

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/04/2011
Claim Number : N08057-0103
Claimant : St. Bernard Parish
Type of Claimant : Local Government
Type of Claim : Public Services
Claim Manager : [REDACTED]
Amount Requested : \$29,205.35

I. Facts

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States. Approximately 282,828 gallons of oil¹ were released into the Mississippi River and the resulting spill response, coordinated by the FOSC Unified Command, initially closed the river to vessel traffic and later, when reopened, managed traffic.

II. Responsible Party

American Commercial Lines LLC (ACL), the Responsible Party (RP), owned the barge at the time of the incident and is a responsible party under the Oil Pollution Act.

III. The Claimant and the Claim

The claimant, St. Bernard Parish Government ("Parish"), is a political subdivision of the State of Louisiana, which, through its divisions and departments, including its Department of Public Works, Water & Sewerage Division, owns and/or operates certain property and facilities, including, water intakes, public works, public water system, sewer system and others.

The Parish, concerned over the safety and health of its citizens, closed its water intakes on the Mississippi River. It claims its sustained damages involve costs of providing increased or additional public services both during and after the DM 932 oil spill. These activities included laboratory testing fees, as well as man-hours expended for the emergency response to the oil spill and for the preservation of life and property (specifically, oil flowing downriver from the spill came in contact with-- and exposed the water intakes of-- the Parish's system). The Parish, for the protection of health, safety and welfare of its citizens, incurred laboratory testing costs totaling **\$24,810.00** for tests performed between July 23, 2008 and August 6, 2008 as a direct result of this incident. Additionally, the cost of the man-hours for Parish employees expended for the emergency response to the oil spill totals **\$4,395.35**.

On July 18, 2011, the NPFC received an increased government public service claim from the St. Bernard Parish Government. The Parish has provided time cards and daily accountings of personnel labor charged for time associated with its actions.

This claim also consists of copies of: the cover letter to the NPFC from Mr. [REDACTED] the OSLTF Claim Form; the letter to Worley Catastrophe from Mr. [REDACTED] two affidavits signed by Colonel [REDACTED] (dated 7/15/2011 and 9/01/2011, respectively); the Pace

¹ See House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008.

Analytical invoices for this incident (#s 20086169, 20086258, and 20086441); the possible witness list for this incident; and internal email correspondence.

IV. 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].

Under 33 CFR 136.237 a claim for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil may be presented only by a State or a political subdivision of a State incurring the costs.

In addition to the requirements of Subparts A and B of this part, under 33 CFR 136.239, a claimant must establish:

- (a) The nature of the specific public services provided and the need for those services;
- (b) That the services occurred during or after removal activities;
- (c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and
- (d) The net cost for the services and the methods used to compute those costs.

Under 33 CFR 136.241, the amount of compensation allowable is the net cost of the increased or additional service provided by the State or political subdivision.

Under 33 U.S.C. § 2702 (b)(2)(F) damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State.

V. DETERMINATION OF LOSS:

A. Overview:

1. 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.
2. In accordance with 33 CFR § 136.105(e)(12), the claimant certified no suit has been filed in court for the claimed uncompensated removal costs.
3. The claim was submitted within the three year statute of limitations. 33 U.S.C. § 2712(h)(2)
4. The claimant presented the claim to the responsible party and the claim was not settled by any person by payment within 90 days. The NPFC also notified the RP that the claimant presented its claim to the OSLTF. 33 U.S.C. § 2701(32)
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the increased services provided were, in fact, for the health and safety of the public, were a direct result of the oil spill and were indeed reasonable and allowable under OPA and 33 CFR § 136.239 (a-d).

B. Analysis

When asked for Additional Information, the Parish provided an affidavit signed by Colonel [REDACTED] in his affidavit, he confirmed the following:²

1. The Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) Regional Coordination Center requested and received a mobile command. The Parish provided personnel for meeting the manning needs of the Incident Command (IC) and to operate the St. Bernard Parish Emergency Operations Center located within the Government Complex in St. Bernard Parish. As a result of the oil spill, the Emergency Operations Center had to be activated and the personnel hours expended coordinating emergency response operations.
2. The Parish took immediate emergency response measures to protect the water purification system within the Parish to prevent unnecessary contamination and ensure the health and safety of the water supply. The Water and Sewer Department began tracking the levels of reserves that were available from the storage tanks placed strategically throughout the Parish and monitoring the hourly consumption rates to determine if other measures needed to be implemented to ensure that the water pressure did not fall below a level that would compromise the entire water distribution system. This was not routinely performed because, without the contamination in the water, the water purification system would not cease operation for extended periods. In addition to conducting hourly monitoring of usage and availability, the Parish issued notices to residents implementing water use restrictions for irrigation and landscaping. It had to perform non-routine filling of reserve storage tanks by the water purification system during specific periods in which no extraction operations of the damaged barge on the river were being conducted or visible oil sheen on the surface present. This allowed the system to be shut off during the extraction process to ensure non-contamination of the system. As a result of the oil spill, tracking, maintaining and distribution of water from storage tanks to ensure water pressure and consumption did not create health risks was necessitated.
3. The Parish requested and received containment boom and had it placed at the intake location to mitigate the potential of contamination at the point of extraction for the water purification system. This process—as well as the monitoring of it-- was not performed during the normal course of business or during normal operating hours. As a result of the Barge sinking and lodging itself against the Crescent City Connection Bridge, the removal of the barge from the water became complicated. This prolonged the incident, which made the tracking of the available treated water and the monitoring of the source to prevent contamination even more critical. In addition, the Parish required constant testing of the water at the source during hours of extraction and after purification to ensure no contamination had occurred and were able to validate these results should this be required. This testing and the time required to draw the samples were not part of routine business and were conducted outside of normal business hours. As the extraction process proceeded, large amounts of oil would become dislodged from within the tanker and appear downstream on the surface. When these were spotted by the Coast Guard, the Parish Liaisons would then notify the on-scene water monitors for visual confirmation and shut down of the water purification process if necessary. This again required the

² See Affidavit given by Colonel [REDACTED] dated 9/01/2011 and Pace Analytical Invoices 20086169, 20086258, and 20086441, all submitted to the NPFC by the claimant on 9/16/2011.

stationing of personnel at the appropriate locations to ensure positive communication and control of the water in-take system which is not part of routine operation.

The NPFC reviewed all documentation provided. In its review, and using the Dysart affidavit, the personnel pay registers for the claimed parish employees and the Pace Analytical invoices, it confirmed that:

1. Both the IC and emergency operations centers were necessary.
2. The additional personnel hours were necessary to mitigate the damage caused by the spill
3. The in-take system was inside the affected are, and that actions taken were, as claimed, a result of the spill.
4. Testing was necessary in order to maintain proper chemical levels in the waters in and around the in-take system.

As such, the claims manager has determined that costs claimed for these actions are reasonable, and are compensable under OPA.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$29,205.35 as full compensation for the reimbursable costs incurred by the claimant and submitted to the NPFC under claim# N08057-0103. All costs deemed compensable are for charges incurred during the DM 932 oil spill and are compensable public service costs, payable by the OSLTF as presented by the claimant.

VI. AMOUNT:

Claim Supervisor: 

Date of Supervisor's review: 10/4/11

Supervisor Action: OFFER APPROVED

Supervisor's Comments: