

CLAIM SUMMARY / DETERMINATION

Claim Number:	916062-0001
Claimant:	Environmental Services, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$8,350.68

FACTS:

Oil Spill Incident: On November 11, 2015, a commercial fishing vessel, The Lindy, Inc. (the Lindy), caught fire while docked near the Town Dock in Stonington, Connecticut. Consequently, the Lindy sank at its mooring, resulting in an estimated 50 gallons of fuel discharging into Stonington Harbor. Stonington Harbor projects into Little Narragansett Bay, an inlet of the Atlantic Ocean and a navigable waterway of the United States. The Connecticut Department of Energy & Environmental Protection (CTDEEP) reported the spill incident to the CG National Response Center (NRC) on November 11, 2015. The owners of The Lindy, [REDACTED], through Ocean Marine Insurance (RP insurer), hired Environmental Services, Inc. (Environmental Services) to conduct pollution removal activities.

Description of Removal Activities for this Claimant: On November 12, 2015, Environmental Services responded to the spill site and “Deployed sorbent boom and pumped out both fuel tanks and bilge area during recovery operation.”¹ Subsequently, Environmental Services personnel decontaminated their equipment on November 13, 2015.² The recovered contaminated water was properly disposed of at Clean Water of New York, Staten Island, NY.³

Responsible Party: [REDACTED] are the owners and operators of The Lindy. Environmental Services made presentment to the RP’s insurer on December 2, 2015.⁴ On August 2, 2016, [REDACTED] were issued an RP notification letter by the NPFC notifying them of our pending claim with Environmental Services. In response to this letter, [REDACTED], Esq. ([REDACTED]) contacted the NPFC via email on behalf of his clients, [REDACTED] stated:

My clients’ insurer is prepared to pay Environmental Services, Inc. for the oil removal costs referenced in your letter. The problem, as I understand it, is that my clients’ insurer has indicated that they require my clients to execute a “Release” prior to payment being made. The “Release” proposed by my clients’ insurer is unacceptable because it includes vague “general release” language that may create issues relate to future claims of my clients against their insurer. I have been in the process of attempting to resolve this issue with my clients’ insurer

¹ See Optional OSLTF form dated July 12, 2016, submitted by Environmental Services, Inc.

² Id.

³ See Environmental Services, Inc. Non-Hazardous Waste Manifests dated November 12, 2015.

⁴ See Environmental Services, Inc. Invoice #61051 submitted to Ocean Marine Insurance dated December 2, 2015.

⁵ See email from [REDACTED] to [REDACTED] NPFC dated August 22, 2016.

since January. I have contacted my clients' insurer and put them on notice of your letter.

The Claim: On July 26, 2016, Environmental Services submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated pollution removal costs totaling \$8,350.68⁶

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.

⁶ See Optional OSLTF form dated July 12, 2016, submitted by Environmental Services, Inc.

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. MST1 [REDACTED], CG Sector Long Island Sound responded as the Federal On-Scene Coordinator (FOSC) for this incident but was unavailable for comment to the NPFC regarding Environmental Services’ 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:

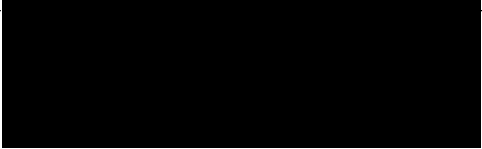
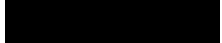
NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were

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 majority of 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 payable 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 only costs denied by the NPFC were the rates charged by Environmental Services for their photographs and scrub brushes. Environmental Services billed \$35.00 for photographs and \$39.00 for two (2) scrub brushes, neither of which are included in the Environmental Services, Inc. Standard/Insurance Company Rate Schedule.⁷

The NPFC therefore determines that the OSLTF will pay \$8,276.68 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916062-0001. 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: 8,276.68


Claim Supervisor: 
Date of Supervisor’s review: <i>8/23/16</i>
Supervisor Action: <i>Approved</i>
Supervisor’s Comments:

⁷ See, Environmental Services, Inc. Standard/Insurance Company Rate Schedule Effective: January 25, 2015.