

CLAIM SUMMARY / DETERMINATION FORM

Date	: 9/14/2011
Claim Number	: 911094-0004
Claimant	: Oil Mop, LLC
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$10,269.85

FACTS:

1. **Oil Spill Incident:** On March 30, 2010 a mystery discharge of oil was discovered at the Sun Oil Dock 5 located on the Neches River, a navigable waterway of the United States. Early into the investigation, Pollution Investigators thought the oil was emanating from the M/V GLENNROSS owned by International Tanker Management Holding Limited (ITMH) however, the laboratory analysis of this case was found inconclusive.¹ Therefore, this oil spill incident remains to be a mystery spill.

Federal on Scene Coordination (FOSC) was made with Marine Safety Unit Port Arthur. The Pollution Investigators opened MISLE case # 495263 and activity # 3706563.² Also, the NRC was contacted via reports # 935577, # 935597, # 935589.³

2. **Responsible Party:** At this time a Responsible Party (RP) has not been identified.
3. **Claim:** The Claimant, Oil Mop LLC (OMI) presented this claim to the National Pollution Funds Center (NPFC) seeking reimbursement of their uncompensated removal costs in the amount of \$10,269.85 from March 31, 2010 through April 2, 2010. This claim is for removal costs based on the contractor's (OMI) rate schedule in place at the time services were provided.

OMI responded to the spill on March 31, 2010 and immediately deployed a 16' flat boat with motor to pickup and replace sorbents, and move hard boom. OMI remained on scene and continued with response and cleanup until April 2, 2010.

This claim consists of OMI dailies, OMI rate schedule, OMI job notes, MISLE report, and NRC reports. The file also includes a Coast Guard Hearing Office letter dated June 6, 2011 that explains that there is insufficient evidence to find that ITMH was the party responsible for the oil discharge and the charge brought against ITMH were dismissed.⁴ Also, Texas General Land Office (TGLO) provided a letter; dated June 17, 2011 explaining that there is insufficient evidence to prove that ITMH is the RP and that case # 2010-0967 is dismissed.⁵

¹ Oil Sample Analysis Report, MISLE exhibit CG 53.

² Case Report opened 3/31/2010.

³ NRC Reports # 935577, # 935597, # 935589.

⁴ Coast Guard Hearing Office letter dated 6/6/2011.

⁵ TGLO letter dated 6/17/2011

The review of the actual cost invoicing and dailies focused on: (1) whether the actions taken were compensable "removable 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:

"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. FOSC coordination was made by Marine Safety Unit Port Arthur pursuant to 33 CFR § 136.203 and 205.
2. The incident involved the 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 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 the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removable actions” under OPA and the claims regulations 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 and reasonable.

On that basis, the Claims Manager hereby determines that Claimant did in fact incur \$10,269.85 of uncompensated removal costs and the 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 # 911094-0004. Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of March 31, 2010 through April 2, 2010. 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 \$10,269.85 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 911094-0004. All costs claimed are for charges paid for by Claimant for removal actions as that term is defined in OPA and are compensable removal costs, payable by the OSLTF as presented by Claimant.

Claim Supervisor

Date of Supervisor's review: *9/14/11*

Supervisor Action: *Determination approved*

Supervisor's Comments: