

CLAIM SUMMARY / DETERMINATION

Claim Number:	916052-0001
Claimant:	Oil Mop, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$21,819.17

FACTS:

Oil Spill Incident

On October 25, 2015, Coast Guard Marine Safety Unit (MSU) Houma received notification¹ that a truck-rig had overturned on a barge in Terrebonne Bay, Cocodrie, Louisiana, that resulted in a diesel and hydraulic oil spill incident into the Houma Navigation Channel. The MSU contacted the owner of the barge and truck, Suard Companies, to verify whether an oil spill responder had been hired for response. The Suard Company verified with the MSU that they hired Oil Mop LLC. (OMI). The MSU confirmed with OMI that they were hired to respond.²

Responsible Party

Suard Company is the Responsible Party (RP). As stated above, the RP hired OMI for response and cleanup of the oil spill incident. When OMI attempted to collect payment via their invoices, the Suard Company told OMI that they were waiting for their insurance company to pay the claim. OMI attempted for several months to collect payment from the Suard Company before submitting their claim to the Fund.

Description of Removal Actions Performed

OMI arrived on-scene October 26, 2015³ with response equipment to conduct cleanup operations. OMI brought personnel, vessel assets, absorbent pads, and 5” sorbent boom as needed to perform cleanup. OMI immediately deployed a 26 foot fast response vessel, sorbent boom, and began removing contaminated liquids and debris from the water. According to the OMI statement, 10-gallons of hydraulic oil reached the water. Approximately 50-gallons of diesel and engine oil, as well as the hydraulic oil were spilled on to the barge.

Final response work was conducted by OMI on November 03, 2015.

The Claimant and Claim

On May 23, 2016, OMI submitted a removal cost claim associated with the cleanup of the Suard Company oil spill to the Oil Spill Liability Trust Fund (OSLTF or the Fund), asserting that the

¹ NRC Report # 1131700.

² Pictures of incident provided by the MSU FOSCR on 2016 06 10.

³ See invoice dated October 26, 2015 as evidence of the first day on scene.

Suard Company failed to pay them for their uncompensated removal costs totaling, \$21,819.17 as described and itemized in invoice # N1512-093.

Upon receipt of this claim submission, the NPFC sent an RP Notification letter to the RP dated, May 24, 2016.⁴ To date, the NPFC has not heard from the RP regarding this claim.

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;

⁴ Certified Mail Receipt # 7013 1090 0000 3302 0054.

- (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. Findings of Fact:

1. MST2 [REDACTED] of Marine Safety Unit Houma provided partial coordination for this claim in his capacity as the Federal On-Scene Coordinator’s Representative (FOSCR) for this incident. He provided an email, to the Fund, regarding the incident as well as pictures.⁵ 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 to “navigable waters.”
3. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1).
4. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs claimed were associated with OPA compensable removal actions in accordance with the NCP and that costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

B. NPFC Analysis

The NPFC reviewed the actual cost invoices and dailies to confirm that the claimant has 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 136.203; (2) the actions taken were to prevent, minimize, and mitigate the effects of the incident; (3) whether the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC reviewed the OMI rate schedule that was in place at the time the services were provided; the NPFC based its adjudication of these costs on the rate schedule, the OMI invoices, and disposal manifests. The Claimant performed cleanup utilizing personnel, boat assets, drum skimmer, sorbent boom, and pads as needed to remove the oil associated with this incident and ensured disposal was properly performed and documented.⁶ Based on its review, the NPFC

⁵ 2016 06 10 Email from FOSC with pictures.

⁶ See disposal manifests in file folder.

determined that most of the claimed costs are reimbursable from the Fund, were actions taken to minimize and mitigate the effects of the incident, and were reasonable and necessary.

Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered.

The NPFC denied a total of \$258.00 in requested costs. Descriptions of the denied costs are as follows:

1. November 03, 2015 – Total denied \$220.00

The Claimant's invoice provides that OMI sold a 275 gallon poly tote tank to the RP in the amount of \$400. However, OMI has no documentation to support the sale of the tank therefore, the NPFC allowed the OMI daily rate of \$30, per day/ multiplied by the six days of response that OMI was on scene which equates to \$180.00 for the sale of the tote tank.⁷

2. November 03, 2015 – Total denied \$38.00

The Claimant billed \$38.00, in tax based on the sale of the tote tank. However, the NPFC allowed the OMI daily rate schedule of \$30 per day. Taxes are not applied to the OMI daily rate, therefore the tax is denied.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer \$21,561.17 as full compensation for the reimbursable removal costs incurred by OMI and submitted to the NPFC under claim # 916052-0001. All reimbursable costs are for charges paid by the claimant for removal actions as that term is defined in OPA and are compensable removal costs by the OSLTF as presented by the claimant.

Determined Amount: \$21,561.17

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>6/16/16</i></p> <p>Supervisor Action: <i>Approved</i></p>
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⁷ See 2016 06 13 Email between OMI and NPFC in regards to the lack of documentation that supports the sale of the tote tank.