

CLAIM SUMMARY / DETERMINATION FORM

Date : 4/27/2012
Claim Number : 912055-0001
Claimant : Metropolitan Marine Solutions
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$20,152.50

FACTS:

- A. Oil Spill Incident:** On March 4, 2011, a vehicle was found submerged in Lake Mohave, part of Lake Mead National Recreation Area, a navigable waterway in the US. Metropolitan Marine Solutions (MMS) states it was contacted by the National Park Service (NPS) to remove this vessel from the area.
- B. Description of removal actions performed:** The claimant, MMS, arrived on-site March 4, 2011. Upon arrival, MMS deployed 400 feet of 18" hard boom. MMS personnel then worked to raise and remove the vessel, transporting it successfully from the waterway.
- C. The Claim:** On April 17, 2012, MMS submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$20,152.50 for the services provided March 4, 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; Mr. [REDACTED] [REDACTED] (MMS) hand-written and typed dailies of the incident; MMS and nationwide correspondence regarding this incident; USPS Delivery Confirmation receipts for correspondence related to this incident; Lake Mead National Recreation Area Vehicle Recovery and Impound Report, dated 3/04/2011; print out of parts of both Title 36 and Title 33 of the Code of Federal Regulations; pictures of the salvage operations performed; the Pollution Incident Daily Resource Report for this incident; the Federal Region 9 Regional Contingency Plan; and internal email communications.

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. The NPFC has determined that the actions taken are not consistent with the National Contingency Plan, as is required by 33 CFR § 136.205.
2. It could not be confirmed the incident involved the report of a discharge of “oil” to navigable waters, as defined in OPA 90, 33 U.S.C. § 2701(23).

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. 33 U.S.C. § 2712(h)(2).
5. An attempt was made to contact the Responsible Party by the NPFC; to date, it has received no response. 33 U.S.C. § 2701(32).
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim to determine whether or not removal costs presented were for actions in accordance with the NCP and if the costs for these actions were 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

This claim is denied for several reasons:

First, there was no Federal On-Scene Coordination (FOOSC). MMS claims that it was tasked by the NPS to remove the vessel, but it does not provide anything from them—or any federal agency, for that matter—other than copies of Mr. [REDACTED]’s hand-written notes¹ that show this is the case. MMS also states in its claim submission that the NPS was abreast of the situation and available to oversee response operations. Again, this is only found in Mr. [REDACTED]’s own notes. Regardless, whether the NPS was on-scene or not, it does not establish Federal on-scene coordination or endorsement for the cleanup and removal activities related to this event since the NCP requires the USCG or EPA to provide this coordination. Additionally, this incident was never reported to the National Response Center (NRC).

Second, there is no proof that there was any oil on board, thus making the vehicle a threat to a navigable waterway. MMS does not provide any disposal manifests for this incident, so it cannot be established that an OPA incident occurred. Without them, all that can be determined is that a salvage operation² was completed, which, in and of itself, is not a cost compensable under OPA.

Lastly, when asked by the NPFC to provide coordination for cleanup and removal actions for this incident,³ Mr. [REDACTED], United States Environmental Protection Agency (US EPA) Region IX, stated he did not feel comfortable giving after-the-fact coordination for this incident, as there is no evidence of fuel in the vessel, nor was it reported to the NRC, as required by the NCP.

C. Determined Amount:

¹ See MMS claim submission, received by the NPFC from the claimant on 4/17/2012.

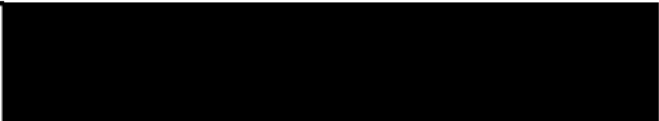
² See MMS invoices, included with the claim submission, and received by the NPFC from the claimant on 4/17/2012.

³ See phone conversation recap between Mr. [REDACTED] US EPA Region IX, and Ms. [REDACTED] USCG NPFC, dated 4/18/2012.

The NPFC hereby determines that the OSLTF will pay \$0.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 912055-0001.

AMOUNT: \$0.00

Claim Supervisor:



Date of Supervisor's review: 4/27/12

Supervisor Action: ~~Denied~~ approved.

Supervisor's Comments: