

CLAIM SUMMARY / DETERMINATION FORM

Date : 7/18/2011
Claim Number : S10003-0001
Claimant : WA State Department of Ecology
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$27,668.10

FACTS:

- 1. Oil Spill Incident:** The United States Coast Guard (USCG) reported that on November 10, 2009, at approximately 0300 hours local time, Sector Seattle received a report of the partially submerged 65-foot P/C Angel Rae in the Duwamish River at Harbor Island Marina in Seattle, WA. The Duwamish River is a navigable waterway of the United States. The USCG pollution investigation revealed that the vessel contained an estimated 100 gallons of diesel fuel and was actively discharging from the fuel vents. With the help of the State of Washington Department of Ecology (ECY), the vessel owner, Mr. [REDACTED] (the named Responsible Party (RP)) hired a contractor to raise the vessel and remove the fuel. During salvage operations, Mr. [REDACTED] discovered that his insurance would not cover vessel salvage. A Federal project was then opened (S10003). USCG Sector Puget Sound and the ECY worked with the Port of Seattle to remove the vessel from the waterway via crane and barge; monitoring the clean up and vessel removal operations until completion.
- 2. Description of removal actions performed:** The claimant, ECY, arrived on-scene at approximately 0325 hours local time. After consulting with both the USCG Sector Puget Sound and the RP, it contracted out Global Diving and Salvage (GDS) to conduct cleanup and removal activities. GDS removed approximately 100 gallons from the P/C Angel Rae and 65 gallons from the water, eventually raising the vessel out of the Duwamish River. The vessel was moved south to SeaTac Marine, where it was lifted out of the water and placed on blocks. The ECY is requesting reimbursement for personnel costs and contracting costs (for GDS) associated with this incident.
- 3. The Claim:** On July 8, 2011, WA State Department of Ecology (ECY) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$27,668.10 for the services provided on November 10, 2009. This claim is for removal costs based on the rate schedule in place at the time services were provided.

This claim consists of copies of: USCG Case Report # 481299; NRC Report # 923048; a copy of the ECY Modified Claim Form; copies of the ECY Environmental Report Tracking System forms; copies of the GDS invoicing and rate schedules; a copy of the ICS 201 reports for this incident; copies of correspondence with the USCG FOSC; copies of the USCG vessel documentation for the P/C Angel Rae; a copy of the RP information; a copy of the ECY Investigation Report; a copy of the ECY Notice of Penalty to the RP and subsequent correspondence; copies of the disposal manifests for this incident; copies of maps and photos for this incident; a DVD of the incident flyovers; 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 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".

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 Sector Puget Sound Case # 481299.¹ 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
4. 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.
5. 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.
6. The Responsible Party was notified but, to date, the NPFC has received no response. 33 U.S.C. § 2701(32).

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 National Contingency Plan (NCP) or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager hereby determines that the claimant did in fact incur \$27,668.10 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 #S10003-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on November 10, 2009.

¹ See USCG Sector Puget Sound Case # 481299, dated 11/10/2009.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$27,668.10 as full compensation for the reimbursable removal costs incurred by the ECY and submitted to the NPFC under claim #S10003-0001. 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: \$27,6

Claim Supervisor:

Date of Supervisor's review: *7/19/11*

Supervisor Action: *Approved*

Supervisor's Comments: