

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/26/2009
Claim Number	: N08057-064
Claimant	: Oil Mop, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: <u>Donna Hellberg</u>
Amount Requested	: \$7,200.00

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 repair costs associated with the damage to 3000 linear feet of their containment boom that was used on site at the DM932 incident in the amount of \$7,200.00 per a repair quote obtained by the claimant from Mr. Sam Cooper of Abasco LLC on October 2, 2009².

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 invoices which are the subject of this claim were 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 repair of their 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

¹ See OMI Master Service Agreement dated July 23, 2002.

² See email from Sam Cooper of Abasco LLC to Colette Landreneau dated October 2, 2009.

³ See OMI Invoice # N0910-004 dated October 9, 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.” 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.
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 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 Claimant OMI provided copies of Boom Release Forms to validate the total number of linear feet of boom that had been damaged and acknowledged between the dates of September 10, 2008 and September 20, 2008. The Claimant OMI then obtained a repair estimate from Mr. Sam Cooper of Abasco LLC on October 2, 2009 in order to have the damaged boom repaired. The NPFC has determined that based on the overall documentation and pricing, the amount requested is fair and reasonable and billed in accordance with the OMI rate schedule provided.

Lastly, the NPFC has confirmed that the damaged boom has been acknowledged by the RP via ACL bates numbered documents DECON000605; DECON000607; DECON000608; DECON000614; DECON000642; DECON000644; DECON000660; DECON000666; DECON000667; and DECON000668.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay **\$7,200.00** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N08057-064. 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: