

CLAIM SUMMARY / DETERMINATION FORM

Date : 5/9/2011
Claim Number : 911046-0001
Claimant : Milt's Seafood Plant Inc
Type of Claimant : Corporate (US)
Type of Claim : Removal Costs
Claim Manager : ██████████
Amount Requested : \$2,692.02

FACTS:

- 1. Oil Spill Incident:** On January 25, 2011, an unknown reddish sheen, approximately 3 feet wide and 30 feet long, was discovered on the Bolivar Peninsula Intracoastal Waterway, as reported to the National Response Center (NRC) by the United States Coast Guard Marine Safety Unit Galveston (USCG MSU Galveston).¹ The Gulf Intracoastal Waterway is navigable waterway of the United States. The discharge occurred at the dock of Milt's Seafood Plant Incorporated (Milt's Seafood), at 1414 Seventh Street in Port Bolivar, Texas. Per the claim submission, Texas General Land Office (TGLO) Response Officer ██████████ and ENS ██████████ of the USCG MSU Galveston responded to the incident. USCG MSU Texas City requested an oil sample analysis of the seven samples taken from the affected area by the USCG Marine Safety Laboratory. The analysis determined that the discharge was "slightly degraded light fuel oil mixed with a lesser amount of lubricating oil," per the Oil Sample Analysis Report.² However, the responsible party (RP) could not be determined. Per the Claimant, the USCG requested that they clean up the spill.
- 2. Description of Removal Activities for this Claim:** Milt's Seafood cleaned up the spill with absorbent pads and boom. They deployed a supervisor for two days and five additional workers on the day of the incident, only. Milt's Seafood also handled the disposal.
- 3. The Claim:** On March 31, 2011, the Claimant submitted a removal cost claim in the amount of \$2,692.02 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated removal costs. The claim consists of a supply invoice from Republic Parts Company, Inc. for sorbent pads; a supply invoice from Complete Environmental Products, Inc. for sorbent boom and gloves; a Rapid Environmental Services & WaterWRKS disposal invoice for used fuel and drums; and the Claimant's labor costs.

To date, the responsible party remains unknown.

¹ See NRC Report #965646.

² See Oil Sample Analysis Report, Marine Safety Unit Texas City Case/Activity Number 3933407, Marine Safety Laboratory dated February 3, 2011.

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 NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the National Contingency Plan (NCP) for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990. (See, Delegation of Authority from COMDT ltr 5760/3 of 27 July 1992).
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 removal costs.
5. 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.
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 Claims Manager has reviewed the actual cost documents 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 FOOSC, 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 \$2,692.02 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 #911046-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on January 25, 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 \$2,692.02 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 911046-0001.

AMOUNT: \$2,692.02

Claim Supervisor



Date of Supervisor's review: *5/11/11*

Supervisor Action: *Approved*

Supervisor's Comments: