

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 911112-0001  
Claimant : United States Environmental Services, LLC  
Type of Claimant : OSRO  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$5,766.50

### FACTS:

1. **Oil Spill Incident:** On October 7, 2010, the M/V NAGOYA BAY belonging to Roswell Navigation Corporation discharged approximately 50 gallons of heavy fuel oil into the lower Mississippi River at MM92.9, a navigable waterway of the United States.

The spill created a visible sheen on the surface of the water and was caused by heavy fuel oil located in the cargo condensate bilge that had been pumped out into the river.

Federal on Scene Coordination (FOSC) was made by MST3 [REDACTED] Pollution Investigator and MST2 [REDACTED] Pollution Investigator. The Pollution Investigators opened case # 524973 and activity # 3865352 in MISLE.<sup>1</sup> Also, the NRC was contacted via report # 956270.

2. **Responsible Party:** Roswell Navigation Corporation owned the vessel at the time of the oil spill incident and is a responsible party (RP) under the Oil Pollution Act.
3. **Claim:** The Claimant, United States Environmental Services, L.L.C. (USES) presented this claim to the National Pollution Funds Center (NPFC) seeking reimbursement of their uncompensated removal costs in the amount of \$5,766.50 from October 7, 2010 through October 8, 2010. This claim is for removal costs based on the contractor's (USES) rate schedule in place at the time services were provided.

O'Brien's Response Management Group (O'Brien's) was hired as the Spill Management Team (SMT). O'Brien's made presentment of the Claimant's costs to the RP via a letter dated, April 29, 2011, requesting payment in full.<sup>2</sup> To date, no response has been received from the RP or O'Brien's.

This claim consists of USES dailies, NRC report, MISILE report, Waste Manifest # 8015, proof of payment, USES rate schedule, O'Brien's letter to RP, U.S. Coast Guard Investigator Statement Form, and Notice of Federal Interest.

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

<sup>1</sup> MISLE case report

<sup>2</sup> Letter from O'Brien's to RP dated April 29, 2011

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. FOSC coordination was made by Sector New Orleans 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 the Claimant did in fact incur \$5,766.50 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 # 911112-0001. Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of October 7, 2010 through October 8, 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 \$5,766.50 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 911112-0001. 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: *9/13/11*

Supervisor Action: *Approved*

Supervisor's Comments: