

CLAIM SUMMARY / DETERMINATION FORM

Date : 9/3/2009
Claim Number : 909104-001
Claimant : Northstar Marine, Inc.
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$9,425.25

FACTS:

1. **Oil Spill Incident:** The United States Coast Guard Sector Delaware Bay Case # 443910,¹ reports that on March 6, 2009, at 1215, Trident Marine Company discharged approximately 50-75-gallons of hydraulic, gear and motor oil into the Intracoastal Waterway, a navigable waterway located at 8110 Bay Shore Ave. in Margate City, NJ. The incident occurred due to a crane that overturned off of a barge. The discharge created an emulsion of oil on the water's surface.

The incident was reported to the National Response Center (NRC) on March 6, 2009 at approximately 12:15pm EST via report # 899235 by Mr. Joe Stewart of Trident Marine Company (Trident Marine), the responsible party (RP). The report described the incident as a 50-gallon discharge of hydraulic oil due to a crane overturning in the Intracoastal Waterway.² The Coast Guard case's Witness Statement states that an emulsion of dark brown gear oil and bands of black motor oil was present. The Coast Guard case further stated that the source was being secured by removing the crane from the water and that Northstar Marine, Inc. (Northstar Marine) was brought in to contain the spill and clean-up the spill site.³

On March 6, 2009, Coast Guard Sector Delaware Bay issued both a Notice of Federal Interest (NOFI) to and a Notice of Violation to Trident Marine. The Atlantic County Office of Emergency Response Hazardous Material Response Team (ACOER) and New Jersey Department of Environmental Protection (NJDEP) responded on-scene to the spill site. Additionally, the Margate City Fire Department responded and issued an incident report on the same day. Upon receipt of the claim, the National Pollution Funds Center (NPFC) Claims Manager sent an RP Notification letter to the responsible party, Trident Marine Company, Inc. on August 4, 2009. The RP sent correspondence acknowledging full responsibility for the spill but denying responsibility for the payment due.

2. **Description of removal actions performed:** The claimant, Northstar Marine, Inc, arrived on site on March 6, 2008. They dispensed boom and sorbent pads around the area of the spill. Eventually, the claimant packed and disposed of contaminated pads and hard boom when allowed to do so by the USCG Sector Delaware Bay. The claimant had responders on site performing cleanup and containment from approximately 13:00 am until 20:30 pm on March 6, 2009; 07:30 am until 12:00 pm on March 7, 2009; and 14:15 pm until 16:30

¹ See, Sector Delaware Bay's Coast Guard Case # 443910 opened 3/6/09

² See, NRC report # 899235 dated March 6, 2009

³ See, Sector Delaware Bay's Coast Guard Witness Statement Form, filled out by MST3 [REDACTED] on 3/24/09

pm on March 9, 2009.⁴ The RP also had a crew on-site assisting throughout the course of the clean-up.

3. **The Claim:** On June 28, 2009, Northstar Marine submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$9,425.25 for the services provided from March 6, 2009 until March 9, 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. The original invoice was for \$11,925.25, but the Trident Marine had paid out \$2500.00. The RP did attempt to give Northstar Marine a check for \$4500.00 for "full and final payment, but Northstar Marine refused to accept it because it was not what they believed that "full and final payment" to be.⁵

This claim consists of copies of the invoicing and associated dailies, contracted rate schedule, NRC report, internal email correspondence, photographs as taken by the USCG, Northstar Marine Supervisor's written log, a copy of the USCG Case # 443910, and the Notice of Federal Interest (NOFI) as issued by the USCG. 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:

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

⁴ See, Job Log filled out by Northstar Marine for Trident Marine, dated 3/6/09 through 3/9/09, Claim submission.

⁵ See, Email dated September 4, 2009 from Mr. [REDACTED] (Northstar Marine) to Ms. [REDACTED] NPFC

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 USCG Case # 443910.⁶
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 on time.
5. Presentment of costs to the RP was made by the claimant, prior to the submission of the claim. The NPFC also made presentment of costs to the RP and the RP acknowledged responsibility for the fill but continued to deny liability to pay.
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.

⁶ See, Sector Delaware Bay's Coast Guard Case # 443910, opened 3/6/09

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 response activities performed by the claimant were overseen by the USCG, ACOER, NJDEP and the RP representative, Mr. [REDACTED]. The NPFC confirmed that Mr. [REDACTED] signed the USCG Notice of Federal Interest during the active removal response between 3/6/09 and 3/9/09.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$9,425.25 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 #909104-001. 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 6, 2009 through March 9, 2009. 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 \$9,425.25 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 909104-001. 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: \$9,425.25

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: