

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915076-0001
Claimant	: Atlantic Coast Marine Group, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,279.83

FACTS:

1. ***Oil Spill Incident:*** The USCG National Response Center (NRC) reports¹ that on January 29, 2015, the M/V Short Bus sank at its mooring in Beaufort, NC. The next day, January 30, 2015, the vessel began discharging its fuel into Gallants Channel on the Intercoastal Waterway located in Beaufort, NC. Gallants Channel flows into Taylors Creek, which in turn flows into Beaufort Channel, then Onslow Bay and finally into the Atlantic Ocean, all of which are navigable waterways of the US.

Description of removal actions performed: On January 31, 2015, ACMG arrived on-scene, mobilizing in an effort to mitigate the spill. ACMG contained the spill, cleaned the product that had been released and pumped the fuel tanks dry so no pollution hazard was left onboard. It then disposed of the contaminant and demobilized the operation.

Since the clean-up, ACMG states that it has had no response from the owner, the named Responsible Party (RP), Mr. [REDACTED].

3. ***The Claim:*** On April 30, 2015, ACMG submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$4,279.83 for the services provided on January 31, 2015.

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 the 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).

¹ See NRC Report # 1106893, opened 1/29/2015.

"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 CFR 136.103(c)(2), if the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to § 136.309(d), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

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.

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 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. FOSC coordination for this incident has not been established via USCG Marine Safety Detachment Fort Macon. 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23); however, there is no evidence that this posed a substantial threat of discharge to navigable waters.
3. A Responsible Party was determined, but, to date, the Claimant has not provided documentation that proper presentment has been made. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
5. 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.

B. Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm whether or not 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.

As a preliminary matter, the Claims Manager was unable to validate that the RP was presented with the costs of this claim pursuant to 33 CFR 136.103(a) Order of presentment states:

- (a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under §136.305.

It is the claimant’s responsibility to first present the claim to the RP, and after either the RP denies payment of the costs in writing or 90 days (whichever comes first), at that time the claimant may present its costs to the NPFC. It is unclear that the Claimant made proper presentment of costs to Mr. ██████ regardless of whether or not he was incarcerated as indicated in the claim submission. The Claims Manager sent a request for additional information email to the Claimant dated May 1, 2015. The NPFC gave the Claimant until

May 15, 2015 to respond providing evidence that proper presentment had been made. To date, the NPFC has not received a response from the Claimant.

Additionally, the Claimant has failed to demonstrate that the incident posed a substantial threat of discharge into a navigable waterway or that the actions undertaken by the Claimant were determined by the FOSC, to be consistent with the NCP or directed by the FOSC and as such, this claim is denied.

Should the Claimant choose to request reconsideration of its claim, it will need to provide (1) evidence that proper presentment of costs was made to [REDACTED] as required by the claims regulations, (2) the Claimant will need to provide evidence of how this incident posed a substantial threat of discharge to a navigable waterway, and (3) the Claimant will need to obtain FOSC coordination for the actions undertaken. Finally the Claimant would need to provide the pertinent rate sheets and disposal manifests demonstrating that proper disposal was performed.

Based on the foregoing, this claim is denied.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$0.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915076-0001.

AMOUNT: \$0.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *6/8/15*

Supervisor Action: *Denial approved*

Supervisor's Comments: