

CLAIM SUMMARY / DETERMINATION

Claim Number:	915013-0001
Claimant:	Oil Recovery Co. Inc. of Alabama
Type of Claimant:	OSRO
Type of Claim:	Removal Cost
Claim Manager:	
Amount Requested:	\$13,380.50

FACTS:

Incident:

On or about 21 October 2013 the United States Coast Guard (USCG) Sector Mobile, the Federal On Scene Coordinator (FOSC) received notice of a discharge of approximately 5 gallons of diesel oil from the UTV Capt Kenny into the Chickasaw Creek, then into the the Mobile River, a navigable waterway. The incident occurred at Hooks Marine. The Sector personnel responded to the incident. This discharge created a sheen on the water. Coast Guard opened MISLE Case Report Number 660673, NRC No. 1063544.

The Claim & the Claimant

The Claimant is Oil Recovery Company of Alabama (ORC). They have submitted a removal cost claim the OSLTF in the total amount of \$13,380.50. The costs included in this claim are for personnel, materials and equipment associated with responding to the oil pollution incident.

Removal Actions:

The Claimant, ORC, was hired by the Responsible Party to respond to the incident. The Claimant responded with personnel, materials and equipment and boomed off the vessel. The actions took place over a period of time from 22 October 2013 through 5 November 2013. The Claimant's actions were to boom off and refloat the vessel.

The Responsible Party

The Responsible Party is the owner of the vessel, Mr. [REDACTED], Inland Towing Marine, LLC. The Claimant submitted this claim to the RP on 31 October 2013. According to the documentation submitted, on 9 June 2014 the RP stated he did not have any money to pay the claim. The NPFC advised the RP that the Claimant had filed a claim with the Oil Spill Liability Trust Fund (OSLTF) via the NPFC to recover costs it incurred responding to this incident. To date, no response has been received¹.

¹ See NPFC RP Notification Letter dated November 19, 2014.

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 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].

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. Chief [REDACTED] from Coast Guard Sector Mobile, in his capacity as the Federal On Scene Coordinator Representative (FOSCR) for this incident, determined that the actions taken by the Claimant, Oil Recovery Company, from 21 October 2013 through 22 October 2013 were consistent with the National Contingency Plan (NCP). 33 USC 2702(b)(1)(B) and 2712(a)(4);
2. With respect to costs incurred after 22 October 2013, the NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the National Contingency Plan (NCP) for 22 October 13 through 5 November 2013. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal costs claims and is consistent with the provisions of sections 1002 (b)(1)(B) and 1012(a)(4) of OPA, 33 USC 2702(b)(1)(B) and 2712(a)(4);
3. The incident involved the discharge of “oil” as defined in OPA, 33 USC 2701 to “navigable waters”;
4. The Claim was presented to [REDACTED]/Inland Barge and Towing on or about 31 October 2013 before being presented to the Fund;
5. In accordance with 33 CFR 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed costs;
6. In accordance with 33 USC 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs;
7. The NPFC Claims Manager thoroughly reviewed all the documentation submitted with the claim and determined that the costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR 136.205.

B. Analysis:

The NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all the 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 conducted a review of the sum certain in the amount of \$13,380.50. The NPFC has determined that all of the costs incurred by the Claimant for this incident were reasonable and necessary to mitigate the effects of the incident.

In the course of adjudicating this claim, the NPFC engaged Sector Mobile regarding all aspects of this incident. The NPFC held conversations with the FOSCR, Chief [REDACTED] regarding the response to this incident and actions performed. The Sector advised the NPFC CA that the incident occurred on 21 October 2013; the vessel was raised on 22 October 2013; that the Sector advised the Claimant that on 22 October 2013, the response was deemed complete and they could remove the boom. However, the Claimant, in accordance with its contractual arrangement with the Responsible Party, made the decision to keep the boom in the water until 5 November 2013 at the Responsible Party's request. According to documentation provided, despite the fact that the vessel was refloated, there was a "split in the weld" of the vessel. As such, the Responsible Party made the decision to keep the boom in the water around the vessel as a preventive measure because a threat of discharge remained.

The NPFC reviewed the documentation for costs incurred from 22 October 2013 – 5 November 2013 in order to determine whether those costs were consistent with the NCP and whether those costs should be reimbursed under the provisions of the governing Claims Regulations. The NPFC made a request to the Claimant for a clarification and additional information of these actions. Specifically, the NPFC was concerned about the actions taken on the final day of the response – 5 November 2013. After obtaining additional information and having phone conversations with the Sector and the Claimant, the NPFC determined that it was appropriate to pay the costs from 22 October 2013 – 5 November 2013 utilizing the NPFC's delegation of authority. Based on all the information received, the NPFC determined that it was reasonable for the Responsible Party to keep the boom in the water to prevent a continued threat of a discharge into the navigable waters of the United States and that the actions taken on 5 November 2013 were also in line with demobilization which included tank cleaning of bilge water and other oily debris collected in response to the incident.

Upon review of the claim submission, the NPFC has determined that the costs presented and incurred were billed in accordance with the rate schedule in place at the time services were rendered. The NPFC also determined that the actions taken by the Claimant were reasonable and necessary in order to mitigate the discharge and continuing threat of discharge to the environment.

The NPFC reviewed the documentation and looked at the actions taken by the Claimant and the information received by the FOSC and has determined that a total of \$13,380.50 is payable as requested.

Determined Amount: \$13,380.50

The NPFC hereby determines that the OSLTF will pay \$13,380.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 915013-0001. 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:

Date of Supervisor's review: *12/29/14*

Supervisor Action: *Approved*

Supervisor's Comments: