

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914086-0001
Claimant	: Pacific State Environmental Contractor, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$54,820.22

OIL SPILL INCIDENT:

On March 7, 2014, oil discharged from fuel lines on the port side bunker oil tank on the Tug RESPECT. The discharge posed a substantial threat to Richardson Bay near Sausalito, California. At the time of the discharge the RESPECT was under the custody and control of [REDACTED] and its contractor, [REDACTED]. [REDACTED] was removing the tug's bunker oil tanks as part of the demolition process and caused the discharge.

BACKGROUND:

On August 24, 2012, the California Department of Resources Recycling and Recovery [REDACTED] requested assistance from the United States Coast Guard (USCG), Sector San Francisco and United States Environmental Protection Agency (USEPA) Region 9 to assist in the raising and disposing of certain vessels in the Oakland Estuary. Under this joint initiative EPA Region 9 was authorized to serve as FOSC for the assessment and removal of Hazardous Material under the Comprehensive Environmental Response and Liability Act (CERCLA) and USCG Sector San Francisco retained FOSC duties with regards to oil spill response and any efforts requiring use of the Oil Spill Liability Trust Fund (OSLTF). [REDACTED] participated in this initiative.

On October 14, 2013, the EPA OSC notified the Coast Guard that its contractor, Global Diving & Salvage Inc. (GDSI), had found tar balls and heavy oil while removing sediment from inside the Tug RESPECT. It was determined that an estimated 300-500 gallons of oil were left on board following completion of oil removal operations in 1998; however, due to the length of time since the last assessment was completed, it was unknown whether or not additional oil had been added to the Tug RESPECT. Based on the unknown amount of oil, the FOSC, on November 27, 2013, determined that the vessel posed a substantial threat of a discharge and that the vessel had to be raised in order to access the oil on board, which was believed to be in the lower holds. The OSLTF was accessed to fund the containment and removal of oils onboard the tug; removal actions began on December 2, 2013.

By December 28, 2013, all oil-laden mud had been removed from the Tug RESPECT and EPA completed the asbestos removal. Sector San Francisco conducted a walk-through of the vessel to determine cleanliness and on December 30, 2013 the FOSC deemed the vessel free of substantial oil and turned the vessel over to EPA for further hazardous materials assessment and ultimate demolition by [REDACTED]. Approximately 31,000 gallons of oil-laden materials and 40 cubic yards of asbestos were removed from the Tug RESPECT. On January 20, 2014, the Tug RESPECT was turned over to [REDACTED] for demolition. At this time it was moored at Bay Ship and Yacht where [REDACTED] removed the superstructure. On February 21, 2014, [REDACTED] towed the Tug RESPECT to the US Army Corps of Engineers facility in Sausalito, California for demolition.

INITIAL CLAIM DETERMINATION AND REVIEW:

On July 1, 2014, [REDACTED] submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$54,820.22 for the services provided from March 13 through May 9, 2014. The Claimant argued that the claimed costs of \$54,820.22 were associated with the CG and USEPA monitored removal actions; therefore, it was entitled to reimbursement from the Fund. Upon review of both Coast Guard and Claimant documentation for this incident, the NPFC determined that the substantial threat of a discharge of oil from the Tug RESPECT ended on December 30, 2014, when the Tug RESPECT was turned over to USEPA for further hazardous materials assessment and ultimate demolition by [REDACTED]

The TUG RESPECT was under the custody and control of [REDACTED] and the discharge of oil from the fuel lines was caused by its contractor, [REDACTED] (the Claimant). As evidenced by [REDACTED] control, on January 20, 2014, six weeks before the incident, [REDACTED] authorized the removal of the Tug RESPECT's superstructure as part of the demolition of the vessel. [REDACTED] hired its contractor, [REDACTED] to assist in the demolition of the vessel, with the intention that "spill prevention [would] take precedent in removal operations... [and] prior to deconstruction, each vessel/debris will be evaluated for fuels, marine paints, asbestos, PCBs, and other hazardous waste." Therefore, as shown in USCG Sector San Francisco POLREP 7, even after the vessel had been determined "clean" by the FOSC, oil being found on the vessel remained a possibility.

On March 6, 2014, during the demolition and removal of the bunker oil tanks, fuel lines were discovered under the starboard tank that were completely full of product. [REDACTED] managed to abate the starboard line but during the removal of the piping from the port side tank and switching system on March 7, 2014, a release occurred due to the age and condition of the fuel lines. The USCG FOSC was contacted concerning the release, hoping to obtain a PRFA after removal actions commenced. [REDACTED] made the decision to remediate the oily water and mud due to the potential release into the Richardson Bay prior to the Coast Guard issuance of any PRFA.

On November 3, 2014, the NPFC issued a denial determination to the Claimant on the basis that "Pursuant to the liability provisions of OPA, [REDACTED] was the responsible party for the discharge because it was in control of, and the operator of, the Tug RESPECT. It is not entitled to a third party defense because it was the operator of the RESPECT and it had a contractual relationship with [REDACTED] who caused the discharge. See 33 U.S.C. § 2703(a)(3). Thus, it cannot seek its uncompensated removal costs from the Fund." Based on the foregoing, the claim was denied.

REQUEST FOR RECONSIDERATION:

A request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d). The claimant has the burden of providing any facts and legal arguments to support its request for reconsideration.

In a letter dated December 19, 2014, the Claimant (via [REDACTED]) requested reconsideration based on a possible misunderstanding of the process agreed to by the USCG and USEPA.¹ It stated that in late December of 2013, the USCG transferred disposition of the "RESPECT" to [REDACTED] argues that it accepted this transfer with the expectation that if additional oil was discovered during the demolition activities, the USCG would remove such oil. While [REDACTED] anticipated and budgeted for the removal of some oily contaminated mud, oil, and countermeasures, the quantity of oil and oily mud discovered exceeded its budget and contingency for these actions.

[REDACTED] argues that while Sector San Francisco (FOSC) conducted a walk-through of the vessel and deemed the vessel free of substantial oil and turned the vessel over to [REDACTED] it was not possible to access and assess the fuel lines and reservoirs/junction boxes under the fuel storage tanks. While all agencies had assumed remaining bunker oil would be minimal at best, no one was able to assess the fuel switching system or reservoirs given the location and hull design. To assess this condition, one would

¹ See, Request for Reconsideration letter dated December 19, 2014.

have to perform a destructive assessment. Since it was [REDACTED] responsibility to recycle and dispose of the vessel, it elected to move forward with the potential risks expecting that both the USCG and USEPA would continue to support the State of California if any significant hazard was discovered during demolition activities. [REDACTED] states that nowhere in the transfer agreement did it state that the USCG would no longer respond to a significant hazard, and that it would not knowingly accept any vessel from the USCG with oil and expose the State of California to the liability of a large response.

[REDACTED] also argues that the determination made by the NPFC was not factually correct when it stated that the FOSC denied the issuance of the Pollution Removal Funding Agreement (PRF A). [REDACTED] claims it did receive a PRFA from the FOSCR, [REDACTED] and filled it out. However, due to the immediate nature of the release, [REDACTED] was encouraged by [REDACTED] to submit the cost of the oil response directly to the OSLTF.

RECONSIDERATION ANALYSIS:

The NPFC, in a request for reconsideration, performs a *de novo* review of the entire claim submission, including any new information provided by the Claimant in support of the request for reconsideration and any new information or facts independently discovered by the NPFC.

Claimant ignores the fact that [REDACTED] and [REDACTED] are responsible parties for the March 7, 2013 discharge. OPA provides that the responsible party for a vessel is the owner or operator. 33 U.S.C. 2701(32)(a). Claimant acknowledges that the Coast Guard transferred the RESPECT to [REDACTED] in December 2013 for demolition; therefore, both are liable for the removal costs associated with the March 7, 2013 incident.

Claimant also argues that while the FOSC deemed the vessel free of substantial oil when it turned it over to [REDACTED] it was not possible to access the fuel lines, reservoirs/junction boxes under the fuel storage tanks. Seemingly, Claimant argues that the FOSC should have determined that any oil in the fuel lines or reservoirs/junction boxes remained a substantial threat. The mere presence of fuel discovered in the lines of the tug, did not pose a substantial threat of discharge at the time of Claimant's demolition activities. In fact the oil did not become a threat until Claimant was removing the piping and caused the discharge.

With respect to the Claimant's assertion regarding the issuance of a PRFA, it is important to note that USCG Sector San Francisco in its capacity as the FOSC did not officially issue a PRFA to [REDACTED] for this event despite any discussions. There is email correspondence between [REDACTED] and Sector San Francisco beginning on March 13, 2014 (6 days after the March 7, 2013 incident) where the CG forwarded a scope of work questionnaire to [REDACTED] which was completed and returned to the CG on March 14, 2014. Despite the fact that a scope of work questionnaire was completed by [REDACTED], the USCG never issued a PRFA in this case. The NPFC obtained evidence that demonstrated [REDACTED] responded to [REDACTED] on March 17, 2014 via email which closed with the following statement:

“...Last, if you have already removed the oil from the vessel, **we will not be able to provide a PRFA**. Notwithstanding, you are welcome to submit a claim against the Oil Spill Liability Trust Fund through the Fund Center.”

Based on the fact that oil removal actions had already commenced making it impossible to issue a PRFA, [REDACTED] was encouraged to present a claim as a possible alternative to the PRFA process. The claim now before the NPFC is subject to the liability provisions of OPA and its governing claims regulations. Under OPA, [REDACTED] as the operator of the TUG RESPECT and [REDACTED] which was in a contractual relationship with [REDACTED], are both Responsible Parties under OPA and are not eligible for compensation from the Fund.

Based on a preponderance of the evidence, the NPFC finds that this March 7, 2013 oil spill incident was a separate and distinct incident from the federal project A14007. The NPFC has further determined that this oil spill incident was caused by [REDACTED] and its contractor, [REDACTED] (the Claimant) and as such, the Claimant is liable for all costs claimed because it was a responsible party as defined by OPA.

For the reasons set forth above, this claim is again denied on reconsideration.

Claim Supervisor:  80

Date of Supervisor's Review: 3/4/15

Supervisor Action: *Denial of reconsideration approved*

Supervisor's Comments: