.

Based on the NPFC's denial of \$324.88 of personnel costs, the NPFC determines that the OSLTF will pay \$840.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #911002-0001.

**C. *Determined Amount:***

The NPFC determines that the OSLTF will pay \$840.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911002-0001. 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: \$840.00**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *11/18/10*

Supervisor Action: *Approved*

Supervisor's Comments: