

CLAIM SUMMARY / DETERMINATION FORM

Date : 2/28/2012
Claim Number : A12001-0001
Claimant : Redwood Shore Diving, Inc.
(d.b.a. Parker Diving Service)
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$3,362.50

FACTS:

1. ***Oil Spill Incident:*** At approximately 1700 local time on October 11, 2011, USCG Sector San Francisco reports that the M/V Escapada sank at its moorings in Brisbane Marina, a part of Richardson Bay that flows into San Francisco Bay, all navigable waterways of the US. Approximately two gallons of oil was discharged, and an unknown amount of fuel and oil was onboard the vessel. Sector San Francisco Incident Management Division (IMD) hired Parker Diving Service (Parker Diving) (d.b.a. Redwood Shore Diving, Inc.) to replace sorbent boom around the vessel and remove all oil and hazmat onboard the vessel.¹

The Responsible Party has been identified; however, he stated that he was unable to pay for the cleanup due to lapsed insurance and lack of funding.²

2. ***Description of removal actions performed:***

The Claimant, Parker Diving, met with both the vessel owner and the USCG Sector San Francisco IMD on the morning of October 14, 2011. A dive station was assembled, and a diver was deployed to locate and plug the leaking vents. A half bale of absorbent pads was added to the boomed area. Containers of household hazardous materials were gathered and removed.

Although a Federal Project Number was opened for this incident, this invoice had been already been issued and, therefore, not covered under it because the services preceded the FPN.

3. ***The Claim:*** On February 9, 2012, Parker Diving submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$3,362.50 for the services provided on October 14, 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 Optional OSLTF Claim Form; NRC Report # 992712; Parker Diving invoices for this incident; Parker Diving Contract for this incident, signed by the RP on 10/14/2011; and USCG Sector San Francisco POLREPS # 1 and 2.

¹ See USCG POLREP #1, dated 10/25/2011.

² See Letter from Mr ██████████ as part of the signed contract submitted to the NPFC with the claim by the claimant on 2/09/2012.

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 San Francisco, and also via USCG Sector San Francisco POLREPS # 1 and 2.³
2. The incident involved the report of a discharge and threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations.
4. 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.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.
6. The RP was notified; however, there has been no response to date. 33 U.S.C. § 2701(32).

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 National Contingency Plan (NCP) or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager confirmed that the Claimant did perform a site assessment with USCG Sector San Francisco on October 14, 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 incur \$3,362.50 of uncompensated removal costs and that that amount is payable by the OSLTF as full

³ See USCG Sector San Francisco POLREPS #1 and 2 for FPN A12001.

compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #A12001-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on October 14, 2011.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$3,362.50 as full compensation for the reimbursable removal costs incurred by Parker Diving and submitted to the NPFC under claim #A12001-0001. 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: \$3,362.50

Claim Supervisor:

Date of Supervisor's review: *3/2/12*

Supervisor Action: *Approved*

Supervisor's Comments: