

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 916005-0001
Claimant	: Blue Dolphin Yachting Center
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$15,309.25

FACTS:

1. Oil Spill Incident: The United States Coast Guard Sector Houston/Galveston¹ reports that on January 31, 2015, the Blue Dolphin Yachting Center (BDYC) reported an unknown red dye diesel spill in Clear Lake, which migrated into the northeast corner of the basin located in its marina. Clear Lake drains into both Trinity and Galveston bay, and eventually into the Gulf of Mexico, all of which are navigable waterways of the US. As BDYC does not produce, sell or store diesel of any kind, it believed that the spill came from outside it marina; however, as an act of good faith, it hired a contractor to clean up and remove the oil from the water.

The USCG Sector Houston/Galveston IMD personnel arrived on-scene and determined that neither the BDYC nor the boats docked there was not the source of the spill. At the time of this adjudication, a Responsible Party (RP) has not been identified.

2. Description of removal actions performed: The claimant, BDYC, hired Phoenix Pollution Control and Environmental Services, Inc. (Phoenix Pollution) for cleanup and removal activities. Upon arrival of Phoenix Pollution personnel, the west boat docking slip had what appeared to be a waste oil product in the water. This oil covered approximately three-fourths of the slip stalls and the center section between the east and west slips. Phoenix Pollution deployed containment boom around the spill area and commenced clean up of the oil in the water around the slips, as well as wiped down all oily material on both the bulkhead and boats that were in the slips. The surrounding areas were also checked by Phoenix and TGLO personnel and no additional pollution was found. The cleanup and removal efforts were approved as completed by both TGLO and USCG Sector Houston/Galvetson personnel.

3. The Claim: On November 10, 2015, BDYC presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$15,309.25 for the services provided January 31,2015.

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

¹ See Sector Houston/Galveston Case Report # 715200, opened 1/31/2015.

“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].

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 has been established via USCG Sector Houston/Galveston.² 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
4. A Responsible Party has not been determined. 33 U.S.C. § 2701(32).
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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the actual cost invoices and dailies 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 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 Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The Claimant, Blue Dolphin Yachting Club, provided a well-documented claim to demonstrate that the actions it performed were for OPA-related costs and that the work performed mitigated the effects of the oil that was released into Clear Lake and migrated into the basin of its marina. Additionally, the USCG Sector Houston/Galveston confirmed the actions performed for this incident. Upon adjudication of the claim, the NPFC verified that the rates charged were billed in accordance with the published rates for both the Claimant and the contractor and as such, the NPFC has determined that the amount invoiced and paid was reasonable.

² See Sector Houston/Galveston Case Report # 715200, opened 1/31/2015.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$15,309.25 of uncompensated removal costs and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #916005-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on January 31, 2015.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$15,309.25 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 916005-0001. 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.

AMOUNT: \$15,309.25

Claim Supervisor: [REDACTED]	[REDACTED]
Date of Supervisor's review: 11/27/2015	[REDACTED]
Supervisor Action: Approved	
Supervisor's Comments:	