

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 03/15/2010
Claim Number	: N08052-001
Claimant	: Environmental Safety and Health Services, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$162,239.85

### **FACTS:**

**Oil Spill Incident:** The United States Coast Guard Sector New Orleans Case # 404057,<sup>1</sup> reported that on May 16, 2008, at 0600, a one-half mile by two mile dark rainbow sheen discharge was reported leaking from a facility at Manila Village Field into Bayou DuPont, a navigable waterway of the United States. USCG PO ██████ of USCG Station Venice reported incident to the National Response Center (NRC) on May 16, 2008 via report # 871092..<sup>2</sup> The report described the source of the spill originating from a storage tank at the Manila Village Bayou DuPont facility owned by CEDYCO, Corporation (CEDYCO). The USCG contacted Mr. ██████ of CEDYCO after performing an over-flight on May 17, 2008, confirming that CEDYCO was the Responsible Party (RP). CEDYCO hired out Environmental Safety and Health Service (ES&H) for cleanup and removal services related to this facility.

CEDYCO had previously been ordered to cease operations at this site.<sup>3</sup> On February 7, 2008, the USCG Facilities Compliance Department determined CEDYCO was storing oil without an approved Facility Response plan, and issued the COTP Suspension Order 001-08 on February 11, 2008. CEDYCO was to desist from handling, storing and/or transporting oil in bulk, and was ordered to remove all oil products from the facility on or before February 24, 2008. A February 25, 2008 inspection showed CEDYCO was in direct violation of this order and Administrative Order (AO) 002-08 was issued, again directing CEDYCO to cease all operations at the Manila Village Bayou DuPont Facility.<sup>4</sup> When the oil sheen was discovered on May 16, 2008, it confirmed that CEDYCO was once more in violation of USCG direct administrative orders. After the joint USCG and the Louisiana Department of Environmental Quality (DEQ) inspection of the spill site on May 19, 2008, the USCG issued Administrative Order 003-08.<sup>5</sup> The joint inspection showed that not only was oil being stored in multiple tanks located on the CEDYCO Manila Village facility, but the well had not been secured and surrounded by containment boom, as ordered by AO 002-08. In addition,, during cleanup activities, a second oil spill occurred at this same facility from an overfilled slop tank. Approximately three barrels of oil were discharged onto the platform deck and another 15 gallons into the waters surrounding the facility.

<sup>1</sup> See Sector New Orleans's Coast Guard Case # 404057, opened 5/21/2008.

<sup>2</sup> See NRC Report # 871092, dated May 16, 2008.

<sup>3</sup> See COTP Suspension Order 001-08, signed by LCDR R. ██████, dated 2/11/2008.

<sup>4</sup> See USCG Administration Order 002-08, signed by CAPT ██████, dated 2/29/2008.

<sup>5</sup> See USCG Administration Order 003-08, signed by CAPT ██████, dated 5/23/2008.

Upon receipt of this claim, the National Pollution Funds Center (NPFC) Claims Manager sent an RP Notification letter to CEDYCO on August 12, 2009 and to date no response has been received.

**Description of removal actions performed:** The claimant, ES&H, arrived on site on May 18, 2008 to place 100 feet of 10” boom around the well head to prevent sheening. PO [REDACTED] and PO [REDACTED], USCG, and Mr. [REDACTED], CEDYCO, responded and were on-scene as well. After placing the boom, ES&H could do only cleanup and removal work because CEDYCO could not close down the well.<sup>6</sup>

On May 19, 2008, PO [REDACTED], PO [REDACTED] and Mr. [REDACTED], DEQ, performed another assessment of the facility and determined that a crude oil tank was discharging. ES&H worked to contain most of the spill by booming off the tank and recovering crude oil from the containment around the well head. There were between 16 to 18 barrels of crude oil in the platform and the surrounding waters.<sup>7</sup> Between May 22, 2008 and June 3, 2008, ES&H continued cleanup operations. More oil spilled at the site, so ES&H boomed around the entirety of the barge. ES&H also decontaminated the mud in the vicinity of the platform, per DEQ request. PO [REDACTED] inspected the site on June 19, 2008 and determined that the sorbent boom could be removed from the site, but that the hard boom would remain until further notice. ES&H removed the sorbent boom disposed of it into a roll-off box.<sup>8</sup>

On July 11, 2008, the USCG took over cleanup of this spill due to the long-standing problems at the facility, thus federalizing the spill. ES&H continued to work as an OSRO for the USCG at this site.<sup>9</sup>

**The Claim:** On July 21, 2009, Environmental Safety & Health Consulting Services, Inc. submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$162,239.85 for the services provided from May 17, 2008 through July 10, 2008. This claim for removal costs was based on ES&H’s rate schedule which was in place at the time services were provided. The claimant included the vendor rate schedule in its claim submission.

This claim consists of copies of the invoicing and associated dailies, contracted rate schedule, a copy of NRC Report # 871092, a copy of the USCG Case # 404074, a copy of the ES&H Spill Report, a copy of Sherry Laboratories Soil test Analysis Report, a copy of ES&H Bill of Lading, a copy of ES&H Supervisor’s Daily Log, a copy of USCG COTP Suspension Order 001-08, a copy of Administrative Order 002-08, a copy of Administrative Order 003-08, copies of Investigative Statement forms signed by PO [REDACTED], PO [REDACTED] and PO [REDACTED] third party receipts, photographs as taken by the claimant and the USCG, 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

---

<sup>6</sup> See ES&H Daily Supervisor Log, submitted with the claim on 7/21/2009.

<sup>7</sup> See ES&H Daily Supervisor Log, submitted with the claim on 7/21/2009 and Investigator Statements filled out by PO [REDACTED], PO [REDACTED] and PO [REDACTED], signed 5/21/2008, 5/22/2008 and 5/29/2008, respectively.

<sup>8</sup> See ES&H Daily Supervisor Log, submitted with the claim on 7/21/2009.

<sup>9</sup> See email dated August 25, 2009 from MST1 [REDACTED] to Ms. [REDACTED], NPFC.

the National Contingency Plan (NCP) or directed by the FOSC, 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 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 such 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 Part 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 # 404074 along with email sent to Ms. [REDACTED], NPFC Claims Manager, from MST2 [REDACTED] and MST1 [REDACTED], both dated August 25, 2009.<sup>10</sup>
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. 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:**

The NPFC Claims Manager 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 NPFC Claims Manager confirmed the response activities performed by the claimant were overseen by the USCG, DEQ, and the RP, Mr [REDACTED]. The NPFC Claims Manager confirmed all invoices had daily supporting documentation and were billed in accordance with the rate schedule that was in place at the time the services were rendered.

The claimant stated that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, May 17, 2008 through July 10, 2008. The claimant represented that all costs paid by the claimant were compensable removal costs, payable by the OSLTF as presented by the claimant. Having reviewed the record, the NPFC Claims Manager has determined that the claimant incurred \$162,239.85 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation

---

<sup>10</sup> See Sector New Orleans’s Coast Guard Case # 404057 opened 5/121/2008 and emails dated 8/25/2009 from MST1 [REDACTED] and MST2 [REDACTED]

for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim# N08052-001.

**C. *Determined Amount:***

The NPFC hereby determines that the OSLTF will pay **\$162,239.85** as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim# N08052-001. All costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

**AMOUNT: \$162,239.85**

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: