CLAIM SUMMARY / DETERMINATION FORM

Date	:	10/26/2009
Claim Number	:	A08033-003
Claimant	:	Notthoff Underwater Service
Type of Claimant	:	Corporate (US)
Type of Claim	:	Removal Costs
Claim Manager	:	Felita Jackson
Amount Requested	:	$12,700.00

FACTS:

1. Oil Spill Incident: On Saturday, September 13, 2008, Coast Guard Sector San Francisco received a report of a sunken 125 foot commercial vessel, *Allen Cody*, discharging oil in the Field Landing area of Southern Eureka. The vessel was attached to a private pier at the time it sank. The pier and the vessel are both owned by Mr. Stanwood Murphy of Redwood Forest Products.

Coast Guard personnel from Marine Safety Detachment Humboldt Bay immediately responded to the scene and began working with the vessel's owner and contractors to control the source of the sheen and begin cleanup operations. Containment boom and absorbent pads were placed around the vessel in an effort to mitigate the effects of the oil. The vessel sank to the bottom of the bay, in approximately 50-feet of water.

The Responsible Party (RP), Mr. Murphy, hired Claimant Notthoff Underwater Service.

2. Description of Removal Activities for this Claim: The following is a timeline of summarized daily response actions performed by the claimant and based on the details of the daily field logs provided by the claimant:

- 09/14/08-- Divers (dive crew Charles Notthoff and John Corbett) responded to Mr. Murphy's call and arrived on site; performed a general underwater inspection of vessel; (one diver) sealed fuel and oil vents.
- 09/15/08—Divers determined the vessel condition and rigging points for the lift and checked sources of the discharge.
- 09/16/08—Divers attached the lift bags to the stern and bow; filled the bags in an attempt to lighter the vessel from the bottom, but the vessel remained stuck in the mud. Divers then attached chains to stanchions on the stern for using a barge as a tidal winch.
- 09/17/08—Divers determined that the best method to remove the petroleum products in the tanks is with a vacuum truck. They pulled diesel fuel from the port stern fuel tank until clear water flowed; and pulled lubrication oil from the port forward storage tank until there was minimal oil flow.
- 09/18/08—Divers evaluated the attachment points for the barge lift. They aborted the plan to lift at the stanchions alone and steel bow structure; rigged a continuous loop under the rudder shoe to reinforce the stanchions; rigged lifting strap under the bow; and secured the chains for attachment to the barges at the next low tide.
- 09/19/08-- Divers attached all lift bags at the stern; pulled the chains up short on the barges at low tide; the rising tide broke the bow strap on the incoming tide.

They then placed three lifting straps under the keel aft of the cabin; attached the crane hoist to the lifting straps near the stern; raised the stern of the vessel with the crane and pulled south with a cable to the Caterpillar 988B. They secured the vessel at the reinforced section of the dock.

- 09/20/08—Divers raised the vessel at the stern and placed a 6" chain under the stern just aft of the cabin. They raised the vessel at the bow and placed a 6" chain under the bow just forward of the cabin.
- 09/16/08—Divers attached the lift bags to the stern and bow; filled the bags in an attempt to lighten the vessel from the bottom, but vessel remained stuck in the mud. Divers then attached chains to stanchions on the stern for using a barge as a tidal winch.
- 09/21/08—Divers attached a 90 ton crane hoist to the stern lift point; attached a 50 ton crane hoist to the bow lift point; attached the Caterpillar 988B to the steel bow structure; and slowly raised the vessel to clear the wheelhouse from the water. They then began with one 6" and two 4" pumps to dewater the vessel; and released the cranes from the vessel as it began to float on its own.
- 09/22/08—Divers loaded all the lift bags and rigging gear from the Humboldt Bay Forest Products dock.

3. The Claim: On September 30, 2009, Notthoff Underwater Service submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated removal costs in the amount of $12,700.00. The $12,700.00 is half of the total amount billed to Mr. Murphy for the work of the dive crew which consisted of Charles Notthoff, owner of Notthoff Underwater Service, and John Corbett, owner of Corbett Diving Service. Corbett Diving Service also filed Claim Number A08033-004 for uncompensated removal costs in the amount of $12,700.00.

The claim consists of daily work logs (dailies) and an invoice for services. The NPFC's 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.

The invoices, which are the subject of this claim, have been submitted to the RP. Presentment was made directly to Mr. Stanwood Murphy c/o Humboldt Forest Products in Fields Landing, CA.

Upon receipt of this removal cost claim from Notthoff Underwater Service, the NPFC sent an RP Notification Letter, dated October 8, 2009 to Mr. Murphy advising that the NPFC has received a claim which identifies him as the RP for the incident. To date, Mr. Murphy has not responded regarding the notification letter for this claim.

According to the claimant, he submitted a payment plan to Mr. Murphy on June 23, 2009 and received a voice mail message from him agreeing to make payments.

4. Additional Information: The initial claim regarding this incident (A08033-001) was submitted by contractor NRCES on December 11, 2008. The NPFC sent an RP Notification Letter to Mr. Murphy on December 18, 2008. On December 23, 2008, he responded to the Claims Manager by e-mail stating that he has put several pieces of

property up for sale and has sold one that is presently in escrow. According to the RP, his effort to sell his properties is to pay for the outstanding balances and pay back the Fund. A copy of this email is in the initial claim file.

NRCES submitted two separate claims regarding this incident. The first claim, A08033-001 was for reimbursement of removal costs incurred for the services they provided regarding the sinking of the commercial vessel *Allen Cody* for $75,955.97. The second, separate claim, A08033-002, requesting $15,000.00 for disposal costs, was submitted for reimbursement and subsequently paid.

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 FOSC has provided FOSC coordination and a Federal Project opened for this incident.
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 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 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.
7. The claimant's removal costs included rates in accordance with their published vendor rate schedule.

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 validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP). The NPFC reviewed the Coast Guard MISLE case and associated Pollution Reports which also corroborated the activities and timeline provided by the claimant.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur $12,700.00 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 #A08033-003. 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 14, 2008 through September 22, 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 determines that the OSLTF will pay $12,700.00 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number A08033-003 for disposal costs.

AMOUNT: $12,700.00

Claim Supervisor: ***Donna Hellberg***

Date of Supervisor's review: ***11/30/09***

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
Staff Symbol: (CA)
Phone: [redacted]
E-mail: [redacted]@uscg.mil
Fax: 202-493-6937

5890
11/30/2009

SENT VIA E-MAIL: [redacted]@suddenlink net

Notthoff Underwater Service
ATTN: Charles Notthoff
2109 Stevens Way
McKinleyville, CA 95519

Re: Claim Number A08033-003

Dear Mr. Notthoff:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $12,700.00 is full compensation for OPA claim number A08033-003.

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 [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

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
Staff Symbol: (CA)
Phone: [redacted]
E-mail: [redacted]n@uscg.mil
Fax: 202-493-6937

Claim Number: A08033-003	Claimant Name: Notthoff Underwater Service ATTN: Charles Notthoff 2109 Stevens Way McKinleyville, CA 95519

I, the undersigned, ACCEPT the determination of $12,700.00 as full compensation for the removal costs incurred from September 14, 2008 through September 22, 2008 in Humboldt Bay, Eureka, CA.

This determination represents full and final release and satisfaction of all removal cost 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