

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/13/2011
Claim Number	: 911010-0001
Claimant	: County of Dauphin Emergency Management Agency
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$16,496.17

FACTS:

On October 19, 2010, the Dauphin County Emergency Management Agency (DCEMA) received a call concerning a mystery oil spill in the Susquehanna River, located in Dauphin County, Pennsylvania, a navigable waterway of the US. Dauphin County Emergency Management Agency notified the NRC while conducting initial response. Harrisburg Fire Department (HFD) requested a DCEMA representative to command the response. The area was searched but the source of the spill could not be found.

Pennsylvania Department of Environmental Protection (PADEP) was the State On Scene Coordinator (SOSC) for this incident and Mr. [REDACTED] provided guidance to the Harrisburg Fire Department as they performed response actions deploying boom in order to mitigate any effects from the incident. PADEP's inspection report comments dated October 19, 2010, stated a sheen was seen on the river at several locations by Dauphin County Hazmat patrol boats. PADEP further reported that at the southernmost location, a petroleum sheen was noticed and the area of McClay and Front Streets had an odor of heating oil/diesel fuel. The odor was reported to be intermittently strong and weak. The patrol boat did not notice any petroleum contamination along the river bank north of the intersection of Emerald and Front Streets. Contamination was only noticed on the Eastern Shore of the Susquehanna River.

Dauphin County Hazmat Teams deployed booms at three locations: (1) The intersection of McClay and Front Street; (2) Beneath the Market Street Bridge; and (3) Beneath the PA Turnpike Bridge.

THE CLAIM:

On November 15, 2010, the County of Dauphin Emergency Management Agency presented a removal cost claim to the National Pollution Funds Center (NPFC) for their uncompensated removal costs associated with this incident in the amount of \$16,496.17.

The claim consisted of the National Response Center (NRC) report, chronology report from the claimant, itemization of costs, PADEP Inspection Report Comments, media reports, pricing schedule for services billed, and PADEP's Emergency Response Form ICS 201-2. It is important to note that the Claimant was advised by PADEP once the response was concluded, that the boom could be discarded as residual waste.

REQUEST FOR RECONSIDERATION:

On December 7, 2010, the NPFC issued its initial determination for this claim. The NPFC denied the claim on the premise that the Claimant failed to perform proper disposal (by way of manifest) and was therefore a violation of the National Contingency

Plan (NCP). On January 25, 2011, the Claimant made an official request for reconsideration via email to [REDACTED] NPFC. The Claimant provided a detailed request for reconsideration along with a letter dated January 24, 2011, from the Federal On Scene Coordinator (FOSC), Mr. [REDACTED] of the United States Environmental Protection Agency (USEPA) Region III. The FOSC confirmed that the response actions were appropriate and consistent with the NCP as well as the disposal was performed in accordance with state regulations since the NCP, ACP, and RCP do not specifically describe disposal requirements, therefore the FOSC affirms that the disposal was in fact in accordance with 25 PA Code § 299 which requires the person or municipality that generates residual waste as a result of a spill or emergency to notify the Pennsylvania Department of Environmental Protection (PADEP) prior to the disposal of residual waste.

Mr. [REDACTED] Chairman, Dauphin County, Local Emergency Planning Committee (LEPC), provided more detailed information in a January 25, 2011, letter to the NPFC. The letter explained that the County's current operating practices were consistent with the residual waste approval code 503 (oil-containing waste absorbent, rags, etc.) because the booms were fuel-contaminated cleanup products. Thus, they are categorized as "residual waste" rather than "hazardous waste." Pursuant to 25 PA Code § 299.218, Storage and Transportation of Residual Waste, storage may be at the site of the emergency, at a permitted processing or disposal facility or at a site approved by the Department (PADEP).

In this case PADEP was notified and approved the dumpster located at HFD Station 2 as an emergency storage location for the oil-contaminated boom. The boom was placed in this dumpster and then transported to the Harrisburg Resource Recovery Facility (Harrisburg Incinerator), which is permitted to accept this type of residual waste. Pursuant to 25 PA Code § 287, Residual Waste Management General Provisions, and 25 PA Code § 299, the residual waste was not required to be manifested. A January 24, 2011, letter from Gregory Ham, EPA FOSC, notes that the residual waste was burned at the Harrisburg Incinerator.

With this additional information and requirements under the PA Code, the NPFC determines that the placement of the boom in the approved dumpster and subsequent transport to the Harrisburg Incinerator for incineration were in accordance with the state regulations and policies of the PADEP and therefore in accordance with the NCP.

DETERMINATION OF LOSS:

A. Overview:

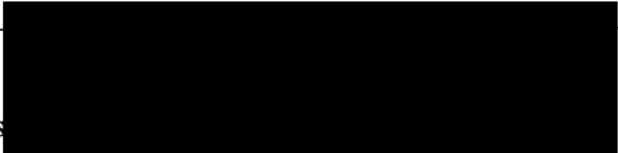
1. FOSC coordination has been provided for this claim (after the fact) via a letter from Mr. [REDACTED] USEPA FOSC, dated January 24, 2011.
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted within the six year statute of limitations.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and the applicable law and governing regulations.

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 NPFC has determined that the costs incurred were reasonable and necessary in order to mitigate the affects of the incident. The costs were billed in accordance with the rate schedule in place at the time the services were rendered and upon reconsideration; the NPFC has determined the disposal was performed in accordance with state regulations and PADEP policy therefore consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay **\$16,496.17** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911010-0001. 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.

Claim Supervisor 

Date of Supervisor's Review: **2/14/11**

Supervisor Action: ***Offer on reconsideration approved***

Supervisor's Comments: