

CLAIM SUMMARY / DETERMINATION FORM

Date : 9/18/2009
Claim Number : 909102-001
Claimant : Talen's Marine & Fuel, L.L.C.
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$3154.30

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard Marine Sector Morgan City reports that on March 26, 2009, a discharge of approximately 5 to 10 gallons of used oil was discovered around the fuel facility and boat slip at Talen's Marine & Fuel, L.L.C. (Talens). The source of the discharge is unknown. The diesel oil discharged into Freshwater Bayou, a tributary of the Gulf of Mexico, a navigable waterway of the US, creating a sheen of oil on the water's surface.¹

The incident was reported to the National Response Center (NRC) on March 26, 2009 at approximately 10:11 am CST via report # 900969 by Mr. [REDACTED] of Talens. The report described the incident as an unknown amount of an unknown oil from an unknown cause.² The Coast Guard Pollution Investigative (PI) team stated that the cause of this discharge was unknown and it had most likely floated in from somewhere further down the canal. They further stated that the source was being secured by Environmental Safety and Health Consulting Services, L.L.C. (ES&H), the OSRO that had been hired.³

- 1. Description of removal actions performed:** The claimant, Talens, discovered contamination along the waterfront property of a facility they owned by an unknown oil floating on top of the water. To protect their property and the property of others, Talens placed absorbent boom and pads in the water before ES&H arrived at the site. After gaining USCG Morgan City approval, ES&H continued cleanup of the contaminated water. Upon completion of the project, when it was determined that there was no longer a discharge of oil on the water, ES&H gave the debris-filled drums over to Talens for disposal. Talens then disposed of the drums using American Recovery, L.L.C.⁴
- 3. The Claim:** On June 25, 2009, Talen's Marine & Fuel, L.L.C. (Talens) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$3,154.30 for the services provided on March 26, 2009. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

¹ See email dated September 9, 2009 from MST2 [REDACTED] NPFC

² See, NRC report # 900969 dated March 26, 2009

³ See email dated September 9, 2009 from MST2 [REDACTED] NPFC and Claim submission forms, submitted by Talen's Marine & Fuel, L.L.C. to the NPFC on 6/25/2009

⁴ See Claim submission forms, submitted by Talen's Marine & Fuel, L.L.C. to the NPFC on 6/25/2009 and ES&H Supervisor's Log, submitted by Ms. [REDACTED] of ES&H to Ms. [REDACTED], NPFC, on 9/9/2009

This claim consists of copies of the invoicing, posted rate schedule, NRC report, a copy of ES&H Supervisor's Log for 3/26/2009, a copy of the American Recovery Non-Hazardous Waste manifest, the Non-Hazardous Waste Manifest and internal email correspondence.

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 coordination has been established via an email sent to Ms. [REDACTED] NPFC Claims Manager, from MST2 [REDACTED] dated September 9, 2009.⁵
2. The incident involved 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. A Responsible Party could not be 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 in fact perform a joint site assessment with the USCG on March 26, 2009. 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 \$3,154.30 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 #909102-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of March 26, 2009. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

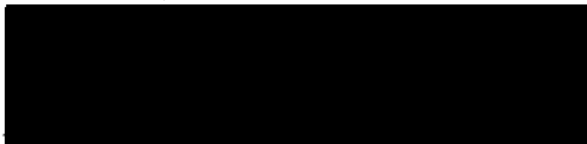
⁵ See email dated September 9, 2009 from MST2 [REDACTED]

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$3,154.30 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #909102-001. 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: \$3154.30

Claim Supervisor:



Date of Supervisor's review: 9/22/09

Supervisor Action: *Approved*

Supervisor's Comments: