

CLAIM SUMMARY / DETERMINATION FORM

Date : 1/22/2009
Claim Number : A08033-001
Claimant : NRC Environmental Services Inc.
Type of Claimant : OSRO
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$75,955.97

FACTS:

1. **Oil Spill Incident:** On Saturday, September 13, 2008, Coast Guard Sector San Francisco received a report of a sunken 125 foot commercial vessel, "Allen Cody," discharging oil in the Field Landing area of Southern Eureka. The vessel was attached to a private pier at the time it sank. The pier and the vessel are both owned by Mr. [REDACTED] of Redwood Forest Products.

Coast Guard personnel from Marine Safety Detachment, Humboldt Bay immediately responded to the scene and began working with the vessel's owner and contractors to control the source of the sheen and begin cleanup operations. Containment boom and absorbent pads were placed around the vessel in an effort to mitigate the effects of the oil. The vessel sank to the bottom of the bay, in 50-feet of water.

The RP, [REDACTED] hired the Claimant, NRCES.

2. **Description of Removal Activities for this Claimant:** Following is a timeline of summarized daily response actions performed by the claimant and based on the details of the daily field logs provided by the claimant:

- 9/13/08—NRCES arrived on site and met with Mr. [REDACTED] and MST1 [REDACTED] from MSD Humboldt Bay.
- 9/14/08—Crews deploy an additional 1500' containment boom (totaling 1900' in water). Sorbents are deployed and recovered. Divers were able to significantly slow the release from the vessel.
- 9/15/08—NRCES received a newly signed work authorization from RP. Divers on site. Crews bagged and replaced sorbents while installing new material. Eel grass was removed from under wharf. Three vessels were released with crew and a driver.
- 9/16/08—Crews continued to tend boom, replace sorbents and recover eel grass. Divers installed lift bags. NRCES spoke with Coast Guard regarding cutting the crew back to one vessel and one standby (at Eureka yard), Coast Guard concurred. Equipment was moved to allow for a second barge deployment off pier. Claimant spoke with RP regarding payment and Coast Guard regarding Fund authorization. Claimant was told that MSSD2 [REDACTED] would be arriving on-site to discuss. Divers attempted to lift vessels with 16000lb of bags. The Claimant received confirmation from MSSD2 [REDACTED] that the Coast Guard would be assuming financial responsibility of the spill beginning Tuesday 9/16/08.

3. **The Claim:** On December 11, 2008, NRCES submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$ 75,955.97 for the services they provided regarding the sinking of the commercial vessel, "Allen Cody."

The claim consists of invoices, daily work logs. The NPFC's review of the actual cost invoices 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 are determined to be consistent with the National Contingency Plan (NCP) or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The invoices, which are the subject of this claim, have been submitted to the RP. Presentment was made directly to Mr. [REDACTED] c/o Humboldt Forest Products in Fields Landing, CA.

Upon receipt of this removal cost claim from NRCES, the NPFC sent an RP Notification Letter, dated December 18, 2008 to Mr. [REDACTED] advising that the NPFC has received a claim which identifies him as the RP for the incident. On December 23, 2008, the Claims Manager received an e-mail from the RP stating that he has put several pieces of property up for sale and has sold one that is presently in escrow. According to the RP; his effort to sell his properties is to pay for the outstanding balances and pay back the Fund. A copy of this email is in the claim file.

4. **Additional Information:** NRCES plans to submit a separate claim for \$15,000.00 for disposal costs that remain in 2 X 20 roll off bins. The NPFC has confirmed that disposal costs were not billed to the USCG after they took over the response therefore will not be duplicative when that claim is submitted at a later date.

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. Findings:

1. The FOSC has provided FOSC coordination and a Federal Project was opened for this incident.
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. 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.

6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as "Compensation Allowable" under 33 CFR Section 136.205.
7. The claimant's removal costs included rates in accordance with their published vendor rate schedule.

B. Determined Amount:

The NPFC determines that the OSLTF will pay \$75,955.97 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# A08033-001 excluding disposal costs.

Claim Supervisor: 

Date of Supervisor's review: 1/26/09

Supervisor Action: *Approved*

Supervisor's Comments: