

CLAIM SUMMARY / DETERMINATION FORM

Date : 2/28/2011
Claim Number : M10015-0001
Claimant : Hudson Analytix
Type of Claimant : Corporate
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$67,370.35

FACTS:

Oil Spill Incident: On March 28, 2010, the United States Coast Guard Sector Miami¹ reported that the M/V KALEBAH ("vessel") experienced a propulsion casualty and was disabled and adrift. It was determined that the vessel posed a substantial threat of a discharge of oil into the Florida Keys National Marine Sanctuary and Atlantic Ocean, a navigable waterway of the United States. The USCG Sector Miami Captain of the Port (COTP) instructed both the USCGC KEY BISCANE and USCGC DECISIVE to take immediate action to reduce the potential of a discharge by rendering assistance to the M/V KALEBAH and taking it in tow.²

It was determined that the Responsible Party (RP) was Technical Ship Support BV.³

Description of removal actions performed: The RP contacted Hudson Marine Management Service (HMMS), the Qualified Individual (QI) listed in the Vessel Response Plan (VRP). HMMS subsequently made notifications to the National Response Center (NRC) and to the Florida Department of Environmental Protection (FL DEP), which assigned Case Numbers #935472 and #2008, respectively. HMMS also notified and placed on ready-alert stand-by status the HMMS Spill Management Team (SMT) and National Response Corporation Environmental Services (NRCES), the vessel's contracted Oil Spill Removal Organization (OSRO), in accordance with the Vessel Response Plan (VRP).⁴

HMMS dispatched [REDACTED] and Capt. [REDACTED] to the scene to assist with the coordination of the vessel's safe/timely tow into the Port of Miami and to attend the vessel upon berthing to mitigate and respond to the potential pollution incident. HMMS SMT maintained liaison with the vessel/RP, USCG Sector Miami, FL DEP, the Port of Miami, the vessel's agent (Shoreline Mutual (Bermuda) Ltd.), NRCES, Response Marine Group (RMP) and other interested parties.⁵

HMMS concurrently developed a comprehensive Incident Action Plan (IAP) and Site Safety Plan (SSP). HMMS also tracked the vessel's position and conducted extensive research on oil spill trajectories, exposures, and resources at risk (including human/health/safety, environmental, and socio-economic). Prior to the vessel's arrival in Miami, Mr. [REDACTED] and Capt. [REDACTED] met with Sector Miami and reviewed the required tow plan, oil-spill contingency plans and other

¹ See USCG Sector Miami Case Report # 494881, opened 3/28/2010.

² See COTP Order, dated 3/29/2010, and signed by CAPT [REDACTED]

³ See letter to LTJG [REDACTED] USCG, from Capt. [REDACTED] TSS, and dated 3/29/2010.

⁴ See email from Mr. [REDACTED] HMMS, to Ms. [REDACTED] NPFC, submitted to the NPFC via email on 1/17/2011.

⁵ See email from Mr. [REDACTED] HMMS, to Ms. [REDACTED] NPFC, submitted to the NPFC via email on 1/17/2011.

operational and logistical issues related to the vessel's tow, transit berthing, husbanding repairs, inspections and testing. Mr. [REDACTED] and Capt. [REDACTED] attended the vessel upon her berthing in Miami, working with the vessel's officers and crew and the USCG to further mitigate the risk of pollution and to ensure response preparedness in the event of a release.⁶

The Claim: On December 21, 2010, HMMS submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$67,370.35 for the services they provided from March 28 through April 28, 2010. This claim is for 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, posted rate schedule, MISLE Case Report # 494881, a copy of NRC Report # 935472, a copy of the Captain of the Port Order 3704822, a copy of Administrative Order # 494881, a copy of the Notice of Federal Interest, a copy of the HMMS Attendance Report, a copy of Resolve Marine Group's notes for this incident, a copy of the Sea-Web Ship overview for the M/V Kalebah, a copy of the NRC Liberty vessel speculations, a copy of the HMMS Incident Action Plan, a copy of the HMMS Site Safety Plan, a copy of the HMMS Material Safety Data Sheets, a copy of the signed contract, copies of receipts and internal email correspondence.

The review of the actual cost invoicing and daily logs 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 FOOSC, 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".

⁶ See email from Mr. [REDACTED] HMMS, to Ms. [REDACTED] NPFC, submitted to the NPFC via email on 1/17/2011.

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].

Under 33 CFR 136.105(e)(8), the claim must include the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.

DETERMINATION OF LOSS:

A. Overview:

1. The initial FOSC coordination has been established via USCG Sector Miami Case Report # 494881.⁷ 33 U.S.C. § 1321(d)(2)(K);
2. The incident involved the report of a substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. Presentment of costs to the RP was made by the claimant, prior to the submission of the claim. 33 U.S.C. § 2701(32);
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2);
5. 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;
6. 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.

⁷ See USCG Sector Miami Case Report # 494881, opened 3/28/2010.

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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable. 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).

On that basis, the Claims Manager hereby determines that, of the \$67,370.35 claimed, the claimant has incurred \$65,983.31 of uncompensated removal costs. The NPFC has determined that the following costs denied are not compensable under OPA⁸

1. 4/3/10— personnel time for [REDACTED] in the amount of \$881.60 for not OPA compensable activity – see spreadsheet for details;
2. Miscellaneous costs for Mr. [REDACTED] - \$55.44 in telecom (internet) costs – no evidence associated with the removal action – see spreadsheet for details.

The Claims Manager hereby determines that the claimant incurred \$65,983.31 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 #M10015-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from March 28 through April 28, 2010.

C. Determined Amount: \$65,983.31

The NPFC hereby determines that the OSLTF will pay \$65,983.31 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #M10015-0001. These costs 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. The NPFC denies \$1387.04 in claimed costs, as these are not OPA compensable

Claim Supervisor: [REDACTED]
Date of Supervisor's review: 3/1/11
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

⁸ All denied costs are further broken down in the NPFC Audit for M10015-0001, attached as an enclosure to this determination.