

CLAIM SUMMARY / DETERMINATION

Claim Number:	917001-0001
Claimant:	Moran Environmental Recovery LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$6,989.50

FACTS:

On September 11, 2016, at 2318, U.S. Coast Guard Sector Charleston received notification that the F/V MISS EMILIE ANN had grounded in the Atlantic Ocean just outside the Edisto Inlet,¹ a navigable waterway of the United States. The vessel owner, Mr. ██████████ reported 400 gallons of diesel fuel on board with no active discharge. A Sector Charleston investigating officer and pollution responders arrived on-scene at 0800 on September 12, 2016.² They issued a Notice of Federal Interest to the owner. The CG Federal On-Scene Coordinator (FOSC) instructed Mr. ██████████ to hire an oil spill response company to pump the oil off the vessel.³ He hired Moran Environmental Recovery LLC (Moran) to remove the oil from the vessel. Due to adverse weather conditions and seas, Moran was unable to remove the oil. They and the FOSC decided that operations should continue the following day. When they arrived the following day, the vessel had broken up and no recoverable oil remained. The operation was concluded.⁴

CLAIMANT AND THE CLAIM:

The Claimant is Moran Environmental Recovery LLC, the pollution response company hired by Mr. ██████████. Mr. ██████████ paid Moran \$5,000 as a deposit for their services. Moran presented its invoice/claim to Mr. ██████████ on September 15, 2016, via email. He refused to pay the remaining balance of their invoice for services provided. Moran seeks reimbursement of \$6,989.50 out of the \$11,989.50 incurred for responding to the incident.

APPLICABLE LAW:

"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

¹ See Coast Guard MISLE Case Report 1044638 p.8

² Id.

³ See October 21, 2016 letter from Mr. ██████████ owner of East Coast Seafood Company.

⁴ See October 18, 2016 email from USCG Chief ██████████

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:

A. Overview:

1. The CG FOSC confirmed that the response was coordinated with him and was consistent with the National Contingency Plan (NCP). 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 certified that it has not filed an action in court for the claimed costs;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. Proper presentment was made in compliance with 33 U.S.C. §2713.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of 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 cost invoices and supporting documentation to confirm that the claimant had incurred the 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 NPFC confirmed that the actions undertaken were reasonable and that the services were billed in accordance with the appropriate rate schedules and work records. The NPFC also received verification that the response was coordinated with the FOSC and that the actions undertaken were consistent with the NCP.⁵

On that basis, the Claims Manager hereby determines that all of the removal costs documented in the invoice are compensable. Moran incurred \$11,989.50 in documented costs. Mr. [REDACTED] paid them \$5,000 as a deposit, so they are entitled to reimbursement of the remaining balance. NPFC has determined that \$6,989.50 is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #917001-0001.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will offer \$6,989.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 917001-0001. All costs offered are for charges incurred 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.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *12/14/16*

Supervisor Action: *Approved*

⁵ See October 18, 2016 emails from Chief [REDACTED].