CLAIM SUMMARY / DETERMINATION FORM

| | |
|---|---|
| Date | : 4/15/2010 |
| Claim Number | : N09039-001 |
| Claimant | : State of Texas |
| Type of Claimant | : State |
| Type of Claim | : Removal Costs |
| Claim Manager | : [redacted] |
| Amount Requested | : $28,183.48 |

***FACTS:***

***1. Oil Spill Incident:*** On July 26, 2009 Sector Corpus Christi Pollution Investigators received a report from the Texas General Land Office (TGLO) that tar balls were discovered in the Gulf of Mexico, a navigable waterway of the United States, and were washing up onto the Padre Island National Seashore in Texas.[1] The incident impacted approximately ninety miles of beach from the Padre Island National Seashore to the beaches of Mustang Island. The source and Responsible Party (RP) are unknown. TGLO's on-scene personnel coordinated with the Federal On-Scene Coordinator Representative (FOSCR), MSSD2 [redacted], who federalized the response under FPN09039.

***2. Description of Removal Activities for this Claimant:*** Miller Environmental Services, Incorporated (Miller) was hired for the removal and disposal of the tar balls along the beaches and other impacted areas. The TGLO response officers assisted and monitored the response actions and ensured the clean-up was consistent with the National Contingency Plan. The clean up continued through August 20, 2009. Invoices include TGLO personnel and equipment expenses (vehicle use) for mitigation of the spill.

***3. The Claim:*** On February 16, 2010, TGLO submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of $28,183.48.

TGLO is claiming personnel expenses of $13,091.31 for nine employees, State equipment expenses of $9,299.27, and indirect expenses of $5,792.90.

This claim consists of copies of the invoicing and associated dailies, a copy of NRC Report # 920807, a copy of the vendor contracted rate schedule, copies of Waste Management Disposal of Non-Hazardous Waste Manifests, a copy of CG Polreps, photographs, maps, and the CG MISLE case documents.

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.

[1] See NRC Report #912839.

***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 was provided by MSSD2 [redacted] of the United States Coast Guard Sector Corpus Christi.
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

***B. Analysis:***

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

The NPFC obtained a copy of the Coast Guard MISLE case and associated Pollution Reports which corroborate the work that was performed, as well as confirmation from the FOSCR, MSSD2 [redacted], via e-mail correspondence.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur $28,183.48 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 #N09039-001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on July 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.

***C. Determined Amount:***

The NPFC determines that the OSLTF will pay $28,183.48 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N09039-001. 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 Claimant.

***AMOUNT: $28,183.48***

Claim Supervisor: [redacted]

Date of Supervisor's review: ***4/22/10***

Supervisor Action: ***Approved***

Supervisor's Comments: