

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/31/2011
Claim Number : 911043-0001
Claimant : Marine Pollution Control
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : XXXXXXXXXX
Amount Requested : \$4,811.89

FACTS:

- 1. Oil Spill Incident:** The United States Environmental Protection Agency (USEPA) Region V reported that on August 29, 2010, an unknown oil sheen was discovered on the Saline River, a navigable waterway of the US, and located in Milan, Washtenaw County, Michigan.¹

On August 29, 2010, USEPA Region V and the Superfund Technical Assistance and Response Team (START) responded to the spill, naming Clark Construction (that was working at an elementary school nearby) as the Potential Responsible Party. Clark Construction, in turn, hired Marine Pollution Control (MPC) as its clean-up contractor.²

On August 30, 2010, when USEPA returned to the site to observe removal activities, not only had the oil dissipated at the original spill site, but Milan police advised that a sheen was discovered about a half-mile upstream of the Platt Road Bridge. Further investigation revealed that there was significant liquid dumping adjacent to the parking lot of a Kroger in Milan. Kroger was then designated as the Responsible Party and clean up operations were complete by August 31, 2010.³

As the USEPA or its START contractor never took oil or soil samples downriver to link the two locations, the NPFC cannot determine that this is, in fact, the same spill and has chosen not to place this claim under the FPN E10529 originally assigned to the Kroger incident.

- 2. Description of removal actions performed:** On August 29, 2010 and into the early hours of August 30, 2010, the claimant, MPC, deployed hard boom to the affected area, with the intention of removing it by vac truck during daylight hours. However, by the time crews and EPA returned to track progress and commence removal activities, the oil had dissipated from this location. As such, MPC removed the containment boom it had placed, and the spent absorbent was placed into a roll-off box at the construction site. After inspecting sewer areas with the City of Milan and EPA, MPC determined its work to be complete and departed the scene.
- 3. The Claim:** On March 24, 2011, MPC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$4,811.89 for the services provided from August 29-30, 2010. This claim is for removal

¹ See US EPA POLREP #1, dated 9/02/2010.

² *Ibid.*

³ *Id.*

costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of the invoicing, posted rate schedule, dailies, EPA POLREP #1, a copy of a letter sent from Clark Construction to Mr. [REDACTED] US EPA and internal email correspondence.

The review of the actual cost invoicing and daily logs 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 consistent with the NCP or directed by the FOSC, 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 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].

Under 33 CFR 136.105(e)(8), the claim must include the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.

DETERMINATION OF LOSS:

A. Overview:

1. The FOSC coordination has been established via US EPA Region V.⁴ 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), to navigable waters.
3. A Responsible Party could not be determined. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

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 whether or not they were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

The Claims Manager hereby determines that the claimant did in fact incur \$4,811.89 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 #911043-0001. The claimant states that all costs claimed are for

⁴ See US EPA Polrep 1, dated 9/02/2010.

uncompensated removal costs incurred by the claimant for this incident from August 29-30, 2010.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$4,811.89 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #911043-0001. These costs 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 the Claimant.

AMOUNT: \$4,811.89

Claim Supervisor 

Date of Supervisor's review: *3/31/11*

Supervisor Action: *Approved*

Supervisor's Comments: