

CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/27/2009
Claim Number	: N09032-001
Claimant	: Environmental Safety and Health Services, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$1,822.00

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Marine Safety Unit Morgan City Case # 408722,¹ reports that on June 17, 2008, at 1200, Cedyco Corporation discharged 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. It is important to note that because this particular location has had numerous incidents, the Coast Guard combined all of the following incident dates into Coast Guard Case # 408722 under Federal Project Number (FPN) N09032 which was officially issued on June 2, 2009. The incident dates are as follows: June 17, 2008 via National Response Center (NRC) report # 874422; August 25, 2008 via NRC report # 881741; March 11, 2009 via NRC report # 899666; April 4, 2009 via NRC report # 901810; May 27, 2009 via NRC report # 906830; and May 31, 2009 via NRC report # 907173.

The incident was reported to the National Response Center (NRC) on June 17, 2008 at approximately 15:28 pm EST via report # 874422 by Mr. Lance Dryer of Cedyco Corporation, the potential responsible party (PRP). The report described the incident as a discharge of crude oil from an oil well due to unknown causes.² The Coast Guard case's Incident Brief states that on June 2, 2009, Marine Safety Unit (MSU) Morgan City conducted a harbor patrol of Boston Bayou and the results of that patrol concluded that the potential responsible party (PRP), Cedyco Corporation, failed to meet the requirement of an Administrative Order # 001-09 which was originally issued back on April 7, 2009. The Admin Order required Cedyco Corporation to continue to clean up oil that was leaking from the wellhead and to provide a plan for securing the source of the spill. Coast Guard personnel made several attempts to contact Cedyco Corporation however the company remains unresponsive

The USCG Case # 408722 states that on June 18, 2008, Marine Safety Unit Morgan City issued a Notice of Federal Interest (NOFI) to Cedyco Corporation. According to ES&H's supervisor's log, Mr. William Cross called ES&H at approximately 17:00 on 6/17/08 to report a spill. Due to inclement weather, ES&H did not go to the site until 6/18/08. The claimant performed a joint assessment of the alleged spill with USCG personnel from Marine Safety Unit Morgan City. Upon completion of the site assessment, no oil was discovered on land or in the water. Upon receipt of the claim, the National Pollution Funds Center (NPFC) Claims Manager sent an RP Notification letter to the potential

¹ See, Marine Safety Unit Morgan City's Coast Guard Case # 408722

² See, NRC report # 874422 dated June 17, 2008

responsible party, Cedyco Corporation on August 12, 2009 and to date no response has been received.

- Description of removal actions performed:** The claimant, ES&H, was called out on June 17, 2008. Upon arrival to the site, the weather was too bad for ES&H to go to the specific location by boat therefore the claimant only charged the PRP for 2 hours at a standby rate along with the standard charge for one unit of Personal Protective Equipment (PPE), one daily charge for a vehicle and the mileage associated with mobilization to the site.

The claimant and the USCG arrived at the site first thing the following morning. Upon completion of their joint site assessment, it was determined that no oil was evident on the water or on land.

- 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 \$1,822.00 for the services provided from June 17, 2008 through June 18, 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 Supervisor's Log, internal email correspondence, and a copy of the USCG Case # 408722. 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].

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 # 408722 along with email sent to Ms. Alyssa Lombardi, NPFC Claims Manager, from MST3 Hargraves dated August 27, 2009.³
2. The incident involved the report of a 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.

³ See email dated August 27, 2009 from MST2 Rodney Segers to Ms. Alyssa Lombardi, NPFC

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.

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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager confirmed that the claimant did in fact perform a joint site assessment with the USCG between June 17 and June 18, 2008.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$1,822.00 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 #N09032-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of June 17, 2008 through June 18, 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 \$1,822.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N09032-001. 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: \$1,822.00

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *9/3/09*

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:
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5890
9/3/2009

VIA FACSIMILE
(985) 853-1978

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

Re: Claim Number N09032-001

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 \$1,822.00 is full compensation for OPA claim number N09032-001.

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 202-493-6883.

Sincerely,

[REDACTED]
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]@uscg.mil

Fax: 202-493-6937

Claim Number: N09032-001	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 \$1,822.00 as full compensation for the claim listed above.

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

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number