

CLAIM SUMMARY / DETERMINATION FORM

Date : 4/25/2011
Claim Number : 911024-0001
Claimant : Ranger Offshore
Type of Claimant : OSRO
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$10,152.51

FACTS:

- 1. Oil Spill Incident:** On December 14, 2010, the crew of the *M/V Hammer Head*, owned by Ranger Offshore, Incorporated (ROI), noticed a sheen in the water between their vessel and the shore at the ELI Facility dock in Berwick, Louisiana. The National Response Center (NRC) received a call from Captain ██████████ of ROI, informing that there was an unknown sheen on the Atchafalaya River, that was described a “dark black” and six feet wide and 3 feet long.¹ The Atchafalaya River is a tributary of the Mississippi and Red Rivers, as well as a navigable waterway of the United States. Marine Safety Unit Morgan City (MSU Morgan City) and Environmental Safety and Health Consulting Services, Incorporated (ES&H) responded to the incident. MSU Morgan City took three oil samples for testing against the samples from the vessel for analysis at the United States Coast Guard Marine Safety Laboratory (USCG MSL). However, the lab results determined that the discharge was not from the *M/V Hammer Head*. The source of the discharge could not be determined. The final results of the USCG MSL analysis determined that the sheen was created by the discharge of slightly degraded light fuel oil mixed with lubricating oil. ES&H provided clean-up and disposal.
- 2. Description of Removal Activities for this Claim:** ES&H deployed four technicians and a supervisor to clean up the spill with containment boom, lining boom, and 5 foot sorbent boom. The clean-up was then suspended until the next day, due to the loss of daylight. They resumed their clean-up efforts the next morning and worked until the clean-up was complete, which included lining the affected bank area with 80 feet of 5 foot sorbent boom, at the Coast Guard’s request. The Coast Guard allowed ES&H to remove the boom from the bank on December 17, 2010. Disposal occurred at the BFI Colonial Landfill in Sorrento, Louisiana on January 4, 2011.
- 3. The Claim:** On March 3, 2011, ROI submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated removal costs in the amount of \$10,152.51 for payment made to ES&H.

The claim consists of the ES&H invoice, dailies, oil analysis documents, proof of payment, and documentation regarding the clean up and disposal of the incident. The NPFC’s review of the actual cost invoice and related documents 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

¹ See NRC Incident Report #962185.

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:

"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 incident involved the discharge of “Oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
2. 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.
3. The claim was submitted within the six year statute of limitations.
4. 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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR§ 136.205 as set forth below.
5. 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.
6. The claimant’s removal costs included rates in accordance with their published vendor rate schedule.

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.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$10,152.51 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #9011024-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on December 14, 2010. 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 \$10,152.51 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 911024-0001 for removal costs.

AMOUNT: \$10,152.51

Claim Supervisor:



Date of Supervisor's review: *4/27/11*

Supervisor Action: *Approved*

Supervisor's Comments: