

CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	916015-0001
<b>Claimant:</b>	Garner Environmental Services, Inc.
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$8,418.40

**FACTS:**

***Oil Spill Incident:*** On September 23, 2013, the FV TX5054HY, owned by Mr. ██████████, sank at the dock at Marina Del Sol, Kemah, TX, discharging approximately 100 gallons of diesel fuel into Clear Lake, a navigable waterway of the United States.<sup>1</sup> CG Sector Houston/Galveston personnel responded to the spill and provided oversight of the cleanup activities.<sup>2</sup> Mr. ██████████ hired Garner Environmental Services, Inc. (Garner) to conduct the pollution removal activities.<sup>3</sup>

***Description of Removal Activities for this Claimant:*** On September 23, 2013, Garner personnel responded at the request of Mr. ██████████ to contain and remove the diesel fuel discharged from the sunken FV TX5054HY and to remove any diesel fuel remaining in the fuel tanks of the sunken vessel. Garner personnel deployed 300' of containment boom around the vessel and lined the boom with sorbent material. On September 24, 2013, Garner personnel returned to check on the vessel and to tend their containment boom. On September 25, 2013, Garner personnel returned again to vacuum out the fuel tanks of the sunken vessel and remove any oil from the surface of the water. The containment boom was left in place to catch any residual fuel clinging to the fuel tanks of the sunken vessel until October 5, 2013, when Garner personnel returned to retrieve their containment boom. The recovered diesel fuel and oiled sorbents were properly disposed of at Aaron Oil Company, Mobile, AL.<sup>4</sup>

***Responsible Party:*** The owner of the FV TX5054HY is Mr. ██████████ ██████████. Mr. ██████████ was issued an RP notification letter by the NPFC notifying him of our pending claim with Garner Environmental Services, Inc on November 30, 2015.<sup>5</sup>

***The Claim:*** On November 10, 2015, Garner Environmental Services, Inc submitted a pollution removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated pollution removal costs totaling \$8,418.40<sup>6</sup>

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<sup>1</sup> See Optional OSLTF form dated November 10, 2015, submitted by Garner Environmental Services, Inc.

<sup>2</sup> See MISLE Activity #4841077.

<sup>3</sup> See Optional OSLTF form dated November 10, 2015, submitted by Garner Environmental Services, Inc.

<sup>4</sup> Id.

<sup>5</sup> See RP notification letter issued by the NPFC to Mr. ██████████ ██████████ dated November 30, 2015.

<sup>6</sup> See Optional OSLTF form dated November 10, 2015, submitted by Garner Environmental Services, Inc. Note, Garner invoice #119267 in the amount of \$12,418.40 was billed to Mr. ██████████ on October 15, 2013. There is record of Mr. ██████████ making partial payments toward this invoice in the amounts of \$2,000.00 on July 24, 2014 and November 20, 2014. As such, the sum certain claimed by Garner is the amount of invoice #119267 that remains unpaid by Mr. ██████████

**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].

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. MST2 [REDACTED] [REDACTED] CG Sector Houston/Galveston responded as the Federal On-Scene Coordinator’s Representative (FOSCR) for this incident but was unavailable for comment to the NPFC regarding Garner’s pollution removal activities. As such, the NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the 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 within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the 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.

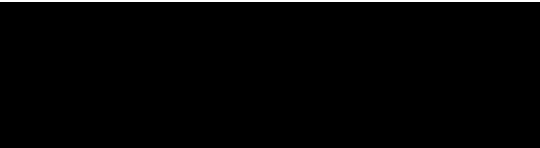

#### ***B. Analysis:***

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 to be consistent with the NCP, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the costs were billed in accordance with the rate schedule in place at the time the services were rendered and were determined by the NPFC to be consistent with the NCP.

The NPFC therefore determines that the OSLTF will pay \$8,418.40 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916015-0001. 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: \$8,418.40**


Claim Supervisor: 
Date of Supervisor's review: <i>December 10, 2015</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: