

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/12/2011
Claim Number	: A10005-001
Claimant	: NRC Environmental Services Inc
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$718,455.28

FACTS:

On the morning of October 30, 2009, the Panamanian-flagged T/V DUBAI STAR and a fuel barge were conducting bunkering operations at Anchorage 9 in San Francisco Bay when it released an unknown amount of oil into the waterway. After Sector San Francisco performed the initial investigation, it was determined that an estimated 400 to 800 gallons of oil was unaccounted for.

RESPONSIBLE PARTY:

South Harmony Shipping, Inc. (SHS) operated the T/V DUBAI STAR at the time of the incident and is a responsible party under the Oil Pollution ACT (OPA).

THE CLAIMANT AND THE CLAIM:

Claimant, NRC Environmental Services (NRCES), executed an Independent Contractor Network (ICN) Agreement on November 1, 2003 with National Response Corporation (NRC) which enables NRCES to provide response services for responding to discharges of oil and hazardous substances from vessels and/or facilities under contract with NRC.¹ NRC is listed in the Vessel Response Plan (VRP) for the T/V DUBAI STAR as one of their designated Oil Spill Response Organizations (OSRO) in the event the vessel has a discharge of oil in US waters.² NRC is under contract with Pioneer Ship Management Services, LLC to provide emergency response services.³ Claimant provided response resources and services under its contract with NRC dated November 1, 2003, using NRCES' Price List effective February 18, 2009.⁴ Claimant provided its published rate schedule to the South Harmony Shipping's Spill Management Team (SMT), O'Brien's Response Management.⁵ The services provided by the Claimant were acknowledged by South Harmony Shipping's designated Spill Management Team, who acted on behalf of the Responsible Party as the Spill Manager. Specifically, the Claimant submitted daily sheets to the Spill Management Team (SMT) which listed the labor and materials/equipment provided by the Claimant for each day of the response in a specific zone location. The SMT approved the materials, equipment and labor identified on each daily by signing the document.⁶ Beneath each signature, the Zone Manager made the notation "subject to audit."

¹ See, National Response Corporation Agreement for Provision of Response Resources dated November 1, 2003.

² See, Vessel Response Plan for DUBAI STAR dated January 11, 2008.

³ See, Contract between National Response Corporation and Pioneer Ship Management Services, LLC, signed by CAPT. [REDACTED] dated September 11, 2008, Attachment A.

⁴ See, NRCES Price List effective February 18, 2009

⁵ See, Email from [REDACTED] of O'Brien's Response Management to [REDACTED] NPFC dated August 13, 2010.

⁶ One responsibility of the SMT was to confirm that the materials, equipment and services billed on each day for a certain period of time and at a given location have in fact been provided and accounted for.

Claimant provided these emergency response services from October 30, 2009 through March 30, 2010. Claimant's invoices to South Harmony Shipping, Inc. for this claim totaled \$2,554,278.16. The RP made payments to NRCES on the invoices which are subject of this claim. The payments made totaled \$1,835,822.88, leaving an unsettled balance of \$718,455.28.

NRCES presented their claim to the Responsible Party (RP) on a rolling basis as each invoice was generated beginning on October 31, 2009. On February 16, 2010, NRCES presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the original amount of \$703,493.55 for the time period of October 30, 2009 through March 30, 2010.⁷ The NPFC sent the RP a notification letter, dated February 24, 2010, to Mr. [REDACTED] General Counsel, advising that the Claimant presented a claim to the NPFC for certain uncompensated removal costs. The Claimant amended their sum certain on or about July 23, 2010.⁸

THE RP AUDIT

South Harmony Shipping, Inc. hired MR & Associates who prepared a Financial Audit for the NRCES invoices, providing a line by line itemization for materials, equipment and personnel submitted for payment by NRCES and payments made to NRCES by South Harmony Shipping, Inc. Upon request by the NPFC, South Harmony Shipping, Inc. provided the Audit to the Claims Manager. The NPFC found that South Harmony's auditor focused on whether the paperwork was complete as determined by their standards, whether the costs were properly supported in accordance with their standards, and whether the costs were operationally reasonable and necessary according to their standards.

REQUEST FOR RECONSIDERATION:

On January 27, 2011, the Claimant requested reconsideration of the following costs:

- Refueling charges in the amount of \$22,155.37
- Rental charges in the amount of \$30,800.00
- Damages and repairs to equipment in the amount of \$3,208.04
- Equipment charges while in decon in the amount of \$14,140.00

DETERMINATION OF LOSS:

A. Overview:

1. The removal actions were coordinated with the FOSC as evidenced by Incident Action Plans and United States Coast Guard (USCG) Pollution Reports.
2. The incident involved the discharge and continuing substantial 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 certified that it has filed no suit in court for the claimed uncompensated removal costs.
4. The claim was submitted within six years after the date of completion of all removal actions for this incident.
5. NRCES presented its claim for removal costs for the invoices dated October 30, 2009 through March 30, 2010 to the RP more than 90 days prior to the submission of the claim to the NPFC. The NPFC notified the RP that Claimant submitted this claim to the NPFC. The RP provided a complete copy of their Audit of the NRCES response costs for this incident.

⁷ As noted above this sum certain was amended to \$718,455.28.

⁸ See, amended summary of invoices as of July 22, 2010.

6. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that the majority of all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205 with the exception of denied costs itemized in the attached Summary of Vendors spreadsheet: (See, Enclosure 1 – RP audit which incorporates NPFC adjudication).

B. Initial Analysis:

NRCES states in its claim that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of October 30, 2009 through March 30, 2010. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

The NPFC Claims Manager reviewed the Claimant's actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed, that the costs were uncompensated, and that the costs were adequately documented and reasonable. As noted above, South Harmony Shipping, Inc. appointed a Spill Management Team (SMT) who acted on behalf of the Responsible Party in various response locations on specific days. The NPFC Claims Manager determined, that the response activities performed by the Claimant were signed off by the SMT on the dailies provided by NRCES and by RP's Audit.

The Claims Manager also confirmed that the removal costs were: compensable "removal actions" under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident): (2) incurred as a result of these actions; (3) incurred for removal actions were determined by the FOSC to be consistent with the NCP or directed by the FOSC. The Claims Manager reviewed the Pollution Reports and Incident Action Plans (IAPs) to corroborate actions that were taking place in the field at any given point in time and were utilized as part of the adjudication process.

The NPFC reviewed the detailed comments in RP's Financial Audit. The NPFC approved certain costs which were adequately documented by the Claimant, NRCES, yet denied by MR & Associates in its Financial Audit for the RP. Such costs were approved over MR's denial in the Financial Audit because these costs had been approved by designated Spill Manager(s) for the RP when these representative(s) signed the Claimants daily sheets. Because the services and material/equipment listed on the daily sheets were provided pursuant to a contract with specified rates, NPFC further finds that NRCES has satisfied its burden of showing that the amounts claimed were reasonable and necessary.⁹

C. Reconsideration Analysis:

In its original determination the NPFC denied certain costs, including rental costs paid to the City of Alameda for land to store equipment, refueling costs for its vessels, decontamination costs for some vessels contaminated with oil and repair costs vessels and skimmers that worked the spill. On reconsideration, the Claimant provided additional information with respect to the Land Lease charges, the refueling charges, and an explanation regarding the decon charges. Based on the new information, the NPFC has determined that it will allow \$22,155.37 in refueling charges based on refueling logs, the invoices, proof of payment, and the rate schedule which states on page 6 of 8 that fuel charges are NOT included in the list price therefore are paid as incurred.

⁹ NPFC policy provides that a written agreement between the responsible party and the cleanup contractor for removal actions evidences that the removal costs and resources incurred pursuant to that agreement are deemed reasonable and compensable.

Additionally, the Claimant provided a full copy of the lease agreement and terms. Based on the information provided, the NPFC will allow \$30,800.00 in rental charges. And finally, with respect to the decon charges, the NPFC reviewed the decon logs, signed dailies and the terms of the rate schedule which states on page 6 of 8 that equipment is billed until the completion of decon therefore the NPFC will allow \$14,140.00 in equipment charges while in decon.

The NPFC has determined the requested amount of \$3,208.04 in repairs and damage costs are denied as these costs are not an appropriate use of the OSLTF and are not considered removal costs therefore these costs are denied.

As referenced in the NPFC Summary of Costs, the unsubstantiated/denied costs are as follows (see spreadsheet of costs for details on each denial): It is important to note that there are invoice discrepancies that total \$1,700.97 therefore when you add the discrepancy amount to the total approved and denied by the NPFC, the amount totals to \$718,455.28 which is the Claimant's sum certain.

NRCES Invoice Number	NPFC Denied Amount
544206	140.00
544207	2595.00
544227 / 544235	4192.38
544278	892.5
544327	1012.50
544389 / 544399	8446.75
544472	4871.25
544508	410.00
544509 / 544510	0
544576	0
544655	3555.00
544656 / 544657	(572.25)
544677	0
544844	932.00
544845	978.41
545090	2665.00
545093	2090.60
545233	0
545244	1873.00
545627	968.00
545681	0
545982	0
545983	1163.00
546235	320.00
546374	160.00
546863	205.30
546903	0
547193	185.00
547409	160.00
547690	160.00
547896	160.00
548175	620.00

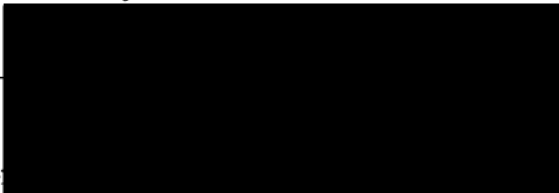
548426	265.00
548701	295.00
549150	250.00
549500	595.00
549640	244.75
549930	295.00
550065	1396.79
Total Denied	\$41,524.98

In summary, the NPFC has approved \$675,229.32 in OPA compensable costs. On this basis, the NPFC Claims Manager hereby determines that the Claimant did incur \$675,229.32 of uncompensated removal costs that are supported by the record and that this 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# A10005-001.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$675,229.32** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # A10005-001. 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.

Claim Supervisor



Date of Supervisor's Review: *2/15/11*

Supervisor Action: *Reconsideration Offer Approved*

Supervisor's Comments: