

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/07/2012
Claim Number : 912038-0001
Claimant : New Bedford Fire Department
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$1,280.56

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Sector Southeastern New England¹ reports that on the morning of September 22, 2011, approximately one gallon of marine diesel fuel was discharged from the F/V FULL CIRCLE. This created a sheen in New Bedford Harbor, a U.S. navigable waterway. The incident was reported to the National Response Center (NRC) on September 22, 2011 via NRC Report # 990487.

At approximately 0430 hours, the USCG Sector Southeastern New England Pollution Investigation (PI) team received a call that a vessel had sunk at the Steamship Pier in New Bedford, MA. At the time, the New Bedford Fire Department (New Bedford) was on-scene and had deployed containment boom. The PI team spoke with Mr. ██████████ who informed them that the owner of the vessel, ██████████ (the Responsible Party (RP)), had contacted Tucker Roy Marine Salvage to refloat the vessel. A Notice of Responsibility was issued to the RP, and salvage operations were monitored by the USCG Sector Southeastern New England.²

- 2. Description of removal actions performed:** The Claimant, New Bedford, deployed containment boom and monitored the spill site until relieved by the USCG Sector Southeastern New England.
- 3. The Claim:** On February 29, 2012, New Bedford submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$1,280.56 for the services provided on September 22, 2011. This claim is for removal costs based on the rate schedule in place at the time services were provided.

This claim consists of copies of the following: Sector Southeastern New England Case Report # 570063; NRC Report # 990487; PI Statement written by MST2 ██████████, USCG Sector Southeastern New England; the Pollution Incident Witness Statement, signed by MST2 ██████████ and Mr. ██████████, dated 9/22/2011; the Optional OSLTF Claim Form, dated 2/17/2012; a City of New Bedford Fire Department claim cover letter, dated 2/15/2012; a City of New Bedford Fire Department RP letter with invoicing, dated 9/26/2011; an email from MST1 ██████████, USCG Sector Southeastern New England, to Ms. ██████████ USCG NPFC, dated 2/16/2012; a City of New Bedford Fire Department letter with Captain's Rates, dated 2/16/2012; photos and internal email correspondence.

¹ See USCG Sector Southeastern New England Case Report # 570063, dated 9/22/2011.

² See PI Statement written by MST2 ██████████ USCG Sector Southeastern New England, dated 9/22/2011.

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 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 USCG Sector Southeastern New England Case Report # 570063, and via an email from PO [REDACTED] USCG Sector Southeastern New England, to Ms. [REDACTED] USCG NPFC.³
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. The claim was submitted within the six year statute of limitations for removal costs.
5. A Responsible Party was determined and notified, but the NPFC has received no response to date.
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.

³ See USCG Sector Southeastern New England Case Report # 5700630, opened 9/22/2011 and email from MST1 [REDACTED] USCG Sector Southeastern New England, to Ms. [REDACTED] USCG NPFC, and dated 2/16/2012.

The Claims Manager confirmed that the Claimant did perform a site assessment with USCG Sector Southeastern New England on September 22, 2011. The Claims Manager validated the costs incurred and determined they 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 \$1,280.56 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 to the NPFC under claim #912038-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on September 22, 2011.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$1,280.56 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #912038-0001. 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: \$1,280.56

Claim Supervisor

Date of Supervisor's review: *3/8/12*

Supervisor Action: *Approved*