

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 915081-0001
Claimant : O'Brien's Response Management, LLC
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$748.12

FACTS:

- 1. Oil Spill Incident:*** The USCG Sector New Orleans reports¹ that on August 27, 2014, a sheen was reported emanating from a flow-line leak on a shut in well located in Garden Island Bay, near Venice, LA. Garden Island Bay drains directly into the Gulf of Mexico, both of which are navigable waterways of the US.

This incident was reported to the National Response Center (NRC) via Report # 1093583.²

Description of removal actions performed: O'Brien's was contracted by the Responsible Party (RP) to deploy both hard and soft boom around the leak. On October 1, 2014, when it was determined acceptable to do so, O'Brien's personnel pulled all boom from the site.

Dune Operating, Inc. (Dune) was designated as the named Responsible Party (RP). On March 8, 2015, Dune filed for Chapter 11 Bankruptcy. The Claimant, O'Brien's Response Management, LLC, has advised the National Pollution Funds Center (NPFC) that it has not filed a Proof of Claim with the Bankruptcy Court for the costs which are subject of this claim. The Claimant presented its costs to Dune via an invoice dated October 31, 2014 and Dune made a partial payment on February 2, 2015 in the amount of \$676.88. The Claimant sent a follow up email to Dune on April 27, 2015 advising Dune of its intent to file a claim with NPFC for the balance owed.

- 3. The Claim:*** On May 11, 2015, O'Brien's presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$748.12 for the services provided on August 27 and October 1, 2014. The original invoiced amount was for \$1,425.00, which included costs for one person and a cell-phone and was billed in accordance with the rate schedule that was in place at the time services were provided. The RP made payment on \$676.88 of these costs. Thus, the claimant has submitted for reimbursement the remainder of the balance. A copy of the vendor rate schedule is provided in the claim submission.

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

¹ See USCG Sector New Orleans Case Report # 698677, opened 8/27/2014.

² See NRC Report # 1093583, opened 8/27/2014.

were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOOSC, 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 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. FOSC Coordination has been established via USCG Sector New Orleans.³ 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23);
3. A Responsible Party was determined and subsequently notified by the NPFC. However, no response has been received from the RP to date. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
5. 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.

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 validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

O’Brien’s provided a well-documented daily to show the actions it performed were for OPA-related costs and that the work performed mitigated the effects of the oil that was released from the compromised well/flow-line. Additionally, the USCG Sector New Orleans confirmed the actions performed for this incident. Based upon the evidence in this claim submission for the actions undertaken by O’Brien’s, the Claims Manager hereby determines

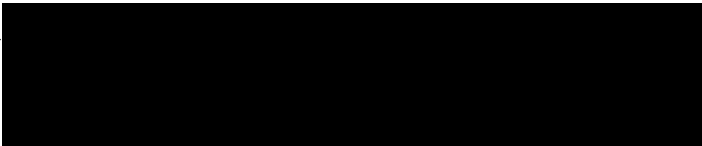
³ See USCG Sector New Orleans Case Report # 698677, opened 8/27/2014.

that the Claimant incurred \$748.12 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by O'Brien's and submitted to the NPFC under claim #915081-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on August 27 and October 1, 2014.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$ 748.12 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915081-0001.

AMOUNT: \$ 748.12



Claim Supervisor: 

Date of Supervisor's review: *6/8/15*

Supervisor Action: *Approved*

Supervisor's Comments: