

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/19/2010
Claim Number	: 910073-001
Claimant	: United States Environmental Services, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: Dawn Unglesbee
Amount Requested	: \$12,531.43

### **FACTS:**

- 1. *Oil Spill Incident:*** On September 2, 2009, the Scenic Yacht Basin, located at 3620 Scenic Drive, Mobile, Alabama, situated on the Dog River, a waterway of the United States experienced a fire involving private, recreational vessels moored at the facility. The fire caused several vessels to sink and release over 200 gallons of diesel fuel and slop oil from the sunken vessels into the Dog River. The Mobile Fire and Rescue Department was notified and responded immediately to extinguish the fire. The National Response Center (NRC) was notified on September 2, 2009 and was issued an Incident report # 916679.

Federal on Scene Coordination (FOOSC) was made with the United States Coast Guard, MST1 Steve Waltz of USCG Sector Mobile, Incident Management Division. The Coast Guard Response Personnel were on scene with the claimant, United States Environmental Services, LLC (USES) and verify that the personnel, equipment, and materials used were appropriate for the necessary cleanup actions and disposal of recovered oil.<sup>1</sup>

- 2. *Description of Removal Activities:*** On September 3, 2009, Mr. Dean McCrary, the owner of the marina, hired USES as the primary contractor to handle the response activities associated with this incident.<sup>2</sup> The contractor's response activities include but are not limited to the deployment of containment boom, deployment of sorbent pads, sorbent boom, and sweep, as well as perform proper disposal. The claim submission is for the Claimant's costs and covers the period of September 2, September 3, September 4, and September 14, 2009.<sup>3</sup> It is important to note that while the marina owner hired USES to handle response, the marina owner is not the owner or operator of the spilled oil therefore not considered an RP under OPA. No RP has been definitively identified.

Disposal of 1.85 tons of diesel contaminated absorbents were handled by Greer Enterprises, LLC in Mobile, Alabama on September 14, 2009 at MacLand Disposal Center in Mississippi.<sup>4</sup>

- 3. *The Claim:*** On February 16, 2010, USES submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of the uncompensated removal costs in the amount of \$12,531.43 for the services provided to the Scenic Yacht Basin in Mobile, Alabama from September 2, 2009, through September 4, 2009, and September

<sup>1</sup> FOSCR Memo provided by MST1Waltz

<sup>2</sup> USES Agreement to Conduct Emergency Response Services document signed by Mr. Dean McCrary on 9/3/09.

<sup>3</sup> USES Daily Invoices.

<sup>4</sup> Disposal Manifest # 55793.

14, 2009. This claim is for removal costs based on the claimant's emergency response rate schedule in place at the time services were provided.

The claim consists of USES dailies, disposal manifests, contracted rate schedules, FOSC written and signed statement as well as State on Scene Coordination (SOSC) written statement, pictures, and a USES signed Agreement to Conduct Emergency Response Services.

To date, a responsible party has not been located.

The review of the actual cost invoicing and dailies focused on: (1) whether the actions taken were compensable "removable 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

### **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. The FOSC has provided FOSC coordination. A coordination statement has been provided from MST1 Steve Waltz, USCG Sector Mobile, Incident Management Division.
2. The incident involved the discharge and continuing substantial threat of 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 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 “removable 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$12,531.43 of uncompensated removal costs and that the amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 910073-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of September 2, 2009, through September 4, 2009, and September 14, 2009. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

*C. Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$12,531.43 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 910073-001. 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 present by the Claimant.

**AMOUNT: \$12,531.43**

Claim Supervisor: *Donna Hellberg*

Date of Supervisor's review: *2/22/10*

Supervisor Action: *Approved*

Supervisor's Comments:

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail:  
D [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
2/22/2010

SENT VIA E-MAIL:  
[REDACTED]@usesgroup.com

United States Environmental Services, LLC  
ATTN: Mr. Dennis Schenck  
365 Canal Street  
Suite 2500  
New Orleans, LA 70130

Re: Claim Number 910073-001

Dear Mr. Schenck:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$12,531.43 is full compensation for OPA claim number 910073-001.

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](http://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 [REDACTED]

Sincerely,

Dawn Unglesbee  
Claims Manager

ENCL: Acceptance/Release Form  
Footnotes One through four

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 2-██████████  
E-mail: ██████████@uscg.mil  
Fax: 202-493-6937

Claim Number: 910073-001	Claimant Name: United States Environmental Services, LLC 365 Canal Street Suite 2500 New Orleans, LA 70130
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I, the undersigned, ACCEPT the determination of \$12,531.43 as full compensation for all removal costs incurred by Claimant for services provided for this incident and claimed to the Oil Spill Liability Trust Fund (Fund) under Claim Number 910073-001.

This acceptance and the determination and offer on which it is based, is for the payment of uncompensated amounts claimed by the Claimant against the Fund under Claim Number 910073-001 and the Oil Pollution Act of 1990, at 33 U.S.C. § 2708, 2712(a)(4) and 2713, and is a full and final release and satisfaction of the amounts claimed. 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

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number