

CLAIM SUMMARY / DETERMINATION FORM

Date : 7/12/2011
Claim Number : G10004-0001
Claimant : Duncan Bay Boat Club Association
Type of Claimant : Private (US)
Type of Claim : Removal Co [REDACTED]
Claim Manager : [REDACTED]
Amount Requested : \$1,698.56 [REDACTED]

FACTS:

Oil Spill Incident: On or about 1 August 2010 the vessel Jenny Lynn sank in Duncan Bay in Cheboygan, Michigan and began discharging diesel fuel into the waters of the Bay, a navigable waterway of the United States. The claimant, Duncan Bay Boat Club Association responded to the incident. USCG Sector Sault Sainte Marie responded to the incident. An FPN was opened and an OSRO, Marine Pollution Control was hired to clean up spill.

Description of Removal Activities The claimant, the Duncan Bay Boat Club Association (the claimant) responded to the incident and used spaghetti boom to soak up the oil. The claimant asserts that it was acting in concert with the United States Coast Guard, but does not include any evidence to support this assertion. The NPFC was able to confirm the claimant's assertion regarding their presence and actions in response to this incident via Sector Sault Sainte Marie. Specifically, MK2 [REDACTED] verified that the Coast Guard was attempting to corral the discharge, but was having problems, so the claimant deployed the boom to help the effort. (e-mail from MST2 [REDACTED] to MSTC [REDACTED] dated 19 May 2011). This is sufficient for FOSC coordination.

The OSRO, Marine Pollution Control responded to the spill. Boom was deployed. Operations were completed to remove all oil from the vessel. 600 gallons of oily waste was off-loaded from the vessel. Pumping operations yielded 1850 gallons of oily waste. A total of 4800 gallons was removed from the vessel and all vents and tanks were capped and sealed and the vessel removed from the Marina.

The Claim: The claimant, the Duncan Bay Boat Club Association is now presenting a claim to the Oil Spill Liability Trust Fund (OSLTF/Fund) for uncompensated removal costs in the amount of \$1,698.56 the cost for replacing the boom and costs of disposing of the boom. In support of their claim before the Fund, the claimant has submitted an invoice for replacement of the spaghetti boom in the amount of \$657.84. They also presented an invoice from Heritage-Crystal Clean, LLC for the disposal of the boom in the amount of \$1,040.72. The invoice indicates that the disposal was for "non hazardous absorbent/debris". The claimant is not claiming costs for personnel. The claimant presented this claim to the Responsible Party, [REDACTED] in October 2010. To date, no action was taken on the part of Mr. [REDACTED] to the claim presented by the claimant.

Upon receipt of the claim, the NPFC sent an acknowledgement letter to the claimant that advised them of the claim number and explaining the claims process. The NPFC also sent out an RP Notification Letter to the alleged Responsible Party, Mr. [REDACTED] to advise him

that we had a claim for these costs from the claimant. To date, there has been no response. The NPFC sent out requests for additional information to claimant. The final response was received during the week of 11 July 2011. The NPFC is adjudicating this claim based on all the evidence submitted.

The claims submission package also contains correspondence from the County of Cheboygan to the United States Army Corp of Engineers requesting that three (3) vessels, including the Jenny Lynn, all allegedly owned by the same owner and RP in this case, [REDACTED] that had sunk and remained abandoned in the general area be removed for among other things a hazard to navigation. This letter doesn't appear to have anything to do with this claim and appears to be just for informational purposes.

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].

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 was made based on verification with the FOSC, Coast Guard Sector Sault Sainte Marie, who were also on-scene at the time of the incident and witnessed the claimant’s actions.
2. The incident involved the discharge and continuing substantial threat of 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 majority of 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 invoices that claimant submitted in support of its claim. The review focused on: (1) whether the actions taken were compensable “removable 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 and reasonable.

In the process of adjudicating the claim, the NPFC had questions regarding whether the actions taken were coordinated by the FOSC. In that effort, the claims manager conducted research on the incident. That research confirmed that a Federal Project Number (FPN) was issued for the incident and there were POLREPS and SITREPS. However, there was no mention of the claimant or their actions in any of those records. The NPFC conducted research and it was confirmed by the CG unit, Sector Sault Ste. Marie that the claimant was in fact on scene and did deploy boom to contain the spill. Based on this information, the claims manager has determined that the actions taken by

the claimant were removal actions, needed to mitigate the effects of the spill and the actions taken were reasonable and consistent with NCP.

The claims manager also contacted the claimant to obtain additional information regarding the boom. Specifically, the inquiry was regarding whether there were receipts from the time the boom was purchased to indicate the costs at the time of purchase.

The claimant responded to the request on or about 27 May 2011 and informed that the boom that was used to respond to the incident was boom they kept on hand at the marina for use in case of emergencies. The boom that was used was purchased in the summer of 2007 from Ace Tex Enterprises, Inc in Detroit, Michigan. They advised that the boom which were purchased as replacements were also purchased from Ace-Tex. According to the claimant, the expense to them for the boom was \$657.84. The claimant provided a Visa receipt for the purchase of the boom.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$1,698.56 of uncompensated removal costs and that the 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 G10004-001. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

AMOUNT: \$1,698.56

RECOMMEND

Claim Supervisor

Date of Supervisor's review: 7/14/11

Supervisor Action: OSLTF approved

Supervisor's Comments: