

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/19/2010
Claim Number : 911001-0001
Claimant : LaFourche Parish Government
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : Dawn Unglesbee
Amount Requested : \$1,972.95

I. Facts

On July 30, 2010, Lafourche Parish Office of Emergency Preparedness was notified by Fire Central of a gasoline odor coming from the area of the car wash near Grand Isle Shipyard in Larose. After further investigation from the Fire Department, the odor was found to be coming from the catch basin at the car wash and was threatening to run off into Bayou La Fourche, a navigable waterway and also provides the Parish's source of drinking water.

The claimant notified ES&H and they immediately responded to the incident and conducted all remedial operations. ES&H discovered that gasoline was dumped into the drainage system at the car wash and had traveled through the drainage system to a catch basin near Hamilton Street.

All liquids were removed from the drains via a vacuum truck. Fresh water was pumped into the upstream drains to flush the gasoline from the drainage system. Approximately 3,000 gallons of freshwater was pumped into the drains and then removed. Air monitoring was conducted during the entire process and no elevated levels of LEL were detected.

The National Response Center was contacted on July 31, 2010 via incident report # 949491.

II. Responsible Party

The United States Coast Guard MSU Houma, LA investigated and was unable to determine the responsible party.

III. The Claim

On October 7, 2010, the NPFC received a claim for removal costs in the amount of \$1,972.95 from the LaFourche Parish, Louisiana. This claim consists of an unsigned claim form (CG NPFC-CA1), NRC Report # 949491, Lafourche Parish Spill or Release Report, Photos, and ES&H invoice # 1-22947 for \$1,972.95.

APPLICABLE LAW:

"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 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].

V. DETERMINATION OF LOSS:

A. Causation

Containment and clean-up were necessary to prevent hazmat from entering Bayou LaFourche waterway. Bayou LaFourche is a navigable waterway and also provides the Parish’s source of drinking water. LaFourche Fire Department responded for initial containment and ES&H was contracted to effect clean-up the spill.

B. Analysis

LaFourche Parish’s Claim is not valid until the NPFC receives an original signature. Under 33 USC § 136.105 (c) Each claim must be signed in ink by the claimant certifying to the best of the claimant’s knowledge and belief that the claim accurately reflects all material. The Claims Manager contacted ES&H to inquire whether or not the invoices have been paid in full and the Claims Manager was told by ES&H that the invoices that pertain to this claim (Invoice 1-22947) have not been paid.¹ Since the invoices have not been paid the claimant has not incurred uncompensated removal costs. Under 33 USC § 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. Because the claimant has failed to pay the invoices

¹ See, Email dated October 18, 2010 from Mr. LeCompte to Ms. Dawn Unglesbee, Claims Manager.

associated with ES&H's work, the costs are not considered uncompensated removal costs as the term is defined in the Oil Pollution Act.

C. *Determined Amount: \$0.00*

The NPFC hereby determines that the claim is denied in accordance with 33 CFR § 136.105(c) and 33 CFR § 136.205.

Claim Supervisor: *Donna Hellberg*

Date of Supervisor's review: *10/19/10*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890
10/19/2010

SENT VIA E-MAIL
[REDACTED]@lafourchegov.org

LaFourche Parish Government
ATTN: Eric Benoit
4876 Highway 1
Mathews, LA 70375

RE: Claim Number: 911001-0001

Dear Mr. Benoit:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 911001-0001 involving LaFourche Parish. Compensation is denied because; (1) the claimant has failed to provide a signed claim form in accordance with 33 CFR § 136.105(c); (2) the claimant failed to provide proof of payment for the removal costs being claimed therefore the claimant has failed to establish they have uncompensated removal costs.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number 911001-0001.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

Dawn Unglesbee
Claims Manager
U.S. Coast Guard