

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/06/2011
Claim Number	: 911016-0001
Claimant	: Golden Shamrock, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$11,953.86

### **FACTS:**

- 1. Oil Spill Incident:** The United States Coast Guard Sector Puget Sound reports that on October 27, 2010, a 100 yard by 600 yard rainbow sheen was discovered in Salmon Bay, which leads into Puget Sound, a navigable waterway of the US.<sup>1</sup>

The USCG Sector Puget Sound took sample analyses and determined this waste oil to be hydraulic oil. While Golden Shamrock, Inc. (Golden Shamrock) was originally charged with the responsibility to clean up and dispose of the oil and contaminated waste,<sup>2</sup> an investigation conducted by Sector Puget Sound later determined the responsible party to be unknown.<sup>3</sup>

- 2. Description of removal actions performed:** The claimant, Golden Shamrock, hired Global Diving and Salvage to clean up and dispose of the oil and contaminated waste. Removal actions consisted of deploying boom around the vessel, F/V Pro Surveyor, and placing sorbent pads, bags and sweep. The contaminated material was removed from the bay and disposed of off-site. USCG Sector Puget Sound verified that the cleanup and removal activity was in accordance with the National Contingency Plan (NCP).<sup>4</sup>

- 3. The Claim:** On January 3, 2011, Golden Shamrock submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$11,953.86 for the services provided from October 27 through October 28, 2010. 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, posted rate schedule, MISLE Case Report # 527512, NRC Report # 958210, a copy of the USCG Sector Seattle Oil Sample Analysis Report for MSL Case # 11-034, a copy of the PI Statement written by MST3 [REDACTED], a copy of an email from MST2 [REDACTED] to the claimant, copies of checks paid for this claim and internal email correspondence.

<sup>1</sup> See USCG Sector Puget Sound Case Report # 527512, dated 10/27/2010, and PI Statement written by MST3 [REDACTED], dated 12/03/2010

<sup>2</sup> See USCG Sector Puget Sound Case Report # 527512, dated 10/27/2010, and PI Statement written by MST3 [REDACTED], dated 12/03/2010

<sup>3</sup> See PI Statement written by MST3 [REDACTED], dated 12/03/2010

<sup>4</sup> See email from MST2 [REDACTED], USCG Sector Puget Sound to Mr [REDACTED], Golden Shamrock, dated 11/18/2010

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 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 FOOSC to be consistent with the National Contingency Plan or were directed by the FOOSC.”

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 FOOSC 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].

Under 33 CFR 136.105(e)(8), the claim must include the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.

### **DETERMINATION OF LOSS:**

#### **A. Overview:**

1. The initial FOSC coordination has been established via USCG Sector Puget Sound Case Report # 527512.<sup>5</sup>
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.
4. The claim was submitted within the six year statute of limitations.
5. A Responsible Party could not be determined.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if 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 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 whether or not they were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

Based on the documentation provided by Golden Shamrock, it appears that the legal fees claimed are not related to the removal of oil; rather, they are costs incurred due to the research and overturning of the Administrative Order, the research of OPA law and the review of the claimant’s insurance policy. Therefore, the legal fees totaling \$3,902.50 are not removal costs and are therefore denied.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$8,051.36 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #911016-0001. The claimant states that all costs claimed are for

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<sup>5</sup> See USCG Sector Puget Sound Case Report # 527512, dated 10/27/2010

uncompensated removal costs incurred by the claimant for this incident from October 27 through October 28, 2010.

**C. *Determined Amount:***

The NPFC hereby determines that the OSLTF will pay \$8,051.36 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #911016-0001. These costs 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: \$8,051.36**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *1/5/11*

Supervisor Action: *Approved*

Supervisor's Comments: