

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : M12016-0002
Claimant : Glynn County Fire Department
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$809.21

FACTS:

1. **Oil Spill Incident:** On December 8, 2011, the Fishing Vessel Bossy Betty (F/V Bossy Betty) sank in Brunswick, Georgia, as reported to the National Response Center (NRC) by the United States Coast Guard Station Brunswick (Station Brunswick).¹ It was reported that the vessel sank at Mary Ross Park in the East Brunswick River. The Brunswick River is a navigable waterway of the United States. The United States Coast Guard Marine Safety Unit Savannah (MSU Savannah) responded and conducted a field investigation of the incident. MSU Savannah was also informed by the owners, [REDACTED] that the bilge pump on the vessel became inoperable due to dead batteries, and sank at the City Dock. A light rainbow sheen was observed and it was determined that an estimated 50 gallons were on board.

The Brunswick Police Department (BPD) was called to respond to the incident. The Brunswick Fire Department (BFD) and the Glynn County Fire Department (GCFD) were called to assist with the response. MSU Savannah and the owners were also at the incident site to respond to the clean-up. However, by the next day, December 9, 2011, it was discovered that the owners could not pay for the clean-up. The Federal On-Scene Coordinator Representative (FOSCR), MST2 [REDACTED], informed the owners that they had until December 12, 2011 to provide a clean-up plan, and had until December 14, 2011 to have the clean-up adequately completed.

The FOSCR issued an Administrative Order to Mrs. [REDACTED] reiterating the necessity of the clean-up and the responsibility of the owner. Mrs. [REDACTED] signed the Order that same day. On December 13, 2011, Mrs. [REDACTED] called MSU Savannah to inform that she was not financially able to carry out the clean-up and would not make the imposed December 14, 2011 deadline. She requested that federal funds be used for the clean-up. The incident was federalized under FPN M12016 (as well as CPN C12033 for battery removal) on December 14, 2011.

2. **Description of Removal Activities for this Claim:** On December 8, 2011, the GCFD received a mutual aid call for response at the incident site and deployed a spill container trailer. They worked with the BFD, BPD and the Coast Guard and deployed 200 feet of absorbent boom. GCFD was called again on December 9, 2012 and responded with the spill container unit to deploy an additional 100 feet of boom, 500 absorbent pads, 35 absorbent pillows and 40 absorbent socks.

¹ See NRC Report #997523.

3. ***The Claim:*** On January 23, 2012, the Glynn County Fire Department submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated removal costs in the amount of \$809.21. They are seeking reimbursement of the actual costs of their materials used during incident which consist of \$529.52 for oil absorbent boom; \$67.44 for absorbent pillows; \$129.05 for absorbent pads; and \$83.20 for absorbent socks.

The claim consists of the BPD Crime/Incident Report and two BPD Incident Supplement reports; the BFD Report of the incident; GCFD Captain Hopkins written statement; the GCFD Report of the incident; and Safety Products Incorporated invoices #982578 and #983059. The Claims Manager gathered additional pertinent information from Coast Guard resources.

The National Pollutions Funds Center's (NPFC) review of the actual cost invoices and dailies focused on: (1) whether the actions taken were compensable "disposal 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 are determined to be consistent with the National Contingency Plan (NCP) or directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

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. Findings:

1. Federal On-Scene Coordination was provided by FOSCR MST2 [REDACTED] of the United States Coast Guard MSU Savannah.
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. A Responsible Party was identified. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined which removal costs were incurred for removal actions in accordance with the NCP and whether the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205. The Claims Manager also identified denied costs and the grounds for denial.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as "Compensation Allowable" under 33 CFR § 136.205.

B. Analysis:

The NPFC Case Manager has 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, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the costs claimed are payable as presented. The Claimant produced two separate invoices from Safety Products Inc. for the replacement of materials used in this response and as confirmed by the FOSC as being consistent with the NCP. The Claimant has also demonstrated the costs claimed are uncompensated and as such, the Claims Manager hereby determines that the Claimant did in fact incur \$809.21 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 #M12016-0002.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on December 8, 2011. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$809.21 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number M12016-0002 for removal costs. 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 Claimant.

AMOUNT: \$809.21

Claim Supervisor:

Date of Supervisor's review: 7/5/12

Supervisor Action: *Approved*

Supervisor's Comments: