

CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/9/2009
Claim Number	: 909106-001
Claimant	: Environmental Safety and Health Services, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$8,517.35

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Marine Safety Unit Morgan City Case # 402731,¹ reports that on May 8, 2008, at 1600, Cedyco Corporation discharged approximately 15-gallons of crude oil from one of their onshore facilities. The incident occurred due to a cason failure from corroded equipment. The crude oil discharged into Boston Bayou which is a tributary of the Gulf Intercoastal Waterway, a navigable waterway of the US. The discharge created a sheen of oil on the water's surface.

The incident was reported to the National Response Center (NRC) on May 9, 2008 at approximately 12:33 pm EST via report # 870375 by Mr. Lance Dryer of Cedyco Corporation, the potential responsible party (PRP). The report described the incident as a 15-gallon discharge of crude oil from an oil well due to a broken pipe.² The Coast Guard case's Incident Brief states that a cason failed as a result of corrosion. The Coast Guard case further stated that the source was being secured by depressurizing, plugging and abandoning the well. Cedyco Corporation stated to the United States Coast Guard (USCG) that they were going to plug and abandon the well to prevent a reoccurrence.

On May 10, 2008, Marine Safety Unit Morgan City issued a Notice of Federal Interest (NOFI) to Mr. William Cross of Cedyco Corporation. According to the claimant, ES&H's Spill Report dated May 9, 2008; the incident was also reported to the State Police on May 9, 2008 and assigned Incident # 08-02676. Upon receipt of the claim, the National Pollution Funds Center (NPFC) Claims Manager sent an RP Notification letter to the potential responsible party, Cedyco Corporation on August 12, 2009 and to date no response has been received.

- 2. Description of removal actions performed:** The claimant, ES&H, arrived on site on May 9, 2008. They followed Coast Guard members from Marine Safety Unit Morgan City to the spill location and they also called the Department of Environmental Quality (DEQ) who advised ES&H that they would arrive at the site the following day. The claimant had responders on site performing cleanup and containment from approximately 11:00 am until 20:00 pm on May 9, 2008. Responders returned the following day, May 10, 2008, and worked from approximately 06:00 am until 13:00 pm at which time active cleanup was completed and performed to the satisfaction of the USCG, DEQ, and Mr. William Cross of Cedyco Corporation (PRP). Although disposal for the sorbent pads and 6" absorbent boom was manifested, it was not charged to CEDYCO due to an oversight

¹ See, Marine Safety Unit Morgan City's Coast Guard Case # 402731 opened 5/12/08

² See, NRC report # 870375 dated May 9, 2008

on ES&H's part, and is, therefore, not included in this claim.³ The claimant was instructed to leave approximately 100 feet of containment boom at the site from May 11, 2008 until approximately June 9, 2008 per Mr. William Cross's request.⁴

- 3. *The Claim:*** On July 21, 2009, Environmental Safety & Health Consulting Services, Inc. (ES&H) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$8,517.35 for the services provided from May 9, 2008 until June 9, 2008. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of the invoicing and associated dailies, contracted rate schedule, NRC report, ES&H Spill Report, internal email correspondence, photographs as taken by the claimant, third party receipts, ES&H Supervisor's written log, a copy of the USCG Case # 402731, and the Notice of Federal Interest (NOFI) as issued by the USCG. The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, 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].

³ See, Email dated September 9, 2009 from Ms. Patsy Eschete to Ms. Alyssa Lombardi, NPFC

⁴ See, Email dated September 9, 2009 from Ms. Patsy Eschete to Ms. Alyssa Lombardi, NPFC

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 coordination has been established via USCG Case # 402731 along with email sent to Ms. Alyssa Lombardi, NPFC Claims Manager, from MST3 Hargraves dated August 26, 2009.⁵
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. Presentment of costs to the RP was made by the claimant, prior to the submission of the claim. The NPFC also made presentment of costs to the RP and to date the NPFC has received no response.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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.

⁵ See, Email dated August 26, 2009 from MST3 Hargraves to Ms. Alyssa Lombardi, NPFC

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 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 Claims Manager confirmed that response activities performed by the claimant were overseen by the USCG, DEQ, and the PRP representative, Mr. William Cross. The NPFC confirmed that Mr. William Cross signed the ES&H dailies during the active removal response between 5/9/08 and 5/10/08.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$8,517.35 of uncompensated removal costs and that that 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# 909106-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, May 9, 2008 through June 9, 2008. 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 \$8,517.35 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909106-001. 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 presented by the Claimant.

AMOUNT: \$8,517.35

Claim Supervisor: *Donna Hellberg*

Date of Supervisor’s review: *9/10/09*

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

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail:

████████████████████
Fax: 202-493-6937

5890
9/10/2009

VIA Email: ██████@ES&H.com

Environmental Safety and Health Consulting Services, Inc.
ATT: Ms. Patsy Eschete
P.O. Box 9217
Houma, LA 70361

Re: Claim Number 909106-001

Dear Ms. Eschete:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$8,517.35 is full compensation for OPA claim number 909106-001.

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 ██████████

Sincerely,

Alyssa Lombardi
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

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail: [REDACTED]
Fax: 202-493-6937

Claim Number: 909106-001	Claimant Name: Environmental Safety and Health Consulting Services, Inc. ATTN: Ms. Patsy Eschete P.O. Box 9217 Houma, LA 70261
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I, the undersigned, ACCEPT the determination of \$8,517.35 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)0, 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

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number