

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/30/2009
Claim Number	: J09033-001
Claimant	: Alaska Marine Response
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$37,319.93

FACTS:

- 1. Oil Spill Incident:** The National Response Center (NRC),¹ reports that on August 27, 2009 the L/C Sound Developer sunk at its slip, leaking over 450 gallons of various lube, engine and residual oils (as of December 11, 2009)² into Cordova Harbor, a navigable waterways of the US.

The incident was reported to the NRC on August 27, 2009 by MSTC ██████████, Federal On-Scene Coordinator Representative (FOSCR) of USCG Marine Safety Unit (MSU) Valdez.³ He researched the Vessel Critical Profile and identified the owner and Responsible Party (RP) as being Mr. ██████████. The vessel had a Certificate of Documentation, listing its status as Non-Operational.

PO ██████████ and PO ██████████, both of MSU Valdez, inspected the spill site. Upon arrival, they verified that the vessel had sunk and was discharging oil into the waterway. The harbor office had placed sorbent material around the vessel, but the oil was not being contained in it. At this time, the harbor office had contacted Mr. ██████████ ██████████ of Alaska Marine Response (AMR) to bring hard containment boom to stop the pollution.⁴

The RP was notified, via a Notice of Federal Interest (NOFI) on August 27, 2009, that he was responsible for the oil spill. Mr. ██████████ told MSTC ██████████ over the phone that he would take full responsibility for the cleanup and that he would hire AMR to help contain the spill and remove what was on the surface. Additionally, when the RP was called on August 31, 2009, he stated that he had come to an agreement with Mr. ██████████ of AMR that AMR would continue containment and removal activities until the oil stopped coming from the vessel.⁵

The FOSCR then contacted AMR. They agreed to the terms of agreement with Mr. ██████████ and agreed to begin working on-scene. The USCG determined that the RP was taking all necessary actions to mitigate the pollution threat from the vessel.⁶

¹ See, National Response Center report # 916159, opened 8/27/2009

² See, MSU Valdez POLREP ONE, dated 12/11/2009

³ See, Pollution Statement, written by MSTC ██████████, dated 10/12/2009, submitted by the claimant

⁴ See, Pollution Statement, written by MSTC ██████████, dated 10/12/2009, submitted by the claimant and PI Statement, written by MST3 ██████████, dated 12/15/2009

⁵ See, Pollution Statement, written by MSTC ██████████, dated 10/12/2009, submitted by the claimant

⁶ See, Pollution Statement, written by MSTC ██████████, dated 10/12/2009, submitted by the claimant

Description of removal actions performed: On August 27, 2009, AMR arrived on-scene to deploy boom and contain the spill site, observing and replacing it as necessary over the next couple of weeks. As the vessel continued to leak out fluids in and around the outside of the boom, it became necessary to boom out a larger area.⁷

Two weeks after sinking, the RP stopped communication with AMR. Therefore, on September 8, 2009, the USCG opened the pollution fund and federalized the spill under Federal Project Number J09033.⁸ At the time this determination was written, the project was still open and removal activities were still being performed.

- The Claim:** On November 16, 2009, Alaska Marine Response submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$37,319.93 for the services provided August 27 through September 8, 2009. 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 and associated dailies, copies of M/V Sound Developer POLREPS 1- 7, a copy of NRC Report # 916159, a copy of the NOFI issued by MSTC [REDACTED], a copy of MSTC [REDACTED] PI Statement, a copy of MST3 [REDACTED] PI Statement, a copy of the interim IRAT from MSU Valdez, dated 12/15/2009, a copy of the Pollution Statement for AMR written by MSTC [REDACTED], 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”.

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

⁷ See, AMR Activity Reports, submitted with the claim on 11/16/2009

⁸ See, Pollution Statement, written by MSTC [REDACTED], dated 10/12/2009, submitted by the claimant, PI Statement, written by MSTC [REDACTED], dated 12/15/2009, and the interim IRAT, dated 12/21/2009

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 MSTC ██████████, USCG MSU Valdez.⁹
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.

⁹ See, Statement written by MSTC ██████████ to AMR, dated 10/12/2009, submitted with the claim on 11/16/2009 and email from MSTC ██████████ to Ms. ██████████, NPFC, dated 11/27/2009

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 USCG MSU Valdez did in fact perform a site assessment on August 27, 2009. 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 \$37,319.93 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 #J09033-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from August 27 through September 8, 2009. 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 \$37,319.93 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim J09033-001. 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: \$37,319.93

Claim Supervisor: [REDACTED]

Date of Supervisor’s review:

Supervisor Action:

Supervisor’s Comments: