

CLAIM SUMMARY / DETERMINATION FORM

Date : 12/27/2010
Claim Number : E10911-0001
Claimant : NRC Environmental Services Inc.
Type of Claimant : OSRO
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$111,056.67

FACTS:

1. ***Oil Spill Incident:*** The United States Environmental Protection Agency (EPA) Case # E10911¹ reports that on September 6, 2010, the tug Mattila being cut up for salvage released oil and diesel into the Petaluma Marina, which drains into the Petaluma River, a navigable waterway of the US. The incident was reported to the National Response Center (NRC) on September 6, 2010 at approximately 1235 p.m. P.S.T. via report # 953213.² It was estimated that between 200 and 600 gallons of waste oil were observed in the water.³ Representatives from EPA District 9 (Mr. [REDACTED]), the State of California Department of Fish and Game (CA DFG), CA DFG Office of Spill Prevention and Response (OSPR), the City of Petaluma Fire Department (PFD), URS Corporation and the California Environmental Protection Agency (CEPA) Regional Water Quality Control Board were on-scene, as well as Mr. [REDACTED] of ATOP TRC, Inc., the Responsible Party (RP). The RP contracted with the claimant, NRC Environmental Services Inc. (NRCES) for cleaning and removal of the pollutants that resulted when the RP was performing a demolition project.

An Incident Command System (ICS) was set-up, with Mr. [REDACTED] of EPA Region 9 designated as the Incident Commander (IC). Under the initial Incident Action Plan (IAP), it was determined that NRCES would setup and implement cleanup and removal activities, as well as disposal of contaminated product and water.⁴

2. ***Description of removal actions performed:*** The claimant, NRCES, arrived on-scene with five personnel and two vac trucks on September 6, 2010, conducting an initial site assessment. Task objectives from the IAP meeting included: oil recovery and skimming at the tug carcass, recovery of oil taken out by the tide, decontamination of the Jericho tug, adjacent tugs, barges, and city docks, deployment of additional containment and exclusionary boom, collection of oil product, decontamination and return of personal floatation device (PFD) equipment, and disposal of waste products.

Activities performed by the claimant on September 6, 2010:

1. Skiff, sorbents and light towers deployed

¹ See EPA's Case Report # E10911.

² See NRC Report # 953213, opened 9/06/2010

³ See CEMA Hazardous Material Spill Update, dated 9/06/2010, and submitted to the NPFC with the claim on 10/04/2010

⁴ See EPA IAP, written by Mr. [REDACTED] EPA, dated 9/06/2010 and submitted to the NPFC with the claim on 10/04/2010

2. Baker tank and 70-bbl vacuum truck brought on-site

Activities performed by the claimant on September 7, 2010:

1. Vacuums/vacuum trucks used to remove the remaining oil contained in the 4 tanks still intact, as well as removed oil and oily water from the affected area.
2. Sorbents deployed at shoreline to collect oil.
3. Crew members work at opening, dismantling and drilling tanks as needed to clean and vacuuming their contents.

Activities performed by the claimant on September 8, 2010:

1. Continued cleaning, steam cleaning and vacuuming affected areas.
2. Pressure-washed vessel.
3. Excavator used to remove top part of hull.
4. Site maintained in preparation to begin demobilizing unnecessary equipment.

Activities performed by the claimant on September 9, 2010:

1. 17-foot Whaler mobilized for boom, sorbent and vegetation collection operations.
2. Performed additional skimming, vacuuming, pressure washing and steam cleaning operations.
3. Continued to clean and demobilize equipment.

Activities performed by claimant from September 10- 14, 2010:

1. Continued to demobilize, cleaning up residual product.
 2. Containerized waste and disposed of it off-site.
3. ***The Claim:*** On September 7, 2010, NRCES submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$111,056.67 for the services provided September 6 through September 14, 2010. This claim is for removal 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 and associated dailies, a copy of NRC Case # 953213, a copy of the EPA IAP for this FPN, a copy of EPA ICS Form 208, a copy of EPA ICS 213, a copy of EPA ICS 202, a copy of CEMA Haz-Mat Spill Update for Case # 10-5354, a copy of OSPR Initial Site Safety Plan copies of NRCES Daily Safety Forms for Job # 53560, a copy of the NRCES Summary Report, a copy of the NRCES Response Work Authorization contract, a copy of the Credit Card Authorization form, copies of the waste disposal manifests, photographs 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:

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 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 US EPA Region 9.⁵
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. 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. In accordance with 33 CFR § 136.101(c), the claim was submitted within the six year statute of limitations for removal costs.
5. Presentment of costs to the RP was made by the claimant, prior to the submission of the claim. The NPFC also made notification of claimed costs to the RP and to date, the NPFC has received no response.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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.

The Claims Manager confirmed that the claimant did in fact perform a site assessment with EPA FOSC on September 6, 2010. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$111,056.67 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # E10911-0001.⁶ The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from September 6 through September 14, 2010. The claimant represents that all costs paid by the

⁵ See IAP and ICS Forms 208, 213 and 202, filled out by Mr. [REDACTED] US EPA, and email from Mr. [REDACTED] US EPA to Ms. [REDACTED] NPFC, dated 10/26/2010


⁶ See Enclosure 1 – NPFC spreadsheet of costs.

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 \$111,056.67 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E10911-0001. 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: \$111,056.67

Claim Supervisor: 

Date of Supervisor's review: *12/15/10*

Supervisor Action: *Approved*

Supervisor's Comments: