

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/06/2010
Claim Number	: 911013-0001
Claimant	: Oil Recovery Co., Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	██████████
Amount Requested	: \$21,933.40

### **FACTS:**

- 1. Oil Spill Incident:** The United States Coast Guard Sector Mobile reports that on June 16, 2010, a discharge of approximately 125 gallons of waste oil was discovered collecting in the main berth of the terminal located on the Mobile River, a navigable waterway of the US.<sup>1</sup> The incident was reported to the National Response Center (NRC) on June 16, 2010 at approximately 1034 hours local time via report # 944256 by Mr. ██████████, terminal manager of the Mobile River Terminal Co.<sup>2</sup>

The USCG Sector Mobile Incident Management Division took samples and determined this waste oil to be a mixture of heavy fuel oil and lubricating oil. While Oil Recovery Company, Inc. (ORC) was originally charged with the responsibility to clean up and dispose of the oil and contaminated waste,<sup>3</sup> an investigation conducted by Sector Mobile later determined the responsible party to be unknown.<sup>4</sup>

- 1. Description of removal actions performed:** The claimant, ORC, was hired by Mobile River Terminal to clean up and dispose of the oil and contaminated waste. Removal actions consisted of removing product from the surface of the water, as well as decontaminating vessels and bulkheads in the berth. USCG Sector Mobile was on-scene the entirety of the 3-day cleanup, monitoring operations and verifying that they were in accordance with the National Contingency Plan (NCP).<sup>5</sup>
- 3. The Claim:** On November 30, 2010, ORC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$21,933.40 for the services provided from June 16 through June 18, 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.

This claim consists of copies of the invoicing, posted rate schedule, MISLE Case Report # 505508, NRC Report # 944256, letter written by MST1 ██████████, signed ORC work order, the Non-Hazardous Waste Manifest and internal email correspondence.

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<sup>1</sup> See letter written by MST1 ██████████, USCG, to the NPFC and submitted with the claim by the claimant on 11/30/2010

<sup>2</sup> See NRC Report # 944256, dated 6/16/2010

<sup>3</sup> See USCG Sector Mobile Case Report # 505508

<sup>4</sup> See letter written by MST1 ██████████, USCG, to the NPFC and submitted with the claim by the claimant on 11/30/2010

<sup>5</sup> See letter written by MST1 ██████████, USCG, to the NPFC and submitted with the claim by the claimant on 11/30/2010

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:**

"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:**

### **A. Overview:**

1. The initial FOSC coordination has been established via USCG Sector Mobile Case Report # 505508, and via a written statement from PO [REDACTED], USCG Sector Mobile.<sup>6</sup>
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 within the six year statute of limitations for removal costs.
5. No Responsible Party could not be determined.
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 confirmed that the claimant did in fact perform a site assessment with USCG Sector Mobile on June 16, 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 \$21,933.40 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 #911013-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from June 16 through June 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.

### **C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$21,933.40 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #911013-0001. 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 the Claimant.

**AMOUNT: \$21,933.40**

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<sup>6</sup> See USCG Sector Mobile Case Report # 505508, opened 6/16/2010 and letter written by MST1 [REDACTED], USCG, to the NPFC and submitted with the claim by the claimant on 11/30/2010

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *12/8/10*

Supervisor Action: *Approved*

Supervisor's Comments: