

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/2/2011
Claim Number : 911019-0001
Claimant : Township of Grosse Ile
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$32,316.58

Facts:

During a routine inspection of the oil fuel separator at the Grosse Ile Airport on Wednesday, February 15, 2006, oil was discovered on a fiber boom in the oil fuel separator. Claimant was notified and immediately contacted Doetsch Industrial Services to pump out the oil fuel separator.

On Thursday, February 16, 2006 the airport maintenance department checked the oil fuel separator's discharge pipe that empties into Frenchman's Creek. Red colored fluid was in the waters and ice areas of Frenchman's Creek near the discharge pipe. Frenchman's Creek is a nexus to the Detroit River then to Lake Erie, a navigable waterway of the United States.

FOSC coordination was made with the United States Environmental Protection Agency (USEPA), Region 5¹ as well as the United States Coast Guard Sector Detroit. Sector Detroit issued a Notice of Federal Interest (NOFI) for an Oil Pollution Incident to the Grosse Ile Municipal Airport². After further investigation, it was found that the source of the leak was tracked back to a construction company, L.D. Agostini & Sons, Inc., whom leased a parcel of land on the Grosse Ile Municipal Airport Commerce Park property. The fuel was stored in a tank that was on the airport grounds while L.D. Agostini & Sons, Inc. was doing work for the township. The tank had no spill containment provision.

Responsible Party

Claimant made presentment to [REDACTED] via a letter dated July 18, 2006³. On February 7, 2011, NPFC Claims Manager sent a Responsible Party Notification letter to L.D.' Agostini & Sons, Inc.⁴ and on February 15, 2011 the NPFC Claims Manager presented the claim submission via email to Mr. [REDACTED] Staff Counsel, for L.D. Agostini & Sons⁵. On February 28, 2011, Mr. [REDACTED] stated in an email to the Claims Manager that L.D. Agostini & Sons, Inc. is preparing a response to the NPFC's RP Notification Letter dated February 7, 2011⁶.

¹ USEPA Coordination letter.

² NOFI, dated February 16, 2006.

³ See letter from Claimant to RP, dated July 18, 2006.

⁴ RP Notification letter dated February 7, 2011

⁵ Email dated February 28, 2011

⁶ *id*

The Removal Actions

February 17, 2006, Doetsch Industrial Services and airport personnel installed oil spill containment booms around the area in order to contain the oil-spill. Doetsch Industrial Services used their sewer trucks to suck up the remaining oil.

Doetsch Industrial Services removed oily water from the manholes from the spill site to the oil fuel separator.

February 21, 2006, Doetsch Industrial Services flushed out the storm water drain lines. They also pumped out and cleaned the oil fuel separator unit.

Monitoring and clean-up activities continued by Doetsch Industrial Services and airport personnel until March 10, 2006.

The oily debris, water, and sorbents were taken for disposal to Advanced Resource Recovery in Inkster, Michigan⁷

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

⁷ Analytical Report prepared by Paragon Laboratories, Inc.

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 removal actions were coordinated with the USCG and USEPA.
2. The incident involved the discharge and continuing substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701 (23), to navigable waters.
3. In accordance with 22 CFR § 136.105(e)(12), the claimant certified that it has filed no suit in court for the claimed uncompensated removal costs.
4. The claim was submitted within six years after the date of completion of all removal actions for this incident as determined by the Federal on Scene Coordinator (FOSC).
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that the majority of all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA 33 CFR § 136.205.

B. Analysis

The NPFC finds that the evidence presented by the Claimant demonstrated that the Claimant is not the Responsible party but did assumed the responsibility of immediate action to mitigate the oil from discharging into the navigable waterways.

Township of Grosse Ile stated in its claim, that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of February 15, 2006-March 10, 2006. The

Claimant represented that all costs paid are compensable removal costs,⁸ payable by the OSLTF as presented by the Claimant.

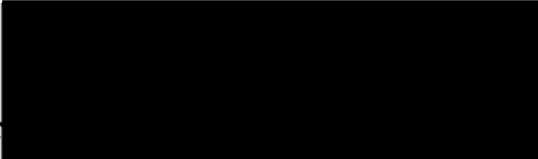
The NPFC Claims Manager reviewed the Claimant's actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed, that the costs were uncompensated, and that the costs were adequately documented and reasonable.

The Claims Manager also confirmed that the removal costs were (1) compensable "removal actions" under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) incurred as a result of these actions; (3) incurred for removal actions that were determined by the FOSC to be consistent with NCP or directed by the FOSC.

Determined Amount:

The NPFC Claims Manager hereby determines that the Claimant incurred \$32,316.58 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 #911019-0001.

AMOUNT: \$32,316.58

Claim Supervisor 

Date of Supervisor's review: *3/4/11*

Supervisor Action: *Approved*

Supervisor's Comments:

⁸ Proof of payment, check #017848 dated March 30, 2006, check # 017842 dated March 24, 2006, and check # 017843 dated 3/24/06.