

CLAIM SUMMARY / DETERMINATION FORM

Date : 5/23/2011
Claim Number : 911076-0001
Claimant : State of Florida
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$259.91

FACTS:

Oil Spill Incident: On November 9, 2010, USCG reported a sunken vessel to the National Response Center (NRC) concerning a fire and sinking of a 38' pleasure craft, approximately 25 miles off of Egan Park, in St Petersburg, FL. On November 9, 2010, FL BER OSC [REDACTED] responded to Egan Park and assisted with removal actions. The craft's tanks were defueled, the vessel was raised, and the USCG determined sixty gallons of fuel impacted Tampa Bay. Towboat U.S. worked to remove the damage. FL BER considers the case closed.

Description of Removal Activities for this claimant: BER did not conduct any cleanup of this release, but conducted an initial assessment and investigation.

The Claim: The Florida Department of Environmental Protection submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel, equipment, and administrative costs in the amount of \$259.91.

Florida DEP is claiming State personnel expenses of \$222.91, State equipment expenses of \$15.00, and State administrative documentation/photo expenses of \$22.00.

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".

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].

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. USCG Sector St Petersburg provided FOSC coordination.
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 on time.
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.

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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$259.91 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 #911076-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on November 9, 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 hereby determines that the OSLTF will pay \$259.91 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911076-0001. 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 the Claimants.

AMOUNT: \$259.91

Claim Supervisor:

Date of Supervisor's review: *5/23/11*

Supervisor Action: *Approved*

Supervisor's Comments: