

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 912034-0001
Claimant : State of Washington
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$7,097.66

FACTS:

1. ***Oil Spill Incident:*** On January 6, 2009, Coast Guard Sector Puget Sound (Sector Puget Sound) received a report from Coast Guard Sector Seattle (Sector Seattle) that an unknown oyster barge was partially submerged in the Puget Sound and discharging diesel fuel into the Burley Lagoon in Purdy, Washington.¹ The Puget Sound (Burley Lagoon) is a navigable waterway of the United States.

Sector Seattle contacted the Claimant, Washington State Department of Ecology (Ecology), to coordinate the clean-up efforts with the vessel owner, as Sector Seattle was able to contact the owner. It was determined that the Claimant and [REDACTED] the owner of the Western Oyster Company barge, would be funding the clean-up. Mr. [REDACTED] informed that an estimated 10 gallons of diesel fuel was on board the barge, as well as unknown amounts of engine oil and hydraulic oil. Sector Seattle informed the owner that he needed to hire an environmental contractor to respond to the sunken barge and he hired Global Diving and Salvage (Global). However, Global informed Ecology that they were hired to only deploy oil containment boom around the vessel.

Upon arrival, Ecology found the oyster barge partially submerged to the wheelhouse in the Lagoon, approximately 50 yards from the beach and observed a rainbow colored sheen at the incident site. They determined that deploying oil containment boom alone would not be a proper response in order to contain the diesel fuel, engine oil, and hydraulic oil, particularly with the stormy environmental conditions. The barge owner could not be reached to upgrade to the needed response.

The Claimant contacted Global and asked them to bring equipment required to pump off the vessel and informed Global that they would guarantee payment but requested they bill Mr. [REDACTED] first for their services. When Mr. [REDACTED] arrived at the incident site, he was informed by Ecology that the response had been upgraded and that he was responsible for all response and clean-up costs. Per the Claimant, Mr. [REDACTED] agreed to pay the costs and informed that he was going to try to salvage the barge. Ecology informed him that oil absorbents would have to be placed around the barge until it was raised.

2. ***Description of Removal Activities for this Claim:*** On January 6, 2009, the Claimant hired Global for the clean-up of the barge. Global arrived at the incident site at 4:45 pm

¹ See NRC Report #894137.

and attempted to launch their boat but determined they would be able to launch when the tide was higher. At 11:10 pm Global successfully launched their boat to reach the barge. By 1:00 am on January 7, 2009, Global reported to the Claimant that they pumped off the almost empty tank; there was a large amount of emulsified oil in the bilge; and that they were going to clean out as much of the oil as the environmental conditions would allow. By 2:15 am, Global reported to the Claimant that they had cleaned out some of the oil in the bilge until the tide no longer allowed them access; and that they left absorbents in the bilge and absorbent sweep around the barge.

Global was later contacted by the Claimant to reassess the vessel and change the absorbents. Global cleaned up diesel fuel floating inside the sweep; replaced the sweep; and reported that most of the contaminated bilge water was no longer there. On January 9, 2009 the Claimant learned that Global did not need to respond by changing oil absorbents because Western Oyster employees used Styrofoam to refloat the barge, but it was not removed from the water.

3. **The Claim:** On February 23, 2012, Ecology submitted a removal cost claim to the NPFC, seeking reimbursement of their uncompensated removal costs in the amount of \$7,097.00. They are seeking reimbursement for the costs of personnel and clean-up services provided by Global. On September 29, 2009, Mr. [REDACTED] filed an Application of Relief from Order for Reimbursement of Expenses.² On August 20, 2010, the Claimant sent Mr. [REDACTED] a Notice of Disposition upon Application for Relief from Order of Reimbursement to stop the recovery of their response costs.³ Upon receipt of his Responsible Party Notification letter from the NPFC, Mr. [REDACTED] faxed the Notice to the NPFC in response.
4. **The Request for Reconsideration:** On September 11, 2012, via e-mail, the Claimant made a written request for Reconsideration to the NPFC, after requesting and then receiving additional information and cost documentation for the invoiced items from Global. The Reconsideration is for \$6,140.28 of costs previously denied in the original Settlement Offer.

DETERMINATION OF LOSS:

A. Overview:

1. Federal On-Scene Coordination was provided by FOSCR MST3 [REDACTED] of the United States Coast Guard Sector Seattle.
2. The incident involved the 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 claims. 33 U.S.C. § 2712 (h)(2).

² 09/29/09 Application for Relief from Administrative Order filed by [REDACTED] (Tab V of claim submittal).

³ 08/20/10 letter from Claimant to [REDACTED] and 08/17/10 signed Notice of Disposition upon Application of Relief from Order of Reimbursement (Tab V of claim submittal).

5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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 as set forth below.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as "Compensation Allowable" under 33 CFR§ 136.205.

B. Reconsideration Analysis and Determined Amount:

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

The Claimant seeks reimbursement of their uncompensated removal costs associated with personnel and the clean-up services provided by Global. The uncompensated costs consist of \$957.38 for the salaries and benefits for Spill Responders [REDACTED] and [REDACTED] and \$6,140.28 for the services provided by Global. The NPFC will reimburse the Claimant for the base salary of each employee, at their hourly rates. However, the NPFC will not reimburse the Claimant for the benefits of the Spill Responders listed on the submitted personnel cost documents as OASI (BA), Retire (BB), Medic/IND (BC), Health (BD), and Medicare (BH).⁴ Therefore the NPFC will pay the base salaries of \$694.74 (19.5 hours @ \$35.63/hr) for Ms. [REDACTED] and \$48.84 (.9 hours @ \$54.27/hr) for Mr. [REDACTED] denying \$213.80.

On July 12, 2012, via e-mail, the NPFC requested the Claimant provide the daily worksheets for the work performed by Global, as well as the rate schedule that was in effect at the time of the incident.⁵ Then again on July 19, 2012, the same request was made to the Claimant, via e-mail, requesting the information by Tuesday July 25, 2012.⁶ On July 20, 2012, the Claimant replied that a request for an estimated time of arrival of the information had been requested of Global but he had not heard back from them, as they were recovering the appropriate records from their archives.⁷

By August 9, 2012, the NPFC had not received the requested information and issued a determination to the Claimant based on the information in the claim submission. The Global costs were denied because the invoiced items could not be verified. Therefore, \$6,140.28 of the claim was also denied because of the Claimant's failure to provide documentation necessary to support the claim for reimbursement of \$6,140.28, pursuant to 33 CFR 136.105(a) and 136.105(e)(6).

⁴ 08/20/09 State of Washington costs for Sunken Oyster Barge-Burley Lagoon (Tab E of claim submittal).

⁵ See 07/12/12 e-mail to [REDACTED] from [REDACTED]

⁶ See 07/18/12 e-mail to [REDACTED] from [REDACTED]

⁷ See 07/20/12 e-mail to [REDACTED] from [REDACTED]

On September 11, 2012, the NPFC received a written request for reconsideration from the Claimant, dated September 4, 2012.⁸ Claimant provided the daily worksheets and related cost documentation for the work performed and billed by Global. The claims manager determined that the Claimant did incur costs requested for reimbursement for Global's work.

The NPFC continues to deny a total of \$213.80 in DOE personnel costs submitted for reimbursement, as noted in the original Settlement Offer.

Based on the NPFC's denial of \$213.80 for reimbursement of the invoiced items submitted on Reconsideration, the NPFC hereby determines that the OSLTF will pay \$6,883.86 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912034-0001. This amount of \$6,883.86 consists of the original settlement offer of \$743.58 and the Global costs of \$6,140.28 approved reimbursement costs submitted for Reconsideration.

DETERMINED AMOUNT: \$6,883.86

Claim Supervisor: 

Date of Supervisor's review: *10/18/12*

Supervisor Action: *Reconsideration offer approved as stated above*

Supervisor's Comments:

⁸ See 09/04/12 letter from David Byers to Director, National Pollution Funds Center.