

CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/23/2011
Claim Number	: N08057-0101
Claimant	: Cargo Carriers, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$31,212.00

I. Facts

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States. Approximately 282,828 gallons of oil¹ were released into the Mississippi River and the resulting spill response, coordinated by the Federal On-Scene Coordinator (FOSC) and the Unified Command, resulted in a closure of the river to vessel traffic initially. As the clean-up progressed, the FOSC had the river reopened, but traffic had to be managed around ongoing response efforts for a period of time.

II. Responsible Party

American Commercial Lines LLC (ACL) owned the barge at the time of the incident and is a responsible party under the Oil Pollution Act.

III. The Claimant and the Claim

As a result of this of this incident, oil released and river currents caused a vast geographical area to be impacted by oil, which prompted immediate response that included the booming of extensive portions of the river. The United States Coast Guard (USCG) implemented a safety zone between Mile Markers (MM) 97 and 50 (eventually expanding the safety zone down to MM 0.0 (Southwest Pass Fairway)) on the Mississippi River and restricted vessel traffic to a safe speed outside of this area as well.

At the time of the incident, the claimant, Cargo Carriers, Inc. (CCI), had ongoing operations in the affected geographic area. CCI claims that it had approximately 60 barges located within the spill zone, and was required by the USCG to have its barges inspected for oil contamination before receiving clearance to operate. ACL initially paid to have approximately 57 barges inspected for oil contamination, and paid contractors to remove oil from the hulls of approximately 46 of the 57 barges. CCI claims that inspections conducted following ACL's decontamination efforts revealed that the hulls of eleven of CCI's barges had either been re-contaminated or the original cleanings had been inadequate. CCI then acquired and paid contractors to re-clean them.

On May 10, 2011, Cargo Carriers, Inc. submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$31,212.00 for the following costs related to the DM 932 oil spill: \$21,166.00 paid to H.B. Ventures L.L.C. to decontaminate nine of its barges from August 17 through August 21, 2008 (specifically, barge #s: CC-9281, CC-9207, MTC-437, MTC-432B, MTC-435B, MTC-643,

¹ See House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008

MTC-221, CC-95560B and CC-8332); \$3,200 paid to AEP River Operations LLC to remove the oil from two additional barges on August 3, 2008 (barge #s CC-95181 and MTC-637); \$6,000.00 it paid Johnson Marine Services to survey its barges for oil contamination on four separate occasions between July 25, 2008 and August 10, 2008; and both \$600.00 paid to Port Ship Services, Inc., and \$246.00 paid Weber Marine, Inc., to transport surveyors to the barges for inspection. This claim is for removal costs based on the rate schedule in place at the time services were provided.

The original claim consisted of the following:

1. Optional OSLTF Claim
2. March 24, 2009 submission to American Commercial Lines and Worley
3. Catastrophe Response, together with invoices, receipts and reports:
 - a. Invoice No. 100 from H.B. Ventures, L.L.C., for \$21,166.00
 - b. Invoice No. RMS5081558 from AEP River Operations, for \$3,200
 - c. Invoice No. JMS200709 from Johnson Marine Services, L.L.C., for \$6,000
 - d. Damage Survey Report of Johnson Marine Services. L.L.C., dated February 3, 2009
 - e. Invoice No. 0408339 from Port Ship Services, Inc for \$600
 - f. Invoice No. 163481 from Weber Marine. Inc., for \$246.00
4. Report of Johnson Marine Services, L.L.C., dated August 20, 2008
5. July 7, 2010 correspondence from Terry Stolz, representative of ACL/Worley

IV. Request for Reconsideration:

On May 18, 2011, the NPFC issued its initial determination for this claim. The NPFC denied the claim on the basis that CCI failed to meet its burden, by the preponderance of the evidence, that the decontamination of its eleven barges was necessary as instructed by the Captain of the Port (COTP)—the FOSC for this incident. On July 13, 2011, CCI made an official request for reconsideration via email to Ms. Alyssa Lombardi, NPFC. CCI provided a detailed request for reconsideration, along with a draft letter dated July 07, 2011, from the FOSC, Captain Peter Gautier, COTP, USCG Sector New Orleans (approved on August 10, 2011).² The FOSC confirmed that the response actions were appropriate. The COTP determined, after the fact, that the vessels claimed by CCI would not have received clearance to operate if they failed to pass an oil contamination inspection. Captain Gautier also stated that, due to the magnitude of the DM 932 oil spill, the vessels operating in the vicinity of this incident were operating under the extreme conditions and guidance within the safety zones initiated by the COTP, as vessel traffic operating in the port was minimized to mitigate or prevent the substantial threat during a discharge resulting in threat to public health and safety in the best interest of the Port of New Orleans.

V. DETERMINATION OF UNCOMPENSATED REMOVAL COSTS:

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 See letter from Captain [REDACTED] USCG COTP, Sector New Orleans, to the NPFC, dated 8/10/2011.

2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. A Responsible Party was determined, but has not made payment of costs to date. Additionally, the NPFC made notification of this claim to the RP. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if 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.

The NPFC has determined that the costs incurred were reasonable and necessary in order to mitigate the effects of the incident. Upon reconsideration and information provided by the FOSC after the fact, the NPFC has determined that the vessels claimed by CCI would not have received clearance to operate if they failed to pass an oil contamination inspection and therefore the cleanings as performed were deemed by the FOSC to be an appropriate action and based on the fact that the records support these vessels as having been identified as dirty, the NPFC has determined that in light of the magnitude of the spill, prior survey records, and information submitted by the Claimant, that these costs are consistent with the NCP. The costs were billed in accordance with the rate schedule in place at the time the services were rendered and consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay **\$31,212.00** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N08057-0101. 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.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$31,212.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim N08057-0101.

AMOUNT: \$31,212.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 8/23/2011

Supervisor Action: *Reconsideration approved*