

CLAIM SUMMARY / DETERMINATION FORM

Date	: 7/30/2010
Claim Number	: P05005-159
Claimant	: City of Gloucester
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$17,243.60

FACTS:

1. ***Oil Spill Incident:***

On 26 November 2004, the Cypriot-flagged tank vessel ATHOS I struck a submerged anchor as it approached the CITGO Asphalt Refining Company terminal in Paulsboro, New Jersey. The anchor punctured the hull and caused the release of Venezuelan crude oil into the Delaware River. The Federal On Scene Coordinator (FOSC) issued a Notice of Federal Interest (NOFI) designating the vessel's owner, Frescati Shipping Company Limited, as the Responsible Party (RP). After it paid for costs exceeding its limit of liability, the RP denied all claims under the Oil Pollution Act of 1990 (OPA). It is important to note that when the City of Gloucester claims first arrived at the NPFC, the NPFC identified them as claims # P05005-152 and P05005-153 but later decided to divide the City of Gloucester claims into three separate claims identified as # P05005-152 claim for the Government Revenue claim, # P05005-153 claim for the Real or Personal Property Damage claim, and # P05005-159 claim for the removal cost claim. Claim # P05005-152 for Government Revenue has been withdrawn by the claimant and # P05005-153 for Real or Personal Property Damage has not been adjudicated at this time.

2. ***Description of Removal Activities for this Claim:***

The City of Gloucester (claimant or City) located on the Delaware River in Camden County, New Jersey, had access to the river from its marina.¹ At the Federal On-Scene Coordinator's request, the City opened its marina and assisted with shoreline assessments of the spill impact area designated NJ-2.² The scope of removal activities for the Gloucester City Fire Department (GCFD) and its Office of Emergency Management (OEM) employees was to take high and low tide shoreline assessments beginning November 27 which continued through December 16, 2004 or 20-days³ using four fire fighters who were supervised by the City's Coordinator, OEM. Activities were logged on ICS reports for each day claimed.

3. ***The Claim:***

¹ See claimant's binder exhibit #1, pages 2 & 3, Google Map and copy of NOAA Scat Map, ATHOS I, PA, DE and NJ Response Zones, Gloucester marina was within response zone NJ-2

² See admin record ICS -202 dated November 27, 2004 USCG AST activated 0800, Point of Contact: Commander Huyck OPS/ Chief ██████████ @ 609-234-0823

³ See, *supra* note 3; ICS-214 dated November 27, 2004

On March 4, 2008, the City of Gloucester submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs associated with this incident in the amount of \$12,237.28. The claimant later amended their sum certain via an email dated June 25, 2010 to \$12,243.60 by Mr. [REDACTED] to Mr. [REDACTED]. The claim consisted of an invoice, payroll records, IAPs in support of daily work, FEMA equipment rate schedule, and an Agreement between The City of Gloucester City and Gloucester City Superior Fire Officer's Association FMBA Local No. 251 Inc., and internal 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 33 USC § 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].

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. FOSC coordination has been established under the Federal Project Number and via the Incident Action Plans (IAPs) for this incident and for the period of time associated with the services provided in this claim.
2. In accordance with 33 CFR §136.101(a)(2) this claim was submitted within the six year statutory time period for removal claims.
3. The incident involved the report of a discharge of “oil” and substantial threat as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
4. In accordance with 33 CFR §136.111(a) (5) claimant indicates that its insurer has not paid this claim in full or in part.
5. In accordance with 33 CFR § 136.105(e) (12), the claimant has certified that no suit has been filed in court for the claimed uncompensated removal costs.
6. In accordance with 33 CFR § 136.113 claimant asserts that it has not applied for or received any other compensation, benefits or services as a consequence of this incident from which this claim arises.
7. 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 majority of the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager reviewed the Claimant’s actual cost invoice and supporting documentation to confirm whether the Claimant had incurred these costs and whether these costs were adequately documented and reasonable. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR Part136 (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 National Contingency Plan, 33 CFR Part 300 or as directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

During the adjudication, the Claims Manager reviewed the Incident Action Plans (IAPs) which corroborated that the claimed actions had taken place in the field. The City also

submitted ICS forms for documentation of their daily activity.⁴ The ICS forms show CGFD personnel carried out morning and evening shoreline assessments. The claimant's invoice #11272004 dated April 8, 2008 for \$17,237.28 describes 40 hours of shoreline assessment performed by four GCFD fire fighters twice daily at the rate of \$39.33 per hour. The Claimant submitted its union agreement and rate plan.

Claimant calculated a total of \$6,282.80 for the four fire fighters performing the shoreline assessment.⁵

City invoiced its Coordinator, OEM 40 hours at \$75 per hour straight-time and calculated \$3,000.

Vehicle costs are for 40 hours each with the OEM pickup at \$48.77 per hour. The ladder truck was calculated at \$150 per hour.

Once the removal actions were confirmed, the Claims Manager determined that the actual hourly rate with benefits document provided by the Claimant from the Fire Department records demonstrates the reasonable uncompensated costs for personnel time vice the amount actually requested on the invoice.⁶

The Claims Manager has also determined that the equipment was charged in accordance with the FEMA equipment schedule provided by the Claimant and that those costs are reasonable and supported by the record.

C Determined Amount:

The NPFC Claims Manager hereby determines that the Claimant incurred \$15,357.20 of uncompensated OPA compensable removal costs that are supported by the evidence. This amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and adjudicated by the NPFC under claim# P05005-159.

AMOUNT: \$15,357.20

Claim Supervisor: [REDACTED]

Date of Supervisor's Review:

Supervisor Action:

⁴ See Incident Command Summaries (#214s) in the file dated from November 27, to December 16, 2004.

⁵ See union agreement & rate-sheets for fire fighters and equipment in CPS & claim file.

⁶ See, Enclosure 1 – Summary of Costs spreadsheet created by the NPFC