

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 911047-0001
Claimant	: Atlantic Coast Marine Group, Inc
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$8,136.50

FACTS:

Oil Spill Incident: On August 1, 2010, the fishing vessel *Miss Melodie* was destroyed in a fire as it was headed to the Pamlico Sound to work. Atlantic Coast Marine Group, Inc. aka Tow Boat US (Claimant) responded to the incident. When they arrived on scene, they found the 55-foot vessel fully engulfed in flames and located partially in the Intercoastal Waterway.

Description of removal actions performed: Upon arrival on site, the Claimant began shuttling firefighters to the vessel and assisted with fighting the fire when it became apparent that the vessel was discharging diesel fuel and engine oil into the waterway. Fire Chiefs were immediately notified of the pollution although since they had no boom to deploy, the Claimant was asked to deploy boom, which they did.

The boat Captain, Mr. [REDACTED] advised everyone on scene that he had no insurance or a means to pay for mitigation or containment efforts. USCG members arrived on scene. The Claimant deployed 560' of soft boom and 800' of hard boom. Once the spill was contained, the USCG informed the Claimant that the Responsible Party was going to provide his own cleanup. The Claimant stated that Mr. [REDACTED] was provided a carbon copy of the invoice at the end of the day.

The Claim: On March 31, 2011, Atlantic Coast Marine Group (Claimant) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$8,136.50 for the services provided on August 1, 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 and associated dailies, a written summary of events, photographs and internal email correspondence.

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 FOSC, 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. "NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4)."
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 6 year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and has determined that the actions are reasonable, necessary and in accordance with 33 CFR 136.203 & 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 NPFC called and spoke with Mr. [REDACTED] Carteret County Fire Marshall on June 30, 2011, who confirmed the Claimant's statement as well as he confirmed the existence of the personnel and equipment/materials as billed by the Claimant. He also confirmed that while the County of Carteret Emergency Services did later bring resources to the scene at no charge to Mr. [REDACTED] the resources used by the Claimant were definitely there and used.

The Claimant requests a total of \$8,136.50 in uncompensated removal costs. The NPFC sent Mr. [REDACTED] an RP Notification Letter advising him the claim was presented. Mr. [REDACTED] called and disagreed that the Claimant provided him a copy of the invoicing. Additionally, he said the County deployed resources that were free of charge which is why Mr. [REDACTED] disputes the validity of the charges.

Based on a conversation with the Fire Marshall, the NPFC has determined that the resources were present and used, billed in accordance with its pricing schedule in response to a valid OPA event therefore the NPFC has determined the claim is compensable in the amount requested.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$8,136.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 911047-0001. All costs deemed compensable are for charges incurred in response to the pollution incident on August 1, 2010 and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Claim Supervisor: 

Date of Supervisor's review: 7/5/11

Supervisor Action: *Approved*

Supervisor's Comments: