

CLAIM SUMMARY / DETERMINATION FORM

Date : 2/4/2009
Claim Number : 909059-001
Claimant : State of New Jersey
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$1,581.89

FACTS:

1. Oil Spill Incident: In August 2007, Mr. ██████████ purchased a 1967 wooden Chris Craft from ██████████, ██████████. The vessel was located at Arnold's Marina on Beaver Dam Road. The vessel was towed to the rear of Mr. ██████████'s residence where it was moored. Additionally, a transient who had been living on the vessel prior to its purchase by Mr. ██████████ also came to the new mooring location and continued living aboard the vessel. In the meantime, Mr. ██████████ abandoned his residence and was wanted for failure to appear at the Neptune Municipal Court on a DWI charge. Mrs. ██████████ who now resides at ██████████, was contacted at her place of work in the Middlesex County Personnel Department.

On November 13, 2007, Mr. ██████████ who is a neighbor that lives at ██████████ contacted the NJSP Marine Bureau in Point Pleasant to report that the vessel was sinking. No action was taken by NJSP marine Bureau. On November 16, 2007 at approximately 1200, the New Jersey Department of Environmental Protection (NJDEP) received a report that the 37' vessel sunk at the rear of the residence located at 58 Lenape Trail and was leaking gasoline. NJDEP was dispatched to the site from Cape May and arrived on scene at approximately 1530 hrs. The vessel was tied off from the port side and was laying starboard side down in the water to the top of the cabin. Odors of gasoline were present and a visible oil sheen was on the surface of the water.

Numerous unsuccessful attempts were made by NJDEP to contact Mr. or Mrs. B. ██████████. Finally, NJDEP contacted the Middlesex County admin office and was able to speak with Mrs. ██████████. She gave NJDEP Mr. ██████████ contact number and they contacted him. After speaking with Mr. ██████████, he stated that he worked for the "Government" and that it was secret line only to be used by authorized persons. NJDEP representative advised Mr. ██████████ that he too worked for the "Government" and was authorized to make the call. NJDEP explained to Mr. ██████████ the situation and he told NJDEP that he could not make any decision until he spoke with his lawyer. After the call ended, NJDEP contacted USCG MST3 ██████████ and the NJSP Marine Bureau.

The USCG contacted Mr. ██████████ lawyer who was later discovered to be an alleged old girlfriend. NJDEP spoke with Trooper ██████████ who told NJDEP that Mr. ██████████ was wanted on a felony warrant and that the Marine police would arrest him if he came to the site. Boat US out of Point Pleasant was contacted and arrived at the spill location with three bales of 8" sorbent boom as well as one bale of sorbent sweep. The crew deployed the boom around the vessel to stop any further gasoline leak. MST3 ██████████ took samples for the Coast Guard and they also requested NJDEP's presence on scene the next day at 0900 hrs.

At 0900 hrs on November 17, 2007, USCG rep MST3 [REDACTED] arrived on scene. NJDEP went to the neighbors and requested statements from them with regards to the sunken vessel. NJDEP was able to get statements from Mr. & Mrs. [REDACTED] and from Mr. & Mrs. [REDACTED]. Both parties stated they had seen kids playing in the now abandoned house located at 58 Lenape Trail and that there were also vagrants possibly sleeping there. NJDEP contacted the Brick Township Police who sent two police officers to the scene. Boat US arrived on scene and adjusted the booms. Due to the position of the sunken vessel, motor oils and fuel continued to slowly leak out into the sorbent boom.

At the time of NJDEP's report of this incident, Mr. [REDACTED] had been arrested, suffered convulsions, hit his head and was reported to be in grave condition. His wife, [REDACTED] was reported to be in Rome on vacation for an unspecified period of time. The vessel was still tied to the dock although it remains in danger of breaking free and sliding into the channel and discharging additional oils and fuel. USCG Sector Philadelphia took the lead on the case and will handle who and when the vessel will be removed.

The Claim: On January 14, 2009, the New Jersey Department of Environmental Protection, Bureau of Emergency Response (NJDEP BER) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$1,581.89 for the services provided in response to the [REDACTED] sunken vessel incident from November 16, 2007 through November 17, 2007.

This claim consists of copies of the invoicing, NJ BER Investigation Report, the NRC Report # 854763, the rate schedule for the State of NJDEP BER, and FOSC coordination from USCG Sector Delaware Bay dated December 4, 2008. The review of the actual cost invoicing and claim package 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. The FOSC has provided FOSC coordination. A coordination statement has been provided via a written statement dated December 4, 2008 by ENS ██████████, ENS USCG Sector Delaware Bay.
2. The incident involved the discharge and continuing substantial threat of 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 on time.

5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 with the exception of the following: the State of New Jersey charges an administrative fee, which is actually their OMB A-87 agreed rate. Although we are allowing the 23% derived figure for the state's labor category, we cannot approve unsubstantiated indirect cost per line item as charged in this claim, as this is considered an improper use of the OSLTF. See 33 CFR §136.105(e)(6).

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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$1,166.79 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim# 909059-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, November 16, 2007 through November 17, 2007. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

The Claims Manager has determined the costs are reasonable in accordance with the contracted rate schedule that was in place at the time services were rendered and that determination of reasonableness is consistent with the current claims policy and procedures in place for determining reasonableness of costs.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$1,166.79 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909059-001. 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: \$1,166.79

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: