

CLAIM SUMMARY / DETERMINATION FORM

Date : 5/24/2011
Claim Number : 911077-0001
Claimant : US Incorporated
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$28,533.64

FACTS:

1. ***Oil Spill Incident:*** The United States Coast Guard Marine Sector Mobile reports that on March 12, 2011, a discharge of more than 30 gallons of oil was reported to the National Response Center (NRC) via case # 969904. The oil discharged into Chikasawbo (aka Chikasabogue) Creek, a tributary of the Mobile River, which flows into Mobile Bay, all navigable waterways of the US. The discharge source is unknown.

The incident was reported at approximately 1117 local time via report # 969904 by Mr. [REDACTED] of US Incorporated (USI). The report described the incident as an unknown amount of discharge of dark black oil from an unknown cause.¹ The Coast Guard Pollution Investigative (PI) team stated that the cause of this discharge was unknown and it had called out to vessels to see where they had last moored in the vicinity. They further stated that, while the original estimate was between 20-30 gallons of fuel, it appeared, upon closer inspection, that the actual amount was more likely to be greater than 30 gallons.²

The duty team reported that it observed a seven-foot slick of black oil with streamers, as well as other patches of oil. A rainbow sheen was prominent in the area, and vegetation, rocks and a nearby barge were all oiled. Samples were taken for further analysis.³

2. ***Description of removal actions performed:*** The claimant, USI, discovered the oil the morning of March 12, 2011. After calling the NRC and reporting the spill, USI began placing boom and sorbent pads to contain the spill. USI used vacuum trucks to remove the contamination from the water, as well as washed the shoreline to remove oily debris.⁴

Over the course of the next couple weeks, USI continued removing oil from the affected area, placing and switching boom and sorbent pads as needed. Additionally, it also tested for atmospheric conditions and LEL levels. Per its agreement with the USCG Sector Mobile, USI agreed to leave boom in the area until March 21, 2011, at which time the cleaning operations were completed.⁵

3. ***The Claim:*** On May 20, 2011, US Incorporated (USI) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the

¹ See, NRC report # 969904, dated 3/12/2011.

² See USCG Sector Mobile Case # 540320, opened 3/12/2011.

³ Ibid.

⁴ See Daily Activity Log, submitted to the NPFC by the claimant on 5/20/2011.

⁵ Ibid.

amount of \$28,533.64 for the services provided from March 12 through March 21, 2011. This claim is for removal costs based on the rate schedule in place at the time services were provided.

This claim consists of copies of: USCG Case Report # 540320, NRC Report # 969904, Optional OSLTF Claim Form, USI Invoice # 2573, a description of actions performed, dailies, various pictures of the affected area and internal email correspondence.

The review of the actual cost invoicing and dailies 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:

"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 FOSC coordination has been established via USCG Case # 540320.⁶ 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. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
4. 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.
5. 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.
6. A Responsible Party could not be determined. 33 U.S.C. § 2701(32).

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 confirmed that the claimant did in fact perform a joint site assessment with the USCG on March 12, 2011.⁷ 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).

⁶ See USCG Sector Mobile Case # 540320, opened 3/12/2011.

⁷ *Id*

The Claims Manager hereby determines that the claimant did in fact incur \$28,533.64 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 #911077-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from March 12 through March 21, 2011.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$28,533.64 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #911077-0001. 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 Claimant.

AMOUNT: \$28,533.64

Claim Supervisor:

Date of Supervisor's review: *5/24/11*

Supervisor Action: *Approved*

Supervisor's Comments: