

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 911117-0001
Claimant : Bollinger Quick Repair LLC
Type of Claimant : Corporate (US)
Type of Claim : Removal Costs
Claim Manager : XXXXXXXXXX
Amount Requested : \$1,173.00

Facts

On May 19, 2011 the waterfront property owned by Bollinger Quick Repair, L.L.C. (Bollinger or Claimant) was contaminated by a mystery spill of oil in the Harvey Canal, a navigable waterway of the United States.

Claimant contacted the National Response Center (NRC) via report #976715¹.

The Claimant and the Claim

Bollinger immediately deployed sorbent boom and pads to clean up the mystery oil that was impacting the facility's dry dock and bulk head. The oil and debris were taken to American Recovery, LLC in Houma, Louisiana for disposal.²

On September 8, 2011, Claimant presented their Personal Property claim to the National Pollution Funds Center (NPFC) for reimbursement of the funds expended to restock their conex box located at Bollinger's facility. Based on the nature of the claim, the NPFC reclassified this submission as a removal cost claim as opposed to a personal property claim.

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 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 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

¹ NRC Report # 976715

² See, American Recovery, LLC Manifest # 273261

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 NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 CFR § 136.101(a)(2), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 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 FOSC, and (4) whether the costs were adequately documented and reasonable.

Claimant provided United States Environmental Services LLC (USES) invoices with proof of payment³ for five 4 section bags of 5"x10' sections of sorbent boom, two bales of sorbent pads (100 per bale), two 55-gallon steel drums, two rolls of duct tape, 18 pairs of gloves, and three hand tools as evidence of the new supplies that had to be purchased to resupply Bollinger's conex box.⁴

On October 5, 2011, the NPFC requested that the Claimant provide the name of the manufacturer of the boom used to clean the spill, the make and model, shelf life of the boom, the age of the boom, and proof of payment with the receipts for the original purchase of boom.⁵ Claimant has not provided this information therefore the NPFC depreciated the newly purchased boom by 50% as fair and reasonable compensation since the Claimant failed to provide the requested information (\$525.00 [cost of new boom] ÷ 50% = \$262.50). The NPFC finds \$262.50 reasonable therefore approves **\$262.50** for the newly purchased boom.

Accordingly, the NPFC has determined that the cost for sorbent pads, drum, tape, gloves, and disposal costs presented by Claimant are reasonable and therefore approves **\$588.00** for the newly purchased equipment and disposal.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$850.50** as full compensation for boom, pads, disposal, drum, tape, and gloves.

AMOUNT: \$850.50

Claim Supervisor: 

Date of Supervisor's review: *10/25/11*

Supervisor Action: *Approved*

Supervisor's Comments:

³ Check # 56-1544/441 dtd 9/15/11 to USES.

⁴ USES Invoice dtd 6/29/11 for \$1,037.00.

⁵ Email dtd 10/5/2011 requesting the A.I. for the boom.