

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/28/2009
Claim Number	: N08057-063
Claimant	: Oil Mop, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Real or Personal Property
Claim Manager	: <u>Donna Hellberg</u>
Amount Requested	: \$3,900.00

I. Facts

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States.

II. Responsible Party

American Commercial Lines LLC (ACL) owned the barge at the time of the incident and is a responsible party under the Oil Pollution Act.

III. The Claimant and the Claim

As a result of the incident, Oil Mop, LLC (Oil Mop or OMI), provided response services under contract with ACL.¹ On October 22, 2009, OMI submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their replacement cost associated with damaged containment boom in the amount of \$3,900.00.²

The NPFC sent the Responsible Party (RP) notification letter, dated October 26, 2009 to Ms. Dawn Landry, ACL – General Counsel and Mr. John A.V. Nicoletti of Nicoletti, Horning & Sweeney, ACL – External Counsel. The invoice which is the subject of this claim was presented to the responsible party for payment on or about October 6, 2009.³

IV. The Audits

ACL performed audits of vendor invoices and has for the most part, provided copies their audits to the NPFC for consideration. The NPFC has not received an audit for this particular invoice associated with the replacement of damaged boom.

V. Applicable Law

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

¹ See OMI Master Service Agreement dated July 23, 2002

² See NPFC Claim Form dated October 16, 2009

³ See OMI invoice dated October 6, 2009

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.” 33 USC § 2701(31).

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 under the Federal Project by way of Incident Action Plans and United States Coast Guard (USCG) Pollution Reports.
2. The incident involved the discharge and continuing substantial threat of 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 OMI, prior to the submission of the claim. The NPFC also made presentment of costs to the RP and the RP has provided a complete copy of their Audit of some of the response costs presented.
6. 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 the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 with the exception of reduced costs referenced below.

B. Analysis:

The NPFC reviewed the actual cost invoice and decon records 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 Part 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 Claimant OMI stated that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

The Claims Manager has confirmed that the containment boom claimed by the Claimant was signed off by the designated Zone Managers in the decon sheets provided by OMI and because the materials listed on the decon sheets were provided pursuant to a contract, NPFC further finds that OMI has satisfied its burden of showing that the amounts claimed were reasonable and necessary as evidenced by the replacement cost invoice provided in the claim submission. As a result, NPFC finds and approves that these costs are eligible for payment under OPA.

In its review, the NPFC has determined that a denial of 6.66% per year depreciation for three years age on the replacement cost of the boom is warranted. The NPFC has derived the age for depreciation based on a purchase date of 2005 as stated by Mr. Kyle Prest of OMI to Donna Hellberg of the NPFC via an email dated October 26, 2009 and based on a shelf life of 15 years as stated by Mr. Scott Dillon of More Boom Co., the manufacturer of the boom in question, to Donna Hellberg via telephone on March 15, 2010. The total amount denied for this claim is 19.98% or \$779.22.

On this basis, the Claims Manager hereby determines that the Claimant did in fact incur \$3,120.78 of uncompensated removal costs and that this 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# N08057-063.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay **\$3,120.78** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N08057-063. 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.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: