

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : M12016-0001
Claimant : City of Brunswick
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$5,000.00

FACTS:

- 1. Oil Spill Incident:** On December 8, 2011, Fishing Vessel Bossy Betty (F/V Bossy Betty) sank in Brunswick, Georgia, and was reported to the National Response Center (NRC) by the United States Coast Guard Station Brunswick (Station Brunswick).¹ It was reported that the vessel sank at Mary Ross Park in the East River. The Brunswick River is a navigable waterway of the United States. The United States Coast Guard Marine Safety Unit Savannah (MSU Savannah) responded and conducted a field investigation of the incident. MSU Savannah was also informed by the owners, [REDACTED] that the bilge pump on the vessel became inoperable due to dead batteries, and then sank at the City Dock. A light rainbow sheen was observed and it was determined that an estimated 50 gallons of diesel fuel was on board.

The Brunswick Police Department (BPD) was called to respond to the incident. The Brunswick Fire Department (BFD) and the Glynn County Fire Department (GCFD) were called to assist with the response. MSU Savannah and the owners were also at the incident site to respond to the clean-up. However, by the next day, December 9, 2011, it was discovered that the owners could not pay for the clean-up. The Federal On-Scene Coordinator Representative (FOSCR), MST2 [REDACTED] informed the owners that they had until December 12, 2011 to provide a clean-up plan, and had until December 14, 2011 to have the clean-up adequately completed. The FOSCR issued an Administrative Order to Mrs. [REDACTED] reiterating the necessity of the clean-up and the responsibility of the owner. Mrs. [REDACTED] signed the Order that same day. On December 13, 2011, Mrs. [REDACTED] called MSU Savannah to inform that she was not financially able to carry out the clean-up and would not make the imposed December 14, 2011 deadline. She requested that federal funds be used for the clean-up. The incident was federalized under FPN M12016 (as well as CPN C12033 for battery removal) on December 14, 2011.

- 2. Description of Removal Activities for this Claim:** On December 8, 2011, BFD arrived at the incident site and deployed approximately 400 feet of 8 inch absorbent boom; 100 feet of 3 inch absorbent socks; five cases of 20 inch absorbent pads; and 2 cases of 20 inch absorbent pillows. BFD also deployed nine firemen and several vehicles during their response. BFD personnel returned on December 14, 2011 to assist with removing boom from the site, at the request of the BPD.
- 3. The Claim:** On January 13, 2012, the Brunswick Fire Department submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated removal costs in the

¹ See NRC Report #997523.

amount of \$5,000.00. They are seeking reimbursement for the costs of personnel and materials used to respond to the incident.

The claim consists of the BPD Crime/Incident Report and two BPD Incident Supplement reports; and the BFD Report of the incident. The Claims Manager gathered additional pertinent information from Coast Guard resources.

The National Pollutions Funds Center's (NPFC) review of the actual cost invoices and dailies focused on: (1) whether the actions taken were compensable "disposal 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 (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

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. Federal On-Scene Coordination was provided by FOSCR MST2 [REDACTED] of the United States Coast Guard MSU Savannah.
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 within the six-year statute of limitations for claims. 33 U.S.C. § 2712 (h)(2).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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§ 136.205.

B. Analysis:

The NPFC Case 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 Claimant seeks reimbursement for uncompensated costs associated with personnel and materials deployed during the initial clean-up. The Claimant's Run Report lists the nine firefighters and absorbent materials deployed at the incident site. On July 9, 2012 the NPFC called the Claimant and asked that detailed cost documentation be provided that accounts for the \$5,000.00 requested for reimbursement. The Claimant agreed to gather the cost documentation and informed the NPFC that he thought the costs were for materials but did not think it would amount to \$5,000.00; the Fire Chief who submitted the claim had retired; and the person who had figured out the costs worked a different shift.² On July 18, 2012 Captain [REDACTED] faxed two documents to the NPFC regarding the breakdown of costs for materials, labor and fuel.³

The following are the costs of the materials used by the Claimant, as quoted by the New Pig Corporation for the total amount of \$3,350.36:

| | |
|------------|-------------------------|
| \$1,410.00 | 10 bags absorbent boom |
| \$298.00 | 2 bags spaghetti boom |
| \$350.00 | 5 boxes oil-only mats |
| \$942.00 | 6 boxes skimmer pillows |
| \$350.00 | shipping charges |
| \$3,350.36 | TOTAL |

The \$416.12 in labor costs, four hours for each firefighter worked, was billed in the following manner:

| | |
|-----------------------------------|----------|
| Chief [REDACTED] (@ \$31.64/hr) | \$126.56 |
| Captain [REDACTED] (@ \$17.98/hr) | \$71.92 |
| [REDACTED] (@ \$11.61/hr) | \$46.44 |
| [REDACTED] (@ \$11.40/hr) | \$45.60 |
| [REDACTED] (@ \$9.11/hr) | \$36.44 |
| [REDACTED] (@ \$9.39/hr) | \$37.56 |
| [REDACTED] (@ \$9.68/hr) | \$38.72 |
| [REDACTED] (@ \$9.11/hr) | \$36.44 |
| [REDACTED] (@ \$9.11/hr) | \$36.44 |

² See 07/09/12 phone note of [REDACTED] conversation with Captain [REDACTED]

³ See 07/18/12 facsimiles (2) from Captain [REDACTED] to [REDACTED] re Reimbursement for Sunken Shrimp Boat.

| | |
|---------------|-----------------|
| Total: | \$416.12 |
|---------------|-----------------|

The Claimant also requests reimbursement of \$100.00 for fuel costs **only** for the four hours their six vehicles were deployed.

The total amount of the costs presented by the Claimant is \$3,926.48. The Claimant did not provide documentation for \$1,073.52, the remainder of the \$5,000.00 initially requested. Therefore, \$1,073.52 of this claim is denied because of the Claimant's failure to provide documentation necessary to support the claim for reimbursement of \$1,073.52, pursuant to 33 CFR 136.105(a) and 136.105(e)(6).

Based on the foregoing, the NPFC has determined that \$3,926.48 of the costs claimed are payable as presented. The Claimant produced cost documentation and demonstrated those costs claimed are uncompensated and as such, the Claims Manager hereby determines that the Claimant did in fact incur \$3,926.48 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 #M12016-0001.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on December 8, 2011. 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 \$3,926.48 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number M12016-0001 for removal costs. 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: \$3,926.48

Claim Supervisor: D

Date of Supervisor's review: 7/23/12

Supervisor Action: *Approved*

Supervisor's Comments: