

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/3/2011
Claim Number	: 911007-0001
Claimant	: Parker Diving Service dba Redwood Shore Diving Inc.
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$18,590.86

I. FACTS:

A. Oil Spill Incident:

On August 29, 2010 the 57-foot, twin engine, Chris Craft named "The King and I" sank in its berth at Riverpoint Landing Marina in Stockton, CA. "The King and I" has two diesel fuel tanks with a 200-gallon (maximum) capacity. At the time the vessel sank, the quantity of diesel onboard was unknown. Diesel fuel began to discharge from the fuel tanks and into the San Joaquin River; a navigable waterway of the United States.

B. Description of Removal Actions:

Riverpoint Landing Marina placed boom around the sunken vessel to contain the diesel. The marina manager phoned Parker Diving Service to plug the source of the fuel leaks to prevent further pollution.¹

On August 31, 2010, Parker Diving Service arrived at Riverpoint Marina and sent a diver down in order to assess the situation. The diver plugged the fuel vents where he could; however, the vents had screens on them and the plugs were not completely effective. The diver also discovered that the starboard fuel tank was leaking diesel therefore he applied an epoxy seal to it. The diesel fuel continued to leak into the river. Parker Diving placed absorbents within the boomed-off area surrounding the vessel to remove the diesel while determining what means would effectively stop the leaking fuel.

Parker Diving considered running a hose-line to the fuel tanks to empty them but, the dive master thought that running the "stinger hose" to drain the tanks would take more time and not be cost effective. Because the vessel was made of wood and it was partially pinned under the dock with debris and furniture floating inside the cabin, it was difficult for divers to maneuver around the interior of the vessel. The Salvage Master suggested that it would be safer to raise the vessel because this would effectively prevent any further fuel leaks. The vessel's owner/operator, Mr. [REDACTED] was designated as the responsible party for the oil spill. Mr. [REDACTED] accepted the Salvage Master's suggestion to raise the vessel in order to prevent further pollution and he signed the contract with Parker Diving to raise his vessel.

Divers then started patching the hole in the port side of the hull and placed lift bags around the sunken vessel. Various size pumps were placed onboard to dewater the vessel and divers closed the hull fittings that were open and patched other openings in the hull. Once the hull was

¹ See OSLTF claim form receive by NPFC 11/1/2010 & Contract for Salvage and Pollution Abatement in file

sufficiently water-tight, the vessel was raised partially above the waterline. Larger pumps were placed onboard and the Salvage Master remained overnight in order to monitor the pumps and dewatering process. The following morning, the vessel was raised, which this cost was not included in removal actions by the claimant. Parker Diving demobilized and reimbursed Riverpoint Marina's three bales of absorbent boom that was used to contain the spill. Parker Diving packed contaminated waste material into three 55-gallon drums for disposal, which was arranged by a separate transport company.²

C. FOSC Coordination:

On November 18, 2010, the Claims Manager emailed MST3 [REDACTED] Sector San Francisco to confirm that MST3 [REDACTED] was the acting Federal On Scene Coordinator Representative (FOSCR) and to find out if raising the vessel was a removal activity that was necessary to prevent further pollution and not considered a salvage job.³ MST1 [REDACTED] of Sector San Francisco responded to the NPFC by calling the Claims Manager and related that MST3 [REDACTED] was on Temporary Duty Assignment in the Gulf of Mexico. MST1 [REDACTED] spoke with MST3 [REDACTED] and confirmed for the Claims Manager that MST3 [REDACTED] was the FOSCR and that he agreed to raise the vessel in order to stop the diesel fuel from discharging into the river. MST1 [REDACTED] explained that MST3 [REDACTED] considered using a "stinger" hose, but after consulting with the Salvage Master, decided that it was safer to raise the vessel.⁴

Because the Responsible Party cooperated with the FOSCR by agreeing to raise the vessel to stop the fuel from discharging into the river, this incident was not federalized.

D. The Claimant:

Parker Diving Service doing business as, Redwood Shore Diving, Inc., P.O. Box 1648 Sausalito, California.

E. The Claim:

Parker Diving Service's claim was received by the NPFC on November 1, 2010. The claimant requested a sum certain of \$18,590.82 for uncompensated removal costs along with the following documentation:

- (1) A contract dated August 30, 2010 signed by the Responsible Party to raise the vessel.
- (2) An invoice from Parker Diving Service in the amount of \$18,316.12 dated August 31, 2010 for costs relating to raising the vessel.
- (3) Two letters addressed to Mr. [REDACTED] from Parker Diving's attorney requesting payment from Mr. [REDACTED]
- (4) A copy of the waste disposal manifests showing the guarantor as the Responsible Party and delivery on October 1, 2010.⁵
- (5) A completed (detailed) and signed copy of the Oil Spill Liability Trust Fund Claim Form received at the NPFC on November 1, 2010.

Subsequent documentation requested by the claims manager and submitted by the claimant:

² See copy of waste disposal manifest dated 12/30/2010 signed by the facility operator 10/16/2010

³ See email dated 11/10/2010 to MST1 [REDACTED] & MST2 [REDACTED] requesting information on incident

⁴ See email 11/16/2010 to claimant with cc to MST1 [REDACTED] outlining the conversation regarding FOSC

⁵ Claimant's waste disposal manifest was not signed by the facility operator and this claim was held-up until a copy of the facility signed manifest was received on 30 December 2010.

(5) Parker Diving Service's rate-sheet dated November 1, 2009.

(6) The marine survey on the cause for the sinking of "The King and I" dated September 1, 2010, (the surveyor was hired by International Marine Underwriters that insure Yolo County Sheriff's Department)

(7) The Yolo Sheriff's Department report that investigated the ownership of "The King and I."

(8) A copy of the waste disposal manifest signed by the facility operator (received December 30, 2010)⁶

The claimant later explained that the \$274.74 difference between its invoice amount and its sum certain represents interest on the invoice.

F. Responsible Party:

Under the Oil Pollution Act of 1990 the owner/ operator of a vessel that discharges oil into a navigable waterway is considered the RP. This oil-spill incident was reported to the National Response Center (NRC incident #952447) by [REDACTED] who gave his current address as [REDACTED] Stockton, California and reported that he was the owner/ operator of "The King and I."

The acting FOSCR designated Mr. [REDACTED] as the Responsible Party (RP) since Mr. [REDACTED] was on-scene at the time of the spill and asserted he was the owner/ operator of "The King and I." Additionally, Mr. [REDACTED] signed a contract with Parker Diving for its services to raise his vessel to stop further fuel from discharging into the river.

The NRC report shows that the Responsible Party for the spill is the Yolo County Sheriff's Department. This is because Mr. [REDACTED] reported the incident to the NRC and related that a vessel belonging to the Yolo County Sheriff's Department struck his vessel resulting in it sinking, which caused the oil-spill.⁷

On December 7, 2010 the NPFC sent [REDACTED] a certified, return receipt letter notifying him that he was the Responsible Party for this incident.

Later, an investigation by the Yolo County Sheriff's Department⁸ indicated that there may be another owner/ operator. The sheriff's deputy reported that [REDACTED] of Antioch, CA asserted she is the owner of "The King and I." On December 22, 2010, the NPFC sent a second letter certified and return receipt to [REDACTED] of [REDACTED], California.⁹

G. Presentment of Claim:

Section 2713 of the Oil Pollution Act of 1990 provides the Responsible Party for an oil spill 90-days waiting period after receiving a notice of a claim. The RP can choose to take action or not in that time period. After 90-days the claimant may present its claim to the Fund.

On November 1, 2010, Parker Diving Service presented its claim to the Oil Spill Liability Trust Fund (Fund) seeking a sum certain of \$18,590.82. Because this claim submission was received

⁶ Claimant submitted a copy of the waste manifest on December 30, 2010 see file

⁷ See NRC report in file.

⁸ See copy of Yolo County Sheriff's Department investigation in the file

⁹ See report by Yolo County Sheriff's Department investigation in the file

before the 90-days waiting period had elapsed, the Claims Manager held the claim until December 1, 2010 before adjudicating it.

Parker Diving notified Mr. [REDACTED] in its contract (Mr. [REDACTED] initialed the specific part) that the claimant's invoice constitutes presentment of the claim under Section 1013(a) of the Oil Pollution Act of 1990. Since Mr. [REDACTED] signed the contract on August 29, 2010 and received the invoice August 31, 2010. The claimant presented its claim to the RP. The RP has not replied to requests for payment by the claimant and has not replied to the NPFC's RP notification letter.

On December 7, 2010 the Claims Manager sent [REDACTED] a certified letter notifying him that he is the designated Responsible Party for the oil spill. As of this date, the RP has not replied.

II. 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].

III. DETERMINATION OF LOSS:

A. Overview:

1. The FOSC coordination has been established via USCG Sector San Francisco (see email dated 11/09/2010)
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.(see NRC report attached)
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. (see OSLTF claim form dated 11/10/10)
4. This removal cost claim was submitted within the six year statute of limitations
5. Presentment of costs to the RP was made by the claimant, prior to the submission of the claim.(see contract 8/29/10, invoice of 8/31/10, 2 letters to RP dated 8/31/10 & 10/27/10)
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:

The Claims Manager reviewed a copy of the invoice and claimant’s rate sheet and confirmed with the FOSCR that the invoice reflects uncompensated costs as claimed. The Claims Manager focused on: (1) whether the actions taken were compensable “removal actions” under OPA and its 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 FOSC¹⁰, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager confirmed directly with MST1, [REDACTED] at Coast Guard Sector San Francisco, that MST3 [REDACTED] and MST2 [REDACTED] were on-scene at the time of the incident.¹¹ The Claims Manager confirmed with MST1 [REDACTED] that MST3 [REDACTED] approved the Salvage Master’s decision to raise the vessel for the safety of the divers and to

¹⁰ See email 11/16/2010 to claimant with cc to MST1 [REDACTED] outlining the conversation

¹¹ See OLSTF Claim Form #12 listing USCG MST3 [REDACTED] and MST2 [REDACTED] as witnesses.

stop the further discharge of oil into a navigable waterway and that this removal action was consistent with the National Contingency Plan.¹²

The claimant represents that all costs claimed are uncompensated removal costs that it incurred for this incident on August 30 and August 31, 2010.

C. Determined Amount:

The Claims Manager confirmed that the FOSCR agreed to raise the vessel as a removal action and that this action was in accordance with the National Contingency Plan.

The Claims Manager determined that the claimant's costs were reasonable by comparing invoiced costs to the claimant's rate-sheet for 2010.¹³ The Claims Manager determined that claimant's invoice of August 31, 2010 represents only uncompensated removal costs and verified that \$18,316.12 represents compensable removal costs.¹⁴

The Claims Manager hereby determines that the OSLTF will pay \$18,316.12¹⁵ as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 911007-0001. All costs claimed were incurred by the claimant for removal actions taken, as defined under OPA and payable by the OSLTF as compensable removal costs.

IV. AMOUNT: \$18,316.12

Claim Supervisor



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Date of Supervisor's Review: 2/2/11

Supervisor Action: *Approved*

Supervisor's Comments:

¹² See email 11/16/2010 that follows-up email to FOSC (11/10/2010) and notes my discussion with MST3 Brian Sulfridge

¹³ See spreadsheet showing invoiced amount compared to rate sheet with explanations of items questioned.

¹⁴ See spreadsheet showing invoiced amount compared to rate sheet with explanations of items questioned.

¹⁵ See spreadsheet showing invoiced amount compared to rate sheet with explanations of items questioned.