

CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/4/2011
Claim Number	: 911075-0001
Claimant	: United States Environmental Services, LLC
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$12,546.00

FACTS:

- 1. *Oil Spill Incident:*** On August 11, 2010, the United States Coast Guard (USCG) Sector New Orleans was notified that the UTV Marine Pearl was grounded at mile marker 16 on the south bank of the Intracoastal Waterway in Jean Lafitte, Louisiana, after taking on water. The Intracoastal Waterway is a navigable waterway of the United States. The vessel was en route on Lake Salvador in Jefferson Parish, Louisiana when the master realized he was taking on water and then grounded the vessel. The master and the crew closed all fuel vents before exiting the vessel. It was estimated that 950 gallons of diesel fuel was on board. USCG Sector New Orleans determined that the grounding was not impacting waterway traffic. USCG then contacted the President of Cummings Marine Service of Memphis (CMS), [REDACTED] to make preparations to salvage the vessel as soon as possible. Mr. [REDACTED] informed USCG that he planned to begin salvage the next day. As the responsible party (RP), he hired United States Environmental Services, L.L.C. (USES), to deploy boom and be on "stand-by" during the vessel re-floating operations, due to the threat of diesel fuel and motor oil spilling. Per the Claimant, the vessel re-floated without spilling the fuel on board.
- 2. *Description of Removal Activities for this Claim:*** From August 12, 2010 to August 13, 2010, USES deployed containment boom around the vessel for diesel and motor oil spill recovery, and stayed on-scene during the re-floating operations. On August 12, 2010, USES deployed a supervisor with three recovery technicians; two pick-up trucks; one work boat; containment and sorbent boom with boom anchors and rope. On August 13, 2010, they deployed a supervisor with five recovery technicians; two pick-up trucks; two work boats; a gas trash pump; and containment and sorbent boom. USES also performed disposal-related activities and hired American Recovery, LLC for the actual disposal of the drums. Disposal Manifests were included in the claim submission.
- 3. *The Claim:*** On May 11, 2011, the Claimant submitted a removal cost claim in the amount of \$12,546.00 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated removal costs for the services provided to CMS. This claim is for removal costs based on the Claimant's rate schedule in place at the time services were provided. A copy of that rate schedule is in the claim file. The claim consists of the Claimant's incident billing summary, invoice, dailies, correspondence log and correspondence between the Claimant and CMS, a map of the incident site, photographs taken by the Claimant, and waste manifests.

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 threat of 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 for removal costs;
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:


The NPFC Claims Manager has reviewed the actual cost documents 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, and (4) whether the costs were adequately documented and reasonable.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$12,546.00 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 #911075-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on August 12, 2010. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by Claimant.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$12,546.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 911075-0001 for removal costs.

AMOUNT: \$12,546.00

Claim Supervisor 

Date of Supervisor's review: *8/4/11*

Supervisor Action: *Approved*

Supervisor's Comments: