U.S. Department of Homeland Security
United States Coast Guard

Director
National Pollution Funds Center

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5890
March 24, 2014

VIA EMAIL: [redacted]

United States Environmental Services LLC
ATTN: [redacted]
365 Canal Street Suite 2520
New Orleans, LA 70130

RE: N13011-0001

Dear Mr. [redacted]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), will offer $200,254.92 as compensation for OPA claim number N13011-0001.

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.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

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

If we do not receive the signed original Acceptance / Release Agreement 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 Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,

[redacted]

Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement
Summary of Costs

CLAIM SUMMARY / DETERMINATION

Claim Number:	N13011-0001
Claimant:	United States Environmental Services LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$230,991.49

FACTS:

Oil Spill Incident: On January 27, 2013, while being pushed down the Mississippi River by the M/V NATURES WAY ENDEAVOR, the T/B MOC 12 and T/B MOC 15 allided with the north face of the Vicksburg railroad bridge at MM 435 in Vicksburg, MS. The lead barge in the tow, T/B MOC 15 broke away after the allision and sustained damage along the portside of the barge. The T/B MOC 12 remained attached to the M/V NATURES WAY ENDEAVOR, alliding head on with the railroad bridge and sustaining significant damage to the starboard side of the barge. The #4 starboard cargo tank on the T/B MOC 12 ruptured and discharged approximately 7,000 gallons of sweet crude oil into the Mississippi River, a navigable waterway of the United States. The total capacity of T/B MOC 12 was approximately 600,000 gallons while the capacity of #4 starboard cargo hold was 86,520 gallons.

Background: USCG MSD Vicksburg[1] responded, closing the Mississippi River from MM 441-425 and . establishing a safety zone around both barges..[2] [3]

The CG National Pollution Funds Center (NPFC) issued a Notice of Designation (NOD) for potential of claims to Third Coast Towing, LLC, owners of the T/B MOC 12 and T/B MOC 15 and to Nature's Way Marine, LLC, owner of the M/V NATURES WAY ENDEAVOR, which was pushing the barges down river.[4] A representative from Nature's Way Marine, LLC, owner of the M/V NATURES WAY ENDEAVOR, notified the CG National Response Center, via report #1036710 at 0257[5] and assumed financial responsibility for all oil spill response activities.

Responsible Party: Third Coast Towing, LLC, is the owner of the T/B MOC 12 and T/B MOC 15. Nature's Way Marine, LLC, owner of the M/V NATURES WAY ENDEAVOR, assumed responsibility for the incident.

The Claim and the Claimant: Nature's Way Marine, LLC contracted with United States Environmental Services LLC (USES) to conduct removal actions for the incident. On November 6, 2013, USES presented a removal cost claim to the National Pollution Funds

[1] While this location is considered an inland zone, USCG MSD Vicksburg assumed the lead as Federal On-Scene Coordinator (FOSC) from US EPA Region IV under an EPA/USCG Memorandum of Understanding (MOU).
[2] See CG POLREP 1 DTG R 272349Z Jan 13
[3] See EPA POLREP 1 and Final dated February 13, 2013
[4] See NOD issued to Third Coast Towing, LLC dated January 31, 2013
[5] See NRC Report #1036710

Center (NPFC) for reimbursement of their uncompensated removal costs as represented by invoice #083503 in the amount of $231.001.49.[6]

Upon review of the claim, the NPFC observed a minor error in the total calculation of costs as submitted by USES. As such, USES was notified of their error and requested their sum certain be changed to $230,991.40.[7] In addition, the NPFC noted that Claimant did not present its claim to Third Coast Towing, LLC, owner of the T/B MOC 12 and T/B MOC 15, prior to submitting the claim to the Fund. USES was directed to make presentment of their invoice to Third Coast Towing, LLC, which they did on November 11, 2013.[8]

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for removal costs and damages specified in subsection (b) of this section that result from such incident.

"Incident" means "any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil." 33 USC § 2701(14).

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".

"Removal costs" means "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 such an incident." 33 USC § 2701(31).

"Remove" or "removal" means "containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines and beaches." 33 USC § 2701(30). r

The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act

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[6] See NFPC Standard Claim Form dated November 6, 2013.
[7] See email from USES to Mr. [redacted] dated February 20, 2014
[8] See USES presentment letter to Third Coast Towing, LLC, dated November 11, 2013

against the Fund. 33 USC § 2713(e). The Claims Regulations are found at 33 CFR Part 136.

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.

Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title 33 USC § 2713(a).

If the claim is presented in accordance with subsection (a) of this section and the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was pursuant to section 2714(b) of this title, whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. 33 USC § 2713(c)(2).

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. CG MSD Vicksburg, as the Federal On-Scene Coordinator for this incident, determined that the actions undertaken by USES were consistent with the NCP as

demonstrated by the FOSC's requirement for a barge to barge transfer, air monitoring and fire control and safety and documented under a barge to barge lightering plan, air sampling work plan and fire control and safety plan drafted and signed in the Incident Action Plan. 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 properly presented to the responsible party.
4. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed costs.
5. In accordance with33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
6. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP and that the removal costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

B. Description of Removal Actions conducted by the Claimant

On January 27, 2013, United States Environmental Services, LLC, (USES) was contracted by Nature's Way Marine, LLC, to conduct cleanup operations of the discharged oil. Containment boom was placed around the T/B MOC 12 and three (3) collection booms were set downriver of the spill with drum skimmers set up at each boom location. In addition to the cleanup efforts, a lightering plan was developed to lighter the T/B MOC 12 and T/B MOC 15, as well as, an air monitoring plan (as sweet crude oil is an inhalation hazard) and fire control and safety plan in the event of a fire or explosion from the barge to barge transfer. All of these plans were outlined in detail in the Incident Action Plan (IAP) and signed by the CG FOSCR on-scene.[9] [10] [11]

Lightering of the T/B MOC 15 was determined to be unnecessary and it was cleared to get underway and transit to a dock to offload cargo.[12] However, over the top cargo transfers were conducted to the T/B MOC 12 on the #4 starboard cargo tank as well as other cargo tanks with cargo piping damaged as a result of the allision with the railroad bridge. The undamaged cargo tanks were successfully lightered using traditional pumping methods. Lightering operations were concluded on February 3, 2014. The barge was then transported to the Big River dock for booming and decontamination.

Air monitoring operations also ceased on February 3, 2013 and the fire fighting apparatus was placed on a deck barge and returned to USES storage in Jackson, MS. Decontamination of the T/B MOC 12 at the Big River dock was completed on February 9, 2013.[13] .

At the conclusion of the removal actions on the T/B MOC 12, USES was directed by a representative of Environmental Pollution Group, LLC (EPG), who was the marine

[9] See IAP Lightering Plan dated January 31, 2013
[10] See IAP Fire Control and Safety Plan dated January 29, 2013
[11] See IAP Air Sampling and Monitoring Work Plan dated January 30, 2013
[12] The USES claim did not include any costs associated with lightering of the MOC 15.
[13] See email from USES to [redacted] dated February 27, 2014

pollution insurance company for Nature's Way Marine, LLC, to split their response costs and submit two invoices for consideration. Specifically, USES was directed to list all oil spill cleanup and removal costs incurred during the response on one invoice while all MOC 12 lightering costs were to be submitted on a separate invoice as it was EPG's opinion that the costs associated with lightering the barge were not expended for removal costs or damages as defined by Section 1013 of the Oil Pollution Act of 1990.[14]

Accordingly, USES submitted invoice # 083552 in the amount of $1,972,863.61 to Nature's Way Marine, LLC, for "supervision, labor, equipment and materials needed to respond to a barge spill in the MS River for Nature's Way in Vicksburg, MS".[15] This invoice was paid by EPG. USES also submitted invoice #083503 for $231,001.49 to Nature's Way Marine, LLC, for "supervision, labor, equipment and materials to provide barge lightering operations for Nature's Way in Vicksburg, MS".[16] This invoice was denied by Nature's Way Marine, LLC, and EPG on the grounds that the MOC 12 had been patched and was no longer a substantial threat of discharge of oil to navigable waters.

NPFC Notification Letters

The NPFC issued RP Notification Letters to both Third Coast Towing, LLC and Nature's Way Marine, LLCon November 8, 2013[17] and received a response from Counsel for the owner of the M/V NATURES WAY dated February 7, 2014.[18] Counsel for M/V NATURES WAY argues that the amounts claimed are not for "removal costs or damages as defined by Section 1013 of the Oil Pollution Act of 1990 ("OPA")" but rather associated with transfer and lightering services which they state are separate operations that were undertaken after the threat was extinguished. Counsel also argues that any decision to engage in lightering and transfer operations was purely a business decision mady by Nature's Way for the continued operation and profit of its company after the threat had passed and states that the NPFC should reject USES' request for reimbursement.

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 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.

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[14] See letter from [redacted] attorney representing EPG dated February 7, 2014
[15] See USES invoice #083552 in the amount of $1,972,863.61 dated February 15, 2013
[16] See USES invoice #083503 in the amount of $231,001.49 dated February 15, 2013
[17] See NPFC RP Notification Letters dated November 8, 2013.
[18] See RP response to NPFC re: liability dated February 7, 2014.

The National Contingency Plan (NCP) provides that the onscene coordinator (OSC) is responsible for promptly initiating a preliminary assessment. 40 CFR 300.305(a). The OSC shall evaluate the magnitude and severity of the discharge or threat to public health or welfare of the United States or the environment. 40 CFR 300.305(b). He shall assess the feasibility of removal and to the extent possible identify potentially responsible parties.

Where practicable the framework for the response management structure (a unified command) brings together the federal government, the state government and the responsible party to achieve an effective and efficient response, where the OSC maintains authority. 40 CFR 300.305(c).

In this case the FOSC established a unified command that included the FOSC, state onscene coordinators from Louisiana and Mississippi, Nature's Way Marine and the Claimant. The FOSC determined that the MOC 12 continued to pose a substantial threat of discharge after the hull was patched. On January 28, 2013 a MOC 12 barge to barge lightering plan was signed on January 28, 2013, by the CG FOSC, State of Mississippi and Louisiana State On-Scene Coordinators (SOSC) as well as a representive from Nature's Way Marine.[19] A subsequent lightering plan addendum was signed on January 31, 2013, In addition, the air monitoring plan was signed on January 30, 2013, by the CG FOSCR and both SOSCs[20] and fire control and safety plans were signed on January 29, 2013, by the CG FOSCR.[21]

These plans provided direction for the USES response as it related to the lightering operations of the T/B MOC 12 and supports USES's claim as their removal actions were determined to be consistent with the NCP as directed by the FOSC. Approximately $73,000 was expended for lightering and decontamination efforts, $117,000 was expended for firefighting safety and control, while $40,000 was expended for air monitoring operations.

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 as directed by the FOSC and documented in the IAPs. 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, unless otherwise indicated below, and were determined by the FOSC to be consistent with the NCP.

General Categories of denied costs:

1. Removal charges for activities that were charged and paid for by EPG under USES invoice #083552;

[19] See Barge to Barge Lightering Plan Addendum signed January 31, 2013
[20] See Air Sampling and Monitoring Work Plan signed January 30, 2013
[21] See Fire Control and Safety Plan signed January 29, 2013

2. Data entry/billing errors identified on the USES invoice;

3. Supporting documentation for response costs that were requested by the NPFC but not supplied by the Claimant; and

4. Daily charges that were paid for air monitoring equipment when a weekly rate was available but not used.

The NPFC will not itemize all the denied costs in this Claim Summary Determination but rather will attach the cost summary spreadsheet created by the NPFC for each invoice where the Claimant can see each item billed, claimed, paid, denied and reason for the denial. All denied costs fall within one of the four categories referenced above.

OVERALL DENIED COSTS = $30,736.57

DETERMINATION AMOUNT:

The NPFC hereby determines that it will offer $200,254.92 as full compensation for the removal costs incurred by the Claimant and submitted to the NPFC under claim #N13011-0001. 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 Claimants.

AMOUNT: $200,254.92

Claim Supervisor: [redacted]

Date of Supervisor's review: *3/24/14*

Supervisor Action: ***Approved***

Supervisor's Comments:

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: N13011-0001	Claimant Name: United States Environmental Services LLC

I, the undersigned, ACCEPT this settlement offer of $200,254.92 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. 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 amounts paid for which I have been compensated under this claim. 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 and associated with those amounts paid for which I am compensated for with this settlement offer. 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 amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

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 for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by 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
Printed Name of Claimant or Authorized Representative	Signature

Title of Witness	Date of Signature
Printed Name of Witness	Signature

*DUNS/EIN/SSN of Payee Please Circle one	Payee
Bank Routing Number	Bank Account Number