

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/07/2012
Claim Number : B12005-0001
Claimant : New Bedford Fire Department
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$1,137.04

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Sector Southeastern New England¹ reports that on November 14, 2011, Marine Safety Detachment (MSD) New Bedford Pollution Investigator (PI) team observed an oil discharge of approximately 10-15 gallons into the Acushnet River, a navigable waterway of the US. The incident was reported to the National Response Center (NRC) via NRC Report # 995498.

The discharge was determined to be recoverable and created sludge in the Acushnet River at Homer's Wharf in New Bedford, Massachusetts. New Bedford Fire Department (New Bedford) personnel were on-scene and deployed sorbent boom to contain the oil. Frank Corp. was hired to remove and dispose of the oil. MSD New Bedford PI team searched for the possible source of discharge and found a welding generator onboard a vessel approximately 25 feet from the oil. The vessel did not have any containment or combing, and had oily rags on the deck. It also had a bucket with oily water on the deck. As the suspected vessel was under construction, it did not have a name and/or an official number. PIs took samples of the spill, clean water from the Acushnet River, the welding generator and the oily water bucket on the deck of the suspected source of discharge. A Sample Report returned from the Marine Safety Lab showed the results were negative for a match.² Therefore, at this time, no Responsible Party (RP) has been identified.

- 1. Description of removal actions performed:** The Claimant, New Bedford Fire Department, deployed sorbent boom to contain the oil. It monitored the spill site until relieved by the USCG MSD New Bedford.
- 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 \$1,137.04 for the services provided on November 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 following: Sector Southeastern New England Case Report # 576284; NRC Report # 995498; PI Statement written by MST2 Donald Anderson, USCG Sector Southeastern New England; the USCG Marine Safety Laboratory Oil Sample Analysis Report # 12-035; the Optional OSLTF Claim Form, dated 2/17/2012; a City of New Bedford Fire Department claim cover letter, dated 2/15/2012; an email from MST1 Nathan Pierce, USCG Sector Southeastern New England, to Ms. Donna Hellberg, USCG NPFC, dated 2/16/2012; a City of New Bedford

¹ See USCG Sector Southeastern New England Case Report # 576284, dated 11/14/2011.

² See PI Statement, written by MST2 [REDACTED] and dated 11/22/2011.

Fire Department letter with Captain's Rates, dated 2/16/2012; 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 were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

APPLICABLE LAW:

"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 # 576284, 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 not determined.
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.

The Claims Manager confirmed that the Claimant did perform a site assessment with USCG Sector Southeastern New England on November 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 in fact incur \$1,137.04 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

³ See USCG Sector Southeastern New England Case Report # 5762840, opened 11/14/2011 and email from MST1 [REDACTED] USCG Sector Southeastern New England, to Ms. [REDACTED] USCG NPFC, and dated 2/16/2012.

to the NPFC under claim #B12005-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on November 14, 2011. The claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$1,137.04 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # B12005-0001. 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: \$1,137.04

Claim Supervisor:

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

Supervisor Action: *Approved*

Supervisor's Comments: