

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/21/2009
Claim Number	: 909079-001
Claimant	: Ken's Marine Services, Inc.
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Felita Jackson
Amount Requested	: \$37,977.74

FACTS:

- 1. Oil Spill Incident:*** Eval Oil Terminal (Eval Oil) was a bulk oil distribution facility at South River Street & Shafer Place in Hackensack, New Jersey in Bergen County. The facility consisted of approximately thirteen above-ground, bulk storage tanks (ASTs), including a one million gallon AST; several smaller tanks of varying dimensions; earthen containment berms; a filling rack; above-ground and below-ground piping, and several buildings. In 1989, the site had a history of oil spills and no record of remediation activities. The site was abandoned by Eval Oil Terminal leaving all the structures in place. Dornach Management LLC (Dornach) and the City of Hackensack had agreements to allow Dornach to redevelop Eval Oil facility site. Dornach retained Creamer Environmental Inc. (Creamer) to remove the existing tanks to prepare for redevelopment and retained Excel Environmental Resources (Excel) to expedite the site assessment and remediation.

At 5:49 pm on July 31, 2007 at 5:49 pm, Tracy Straka, employee of Creamer, called the New Jersey Department of Environmental Protection, Trenton (NJDEP) Hotline to inform of an 8-gallon release and indicated that the spill had been cleaned up. The NJDEP took the incident report but did not investigate further.

The Hackensack Fire Department drove by the site on August 1, 2007 and detected a smell of fuel and sent their Fire Official, Russel Shorter, to investigate. When Lt. Shorter arrived, he observed oil "all over the ground" and Creamer cutting up steel tanks. Lt. Shorter immediately notified Bergen County Hazmat and John Greenwood, the Hackensack Building Sub code Official. A temporary stop work order (in accordance with the terms of Creamer's demolition permit) was issued by Mr. Greenwood. Scott Saunders and James Taradash, Bergen County Hazmat Responders, observed oil "all over the ground." They also observed Creamer's cleanup measures. Mr. Saunders and Mr. Taradash noted that there were long intervals when no cleanup action was taking place. They determined that Creamer's cleanup efforts were inadequate based on the volume and extent of the spill and the threat it posed to the adjacent Hackensack River, a navigable waterway of the US. According to Carl Mills, Creamer's representative, Creamer was cleaning up the spill and had recovered approximately 11,000 gallons of oil and water mix; a fifth vac truck was onsite and one worker was recovering water and oil.

Upon his arrival to the site, NJDEP Responder Dan Potashnick observed a 500,000 gallon above ground storage tank (AST) half cut open, with oil pooled in and around the tank, covering several areas along the Hackensack River. It appeared that the oil accumulated in the "footprints" of three previous ASTs. Mr. Potashnick directed Creamer to provide additional resources and requested Dornach on site due to the pace of

the cleanup by Creamer; the proximity of the spill to the Hackensack River; and the inadequate level of response resources on site.

Eric Mertz, Excel's on site representative, contacted Robert Hutchinson, Dornach's Vice President, and Ken's Marine Service, Inc. (Ken's Marine). Ken's Marine deployed two additional vac trucks along with a crew of workers. Creamer deployed a fractionation (frac) truck for the temporary storage of liquids. Mr. Hutchinson arrived shortly afterwards. Mr. Potashnick issued a field directive to Mr. Hutchinson requiring immediate product removal by Dornach; a follow up site investigation; and remediation in accordance with NJAC 7:26E (New Jersey Administrative Code Technical Requirements for Site Remediation).

At 6:00 pm, Ken's Marine arrived at the site. They deployed sorbent booms around the pooled oil; positioned their vac trucks; and began skimming pooled free product. Creamer's subcontractor delivered a frac tank.

Mr. Potashnick returned to the site on August 2, 2007. He observed minor areas of free product, but substantially, the product removal was complete. He then met with Mr. Greenwood, Mr. Saunders, and Mr. Shorter. They recommended that a vac truck and operator be on standby while the tanks are being removed and any release of oil should trigger a stoppage of work; notifications to state and local officials; and an immediate cleanup response. With those additional conditions in place, Mr. Greenwood would lift the stop work order and Bergen County Hazmat would meet with Creamer and monitor their progress through demolition. Mr. Potashnick called Dornach and Excel to update them.

- 2. *Description of Removal Activities for this Claim:*** On August 1, 2007 Ken's Marine arrived on site to South River Street & Shafer Place in Hackensack, New Jersey (formerly Eval Oil Terminal site) due to an oil spill. After NJDEP and Bergen County Hazmat discovered several hundred gallons of oil that posed a threat to the Hackensack River at the site, Dornach was required to do immediate product removal. Dornach retained Ken's Marine. Ken's Marine deployed three cleanup technicians; four equipment operators; two vacuum trucks; one vacuum trailer with a tractor; two rack lift trucks, a response spill truck; and a utility truck. They applied absorbents to the site.

On August 2, 2007, Ken's Marine deployed three cleanup technicians; four equipment operators; two vacuum trucks; and one vacuum trailer with a tractor. They disposed of the oily water recovered at the site.

Disposal Manifests are included with the claim submission.

- 3. *The Claim:*** On March 30, 2009, Ken's Marine submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated disposal (removal) costs in the amount of \$29, 924.99. The Claimant also requested \$8,052.75 for 18% yearly interest.

The claim consists of daily work logs (dailies) and invoices for third party services. The National Pollutions Funds Center's (NPFC) review of the actual cost invoices and dailies focused on: (1) whether the actions taken were compensable "disposal 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 are determined to be consistent with the National Contingency Plan (NCP) or directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

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. Findings:

1. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
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 on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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 as set forth below.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as “Compensation Allowable” under 33 CFR§ 136.205.

B. Analysis:

The NPFC Case Manager has 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, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager’s review of the cost documentation reveals charges for 18% yearly interest in the amount of \$8,052.75 are not OPA compensable removal costs as the term is defined. Also, the claimant will be compensated for removal costs based on the rate schedule provided with the claim submission. With regards to the two rugs (36” x 300’) per bale, claimants invoice lists the rate as \$225.00 per bale. However, the provided rate schedule lists \$198.00 per bale. Claimant will be compensated at the \$198.00 per bale rate.

With regards to disposal charges of August 2, 2007, claimant will be compensated at the invoiced cost plus 15%, as noted at Item 6 on the provided rate schedule under "NOTES," instead of the 65% listed on Claimant's invoice. Also, Claimant will only be compensated for 1,905 gallons of oily water disposal noted on the invoice as BOL#07-500, not for 1,955 gallons. The subcontractor only charged Claimant for the disposal of 1,905 gallons of the 1,955 gallons of oily water.

Itemized list of costs that are denied:

- 18% yearly interest incurred ----- \$8,052.75
- two rugs (36" x 300') per bale ----- \$54.00
- 08/02/07 disposal charges for BOL#07-498 ----- \$1,820.00
- 08/02/07 disposal charges for BOL#04-499 ----- \$1,140.00
- 08/02/07 disposal charges for BOL#04-499A --- \$1,000.30
- 08/02/07 disposal charges for BOL#04-500 ----- \$699.25

- Total amount of costs denied = \$14,804.46

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$17,158.69 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 909079-001 for removal costs.

AMOUNT: \$17,158.69

Claim Supervisor: ***Donna M. Hellberg***

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
5/21/2009

VIA E-MAIL [REDACTED]@aol.com

Ken's Marine Services, Inc.
ATT: Joyce Lubach
117-119 East 22nd Street
P.O. Box 4001
Bayonne, NJ 07002

Re: Claim Number 909079-001

Dear Ms. Lubach:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$17,158.69 is full compensation for OPA claim number 909079-001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.ccr.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 2 [REDACTED]-[REDACTED]

Sincerely,

Felita Jackson
Claims Manager

ENCL: Claim Summary/Determination Form
Acceptance/Release Form

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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Fax: 202-493-6937

Claim Number: 909079-001	Claimant Name: Ken's Marine Services, Inc. 117-119 East 22nd Street P.O. Box 4001 Bayonne, NJ 07002
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I, the undersigned, ACCEPT the determination of \$17,158.69 as full compensation for the claim listed above.

This determination represents full and final release and satisfaction of all claims under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number