

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 913065-0001  
Claimant : Jackson County Commission  
Type of Claimant : Local Government  
Type of Claim : Removal Costs  
Claim Manager : ██████████  
Amount Requested : \$17,600.00

**FACTS:**

**Oil Spill Incident:** On April 1, 2013, a houseboat sank at its mooring at the Jackson County Park dock on the Tennessee River, a navigable waterway of the United States, in Scottsboro, AL.<sup>1</sup> As a result of the sinking; approximately 20 gallons of gasoline and motor oil were released from the vessel.<sup>2</sup> The Jackson County Emergency Management Director (EMA), ██████████ was notified of the sunken vessel, who in turn contacted the Alabama Department of Environmental Management (ADEM).

ADEM informed park personnel that boom needed to be placed around the vessel to prevent the spread of the gasoline and oil. The National Response Center (NRC) was notified and incident number 1042681 was assigned. The Claimant, Jackson County Commission, oversees park operations and contracted with Hazco, LLC to initiate containment and cleanup. ADEM notified the Environmental Protection Agency (EPA) Federal On Scene Coordinator (FOSC) ██████████ man of the sinking the following morning. ██████████, the Responsible Party (RP), informed the Claimant and responding agency that he had no insurance on the vessel, but offered that he could salvage the vessel after cleanup was complete.

Subsequent attempts to contact the RP to remove his vessel from its dockside moorage after the cleanup was complete were unsuccessful. Therefore, EMA and the park manager elected to contract with a salvage company to remove the vessel from the water in order to prevent additional discharge of gasoline and oil into the water. Tow Boat US was contracted to remove the vessel and Hazco, LLC remained on scene to assess any environmental impact of the vessel's removal from the waterway. The Claimant presented their claim for removal costs to the RP on April 9, 2013, which to date has not been answered.

**Description of Removal Actions:** Hazco, LLC was contracted by the Jackson County Commission for the deployment of containment boom and cleanup of the spilled gasoline and oil.<sup>3</sup> The spill was initially managed through deployment of boom to prevent the spread of gasoline and oil. The following morning, Hazco, LLC returned to the scene to deploy sorbent pads and to continue gasoline and oil cleanup. Tow Boat US, at the request of Jackson County Commission, raised the vessel, placed it on a trailer and moved it to other park grounds. Hazco, LLC remained on scene during this evolution to respond to any potential discharge of gasoline or oil that may occur as the vessel was moved.<sup>4</sup>

**The Claim:** Jackson County Commission presented a removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$17,600.00.

The claim consists of OSLTF Optional Claim Form, Jackson County Commission memorandum to the RP requesting reimbursement for their costs incurred, NRC Report 1042681, Southern Marine Towing and Salvage, LLC invoices, Hazco, LLC invoices for services rendered, ADEM pollution incident report,

<sup>1</sup> See, OSLTF Claim Form, dated May 22, 2013.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

Jackson County Commission narrative of after-hours call center notification, Claimant's claim to the RP and evidence of its non-delivery or refusal, and pictures of the incident.

**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:

### *Overview:*

1. FOSC coordination was not properly made by USEPA FOSC [REDACTED].
2. The incident involved the 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. 33 U.S.C. § 2712(h)(1).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which 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.

### *Analysis:*

NPFC CA reviewed the actual cost invoices 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 NPFC has determined that some of the removal costs presented and incurred were billed inappropriately at the time services were rendered.

The Jackson County Commission presented response costs in the amount of \$10,100.00, and vessel salvage costs in the amount of \$7,500.00. These costs were commingled across two invoices. Hazco, LLC, invoice 13-005 billed \$7,500.00 for activities on the date of the spill described as, "[REDACTED], 52 ft. houseboat located at Jackson Co. Park." The invoice was annotated for further activity, "Haz Mat crew and all materials used for entire salvage operations" from 1 to 3 April.

Southern Marine Towing and Salvage, dba TowBoat US Chickamauga Lake, invoice 6052, billed for "salvage operation...raising the boat...towing boat to launching ramp...and loading on...trailer." Billing activities included TowBoat US "Haz Mat crew and materials to clean up...until the boat was removed from the lake" for a line item total of \$10,100.00. The work performed by Hazco, LLC is listed separately as "charges for salvage and removing boat from lake and hauling off charges for Hazco, LLC." Both the Hazco, LLC and Southern Marine Towing & Salvage invoices were billed to Jackson County Park & Marina.

Additional documentation to support the claim was requested on 27 September 2013 via email to the Claimant, but was not received. Requested documentation included daily work logs for Southern Marine and Hazco, LLC, inclusive of employee name, role or job performed, and start/stop times, which were not presented. Also requested were standard rate lists for each cleanup vendor, and disposal manifests, which were not presented. Finally, proof of payment from Southern Marine Towing & Salvage to Hazco, LLC and proof of payment from the Claimant to Southern Marine Towing & Salvage were requested but not presented.

According to the claim documentation, the sunken vessel was removed from the water, services for which were billed to the Claimant and part of the sum certain for this claim. The FOSC for this response, [REDACTED]

██████████, USEPA, was queried by NPFC to offer substantive input regarding the removal of this vessel from the water and the consistency of that work with the NCP. As a result, it cannot be determined that the actions taken to remove the vessel from the water were consistent with the NCP or deemed *reasonable* and therefore are not eligible for reimbursement from the OSLTF.

Additionally, because there is duplicative commingled charges across invoices and lack of supporting documentation as required by OPA 90, combined with the lack of FOOSC coordination for the removal of the vessel from the water, the claim is denied. The burden is on the Claimant to properly document and support its claim.

The NPFC did call and speak with the Claimant and further explained the deficiencies in the invoicing, pricing, and supporting documentation although to date, the Claimant has not remedied the lack of proper supporting documentation and coordination of actions undertaken.

***Determined Amount:***

Based on the foregoing, this claim is denied because (1) the Claimant has failed to provide proof of payment to all contractors, (2) the Claimant has failed to provide requested supporting documentation, and (3) the Claimant has failed to obtain proper FOOSC coordination from USEPA for the salvage of the vessel associated with this incident and therefore it cannot be determined that the actions were consistent with the National Contingency Plan (NCP).

Claim Supervisor: ██████████

Date of Supervisor's review: *10/29/13*

Supervisor Action: *Denial approved*

Supervisor's Comments: