

## CLAIM SUMMARY / DETERMINATION FORM

Date : 11/15/2011  
Claim Number : 912015-0001  
Claimant : United States Environmental Services, L.L.C.  
Type of Claimant : Corporate  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$2301.70

### FACTS:

- 1. Oil Spill Incident:** On May 17, 2011, the United States Coast Guard Sector Mobile Case # 547940,<sup>1</sup> reported a discharge of 20 gallons of diesel from the F/V TAM LE II, into Snake Bayou creating a sheen. Snake Bayou is a tributary of Bayou La Batre, a navigable waterway of the United States.

USCG personnel responded to the scene to investigate the incident and found that the F/V TAM LE II had listed to its starboard side due to the ebbing tide causing the water level to drop to the point where the vessel's hull was resting on the bottom. The valve leading from one of the fuel tanks to the engine came loose during the incident allowing fuel to be discharged into the bilge which was taking on water from over the side due to the list. The rising water level caused the 20 gallons of diesel to be discharged through the hatch and into the water of Snake Bayou. The owner of the vessel (And Responsible Party (RP)), Mr. [REDACTED], deployed 100 feet of boom around the vessel and began using absorbent pads to recover any product in the water.<sup>2</sup>

On May 18, 2011, the owner was in contact with United States Environmental Service to pump the remaining diesel out of the bilge and dispose of the used absorbent pads. The remaining sheen on the water dissipated naturally.

- 2. Description of removal actions performed:** USES was contracted by the RP, and arrived on-scene May 19, 2011. USES began removing the oily water from the F/V TAM LE II. They also drummed and disposed of the dirty absorbent materials. USES attempted to collect payment from the RP multiple times before coming to the NPFC for reimbursement of their uncompensated costs.
- 3. The Claim:** On November 9, 2011, United States Environmental Services, L.L.C. (USES) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$2,301.70 for the services provided on May 19 and 20, 2011. 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. The FOSCR for this incident was USCG MST1 [REDACTED] USCG.

This claim consists of copies of the following: invoicing and associated dailies; MISLE Case # 547940; NRC Report # 976578; the NOFI issued by MST3 [REDACTED] the PI

<sup>1</sup> See USCG Sector Mobile Case # 547940, opened 5/17/2011.

<sup>2</sup> See PI statement given by PO [REDACTED], USCG, dated 5/20/2011..

Statement written by MST3 [REDACTED] the FOSCR coordination memo written by MST1 [REDACTED] the Optional OSLTF claim form; the signed contract between USES and the RP; proof of payment to all subcontractors; a copy of the Disposal of Non-Hazardous Waste Manifests; 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 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 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. The FOSC coordination has been established via USCG Sector Mobile Case Report # 547940, and via the coordination memo written by the FOSCR MST1 [REDACTED] USCG.<sup>3</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 for removal costs.
5. Presentment of costs to the RP was made by the claimant, prior to the submission of the claim. The NPFC also notified the RP and to date the NPFC has received no response.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all removal costs presented were for actions in accordance with the NCP and that 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.

<sup>3</sup> See USCG Sector Mobile Case Report # 547940, opened 5/17/2011, and the coordination memo written by PO [REDACTED] USCG, dated 10/18/2011.

The Claims Manager confirmed that the FOSCR for Sector Mobile did in fact perform a site assessment on May 17, 2011. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

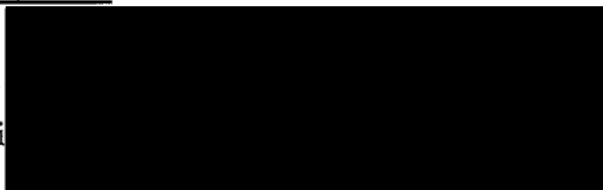
On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$2,301.70 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #912015-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on May 19 and 20, 2011. The 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 \$2301.70 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912015-0001. All costs claimed 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: \$2,301.70**

Claim Supervi



Date of Supervisor's review: *11/15/11*

Supervisor Action: *Approved*

Supervisor's Comments: