

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/13/2011
Claim Number	: N09053-0001
Claimant	: Spectrum Energy Services, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$8,477.98

INCIDENT:

Claimant states that a spill occurred in the Houston Ship Channel as a result of a collision between the M/T Chemical Supplier and a barge in September 2009. The designated responsible party (RP) for the incident is the vessel's operator, W-O Shipmanagement GMBH & Co. KG. O'Brien's Response Management acted as the Spill Management Team on behalf of the RP.

CLAIM:

The claimant alleges that representatives of O'Brien's Response Management, the spill managers, contacted Spectrum Energy to purchase oil recovery snare for use in the spill cleanup. The claimant alleges that O'Brien's requested priority handling and shipping. The claimant was paid for the snare, but seeks reimbursement of the expedited delivery charges plus interest that it alleges has not been paid for over a year.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that the responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters, adjoining shorelines or the exclusive economic zone is liable for removal costs and damages. 33 USC 2702(a)

Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real or personal property or natural resources which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

Removal costs are "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 such an incident." 33 USC 2701(31)

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFCA, 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 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].

Pursuant to the implementing OSLTF claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

DETERMINATION:

The claimant seeks reimbursement of \$6,000 in expedited delivery charges related to the sale of oil snare to the RP plus \$2,477.98 for interest on the \$6,000. The claimant provided correspondence between it and O'Brien's and the lawyer for the responsible party. The O'Brien's emails document its encouragement of the RP's attorneys to pay the claimant for the outstanding charges. The claimant also provided copies of its invoices sent to the RP. Though irrelevant to this decision because the costs are not compensable, there are no copies of the receipts or proof of payment of the expedited delivery charges.

Since it appears that O'Brien's ordered the snare on behalf of the RP and the RP has refused to pay the shipping charges, the alleged, claimed costs directly resulted from the breach of a verbal contractual agreement related to the sale of goods. O'Brien's and the responsible party's breach of the agreement in their failure to pay agreed-upon charges associated with the purchase of the equipment is the cause of any loss alleged by the claimant. Compensation must be denied because the claimed costs are not removal costs incurred by the claimant, nor are they damages resulting from the injury or destruction of property or resources by the discharge of oil into

navigable waters of the U.S. Therefore, the claim is denied and the claimant is not entitled to payment from the Oil Spill Liability Trust Fund.

AMOUNT: \$0.00

Claim Supervisor:

Date of Supervisor's review: *4/14/11*

Supervisor Action: *Denial approved*

Supervisor's Comments: