

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 912003-0002
Claimant : Marion Environmental, Inc.
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$9,859.75

FACTS:

1. **Oil Spill Incident:** On July 26, 2011, Marion Environmental Services (MEI) was contacted by Mr. [REDACTED] of Towboat US, to aid it in the containment and cleanup of a sunken vessel and resultant 200-foot by 50-foot sheen inside of B&B Marina. The marina is on the Hiawasse River, a navigable waterway of the United States located in Bradley County, TN. The incident was reported to the National Response Center (NRC) on July 26, 2011.¹ The Tennessee Wildlife Resources Agency (TWRA) was on-scene to monitor the response operations in the capacity of State on Scene Coordinator (SOSC).²

The Claimant made presentment of costs to the Responsible Party (RP), Mr. [REDACTED] on August 19, 2011 via certified mail # 70091680000160184227. The Claimant has not received payment from the RP for the services provided. The NPFC sent a notification letter to the RP dated March 5, 2010 advising receipt of this claim and to date, no response has been received.³

2. **Description of removal actions performed:** The Claimant, MEI, arrived on site July 26, 2011. The Claimant was originally contacted by Towboat US, which had been contacted by TWRA to raise the vessel. MEI staged and monitored sorbent boom and pads before, during and after the raising of the vessel. Some of this boom as left in-place to catch any lingering oil, and was retrieved and disposed of on August 4, 2011.⁴
3. **The Claim:** On March 2, 2012, MEI submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$9,859.75 for the services provided on July 26, 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.

This claim consists of copies of the following: invoicing and associated dailies; NRC Report # 983913; MEI's contracted rate schedule; the Disposal of Non-Hazardous Waste Manifest for this incident; a letter from MEI to Mr. Graham, the RP, dated 8/19/2011; letter from TWRA regarding Towboat US claim, NPFC Claim # 912003-001, dated 11/22/2011; and internal email correspondence.⁵

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

¹ See, NRC Report # 983913 dated July 26, 2011.

² *Id.*

³ See, RP Notification letter dated March 5, 2012.

⁴ See Optional OSLTF Form, submitted by the claimant with the claim on 3/02/2012.

⁵ See, NPFC claim file # 912003-0002.

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. FOSC Coordination has been established via US EPA Region IV.⁶
2. The incident involved the report of a discharge and substantial threat 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 has been 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.

Upon adjudication of this claim, the NPFC contacted the FOSC, Mr. [REDACTED] of USEPA, who provided coordination for the Claimant’s actions in order to mitigate the oil spill incident in conjunction with Tow Boat US. The Claims Manager validated that the costs incurred were billed in accordance with the rate schedule that was in place at the time services were rendered and confirmed proper disposal was performed. The NPFC determined the costs and actions undertaken by the Claimant 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 \$9,859.75 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

⁶ See email from Mr. [REDACTED], US EPA, to Ms. [REDACTED] USCG NPFC, dated 4/04/2012.

to the NPFC under claim #912003-0002. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on July 26, 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 \$9,859.75 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912003-0002. 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: \$9,859.75

Claim Supervisor:

Date of Supervisor's review: *4/9/12*

Supervisor Action: *Approved*

Supervisor's Comments: