

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/13/2009
Claim Number : 909119-001
Claimant : South Carolina Department of Health and Environmental Control
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$3832.46

FACTS:

1. ***Oil Spill Incident:*** The South Carolina Department of Health and Environmental Control (SC DHEC), reports that an overturned tractor trailer released approximately 40 gallons of diesel fuel between storm drains into a median located at I-26 Mile Marker 73.¹ The diesel fuel discharged approximately 60 feet from the downgrade drain which leads to Cannons Creek², which leads to Parr Reservoir, which ultimately feeds into Broad River, all navigable waterways of the US. Because of its proximity to the drain, the oil posed a substantial threat to navigable waterways.

The incident was reported to the National Response Center (NRC) on September 11, 2008 at approximately 04:41 am ET via report # 883424 by Mr. [REDACTED] with SC DHEC. The report described the incident as a release of materials resulting from ruptured saddle tanks due to an overturned tractor trailer.³ At the time of the spill, it was raining, remained overcast later in the day. SC DHEC contracted out the clean-up of this spill, as the Responsible Party could not show proof of insurance.

2. ***Description of removal actions performed:*** The claimant, SC DHEC, hired NuWay Environmental Services, Inc. (NuWay) to assess and clean up the spill site. NuWay determined that a backhoe and a roll-off box would be needed in order to excavate and containerize the affected soil. They removed 6.12 tons of contaminated soil in the roll-off. Backfill was later brought in and placed in the excavated area.⁴
3. ***The Claim:*** On September 15, 2009, South Carolina Department of Health and Environmental Control (SC DHEC) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$3,832.46 for the services provided. This claim is for removal 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, contracted rate schedule, copies of the Disposal of Non-Hazardous Waste Manifests, NRC report #

¹See, SC DHEC Incident Report # 200806252, opened on 9/11/2008 and Claim submission forms, submitted by SC DHEC to the NPFC on 9/15/2009

² See, Email from Mr. [REDACTED] NPFC, dated 10/6/2009

³ See, NRC report # 883424 dated September 11, 2008

⁴ See Claim submission forms, submitted by SC DHEC to the NPFC on 9/15/2009

883424, SC DHEC Incident Report # 200806252, NuWay correspondence letters to SC DHEC, photographs 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 FOSC, 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 a signed statement by USEPA dated February 19, 2009.
2. The incident involved the report of a 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 on time.
5. Responsible Party was found, but was unable to provide proof of insurance.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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 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 NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$3,832.46 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 #909119-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on September 11, 2008. 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 hereby determines that the OSLTF will pay \$3,832.46 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 909119-001. 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: \$3832.46

Claim Supervisor: 

Date of Supervisor's review: *10/15/09*

Supervisor Action: *Approved*

Supervisor's Comments: