

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 912037-0002
Claimant : Marion Environmental, Inc.
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$55,611.25

FACTS:

- 1. Oil Spill Incident:** On September 7, 2011, Marion Environmental Services (MEI) was contacted by Mr. [REDACTED] the potential Responsible Party (RP), to aid in the containment and cleanup of a sunken vessel and resultant sheen inside Guntersville Marina. The marina is in Guntersville Lake, a tributary of the Tennessee River, a navigable river of the United States. The incident was reported to the National Response Center (NRC) on September 3, 2011, and to the Alabama Department of Environmental Management (ADEM) on September 7, 2011.¹
- 2. Description of removal actions performed:** The Claimant, MEI, arrived on site September 7, 2011. MEI's original plan was only to place and monitor boom, removing and discarding the spent boom and pads as needed. The RP indicated to the Claimant that he was going to raise his vessel himself. After this work was not performed, and when MEI could no longer contact the RP, MEI set up a plan to continue to collect and remove the fuel from the water. On January 23, 2012, MEI teamed up with Towboat US in its efforts to raise the vessel and dispose of the rest of the fuel onboard the vessel. As Towboat worked to remove the boat from the water, MEI absorbed the rest of the fuel from the water.

In total, eight drums of dirty absorbent material were generated and disposed of in accordance with the National Contingency Plan (NCP).

- 3. The Claim:** On March 9, 2012, MEI submitted a removal cost claim to the National Pollution Funds Center (NPFC), seeking reimbursement of removal costs in the amount of \$55,611.25 for the services provided from September 7, 2011 through January 25, 2012. 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 record.

This claim consists of copies of the following: invoicing and associated dailies; NRC Report # 988724; ADEM Pollution Report # 7388; MEI's contracted rate schedule; the Disposal of Non-Hazardous Waste Manifests for this incident; a letter from MEI to Mr. [REDACTED] the RP, dated 2/22/2012; Coordination from Mr. [REDACTED] US EPA, dated 5/25/2012; photographs and internal email correspondence.

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 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

¹ See NRC Report # 988724, dated 9/03/2011 and the ADEM Pollution Incident Report #7388, dated 9/07/2011.

were consistent with the NCP or directed by the FOSC, 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.²
2. The incident involved the report 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. A Responsible Party was identified. 33 U.S.C. § 2701(32).
5. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1)
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that most of the 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.

The Claims Manager validated the costs incurred and determined what, of these costs, were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from September 7, 2011 through January 25, 2012. The Claimant represents that the costs it paid are compensable removal costs, payable by the OSLTF as presented by the claimant.

An adjudication of the costs was performed, weighing the requested amounts against the rate sheets in place for MEI. Based on the level of effort and the pricing schedule, the Claims Manager hereby determines that the Claimant incurred \$52,669.25 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912037-0002. Of the \$2,942.00 in denied costs, \$192.00 associated with report

² See email from Mr. [REDACTED] US EPA, to Mr. [REDACTED] IV, MEI, and dated 5/25/2012.

preparation was denied because it is not compensable under OPA, and \$2,750.00 was denied because the claimed costs are not covered in the rate sheets for MEI.³

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$52,669.25 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912037-0002. 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: \$52,669.25

Claim Supervisor 

Date of Supervisor's review: *6/25/12*

Supervisor Action: *Approved*

Supervisor's Comments:

³ See, Enclosure (1) Spreadsheet of costs