

CLAIM SUMMARY / DETERMINATION

Claim Number: 913048-0001
Claimant: Florida Dept of Environmental Protection
Type of Claimant: CLAIMANT TYPE
Type of Claim: Removal Costs
Claim Manager: [REDACTED]
Amount Requested: \$313.99

FACTS:

Oil Spill Incident: On October 19, 2011, Florida State BER received a report by Treasure Island Police Department of a sinking vessel,¹ with a 2-gallon sheen on the waters of the ICW, at Slip 5, John's Pass Marina. A 2' x 100' sheen was reported. The U.S. Coast Guard (PO Kriegh) responded. Claimant asserts that there may have been possible criminal intent, as a water hose had been put into the vessel, causing it to sink. The vessel owner, Mr. [REDACTED] was able to refloat the vessel.

BER returned to the site on October 20, 2011 and witnessed 16 - 55-gallon drums of waste by the dock. The Coast Guard told BER that 10 out of the 16 drums were from pumping out the bilge and the spill cleanup for this incident.² At this point, only a minimal silvery sheen was evident from the sinking vessel. BER mailed a letter to the vessel owner, Mr. [REDACTED], requesting that Mr. [REDACTED] produce disposal documentation for the drums by November 4, 2011.³

On November 22, 2011, BER re-visited the site to check on the status of the drums. The drums were gone. BER visited Mr. [REDACTED] at his home, on December 2, 2011, and hand-delivered a second letter requesting evidence of disposal.⁴ Mr. [REDACTED]'s English-speaking relative translated that Mr. [REDACTED] had "a company" remove the waste and agreed to produce the disposal documentation. Claimant's report states that a friend helped Mr. [REDACTED] arrange the removal of the drums⁵.

BER sent a third letter to Mr. [REDACTED] on January 3, 2012⁶, again requesting the disposal documentation. To date BER has not received the disposal documentation from Mr. [REDACTED]. Therefore there is no evidence that the non-hazardous waste was disposed of properly. However, BER claims that the spill clean-up was satisfactory and that no further action is being taken at this time.

The Claim: On May 14, 2013, the State of Florida submitted a claim to the NPFC for reimbursement of their uncompensated removal costs in the amount of \$313.99 for; Personnel Expenses, Transportation Expenses, PPE Expenses, and Miscellaneous Expenses.

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

¹ Vessel's name is MYSTIC, FL2626SH

² 2011-4C-46042

³ See, FDEP letter dated October 20, 2011 to Mr. [REDACTED], signed by [REDACTED].

⁴ See, FDEP letter dated December 2, 2011 to Mr. [REDACTED], signed by [REDACTED].

⁵ BER Response Information, dated 3/13/12.

⁶ See, FDEP letter dated January 3, 2011 to Mr. [REDACTED], signed by [REDACTED].

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 was made with Sector St. Petersburg.
2. The incident involved "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 that 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. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that 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 as set forth below.

B. Determined Amount:

The NPFC determines that the OSLTF will pay \$313.99 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # 913048-0001 as the rates charged are consistent with the state published rates. The actions undertaken by the state were endorsed by the Federal On Scene Coordinator (FOSC).⁷

AMOUNT: \$313.99

Claim Supervisor: 

Review Date: 5/15/13

Supervisor Action: *Approved*

Supervisor's Comments:

⁷ See FL BER Emergency Response Report dated 3/1/12.