

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/14/2009
Claim Number : 909116-001
Claimant : South Carolina Department of Health and Environmental Control
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$2182.65

FACTS:

1. **Oil Spill Incident:** The South Carolina Department of Health and Environmental Control (SC DHEC), reports that on October 23, 2007, household garbage and 11 one-gallon containers of used oil were discovered abandoned. Some of these containers were ruptured and discharged both on the Dye Road bridge—which had storm drains—and an intermittently dry creek bed, which led to McFadden Branch Creek, a navigable waterway of the US. Because it was raining on the day of the spill, and because this creek bed was within 1.5 miles of McFadden Creek, the oil spill posed a serious threat.¹

The incident was reported to the National Response Center (NRC) on October 25, 2007 at approximately 13:44 pm ET via report # 852677 by Mr. [REDACTED] with SC DHEC. The report described the incident as sheen in an unnamed creek.² SC DHEC responded on-scene on 10/24/2007 due to a complaint from the owner of the land where the drum was deposited. Mr. [REDACTED] arrived and noted that several of the containers had ruptured and the used oil was released into the creek.³

It is important to note that Ms. [REDACTED] is identified as the potential responsible party. The NPFC issued an RP Notification letter to Ms. Sundeen and to date, no response has been received.

2. **Description of removal actions performed:** The claimant, SC DHEC, hired out Advanced Environmental Options (AEO), who arrived on October 27, 2007, to assess and clean up the spill site. SC DHEC had already placed absorbent pads in the puddles that had formed during the rain. AEO replaced the absorbent pads and also removed the contaminated soil in a 6X6 foot square area. Both the contaminated soil and the soiled sorbent pads were containerized in six 55-gallon drums and disposed.⁴

3. **The Claim:** On October 24, 2007, 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

¹ See, SC DHEC Incident Report # 200706455, opened on 10/24/2007, Claim submission forms, submitted by SC DHEC to the NPFC on 9/15/2009 and email from Mr. [REDACTED] NPFC, dated 10/13/2009

² See, NRC report # 852677 dated 10/25/2007

³ See, SC DHEC Incident Report # 200706455, dated 10/24/2007

⁴ See Claim submission forms, submitted by SC DHEC to the NPFC on 9/15/2009 and emails from Mr. [REDACTED] [REDACTED], dated 10/06/2009 and 10/08/2009, and Mr. [REDACTED], dated 10/13/2009, to Ms. [REDACTED] NPFC

\$2182.65 for the services provided from October 23, 2007 through October 24, 2007. 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, a copy of the Disposal of Non-Hazardous Waste Manifests, NRC report # 852677, SC DHEC Incident Report # 200706455, written correspondence from AEO, 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 SC DHEC Incident Report Number 200706455.⁵
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. The Responsible Party has been contacted by the NPFC but to date, there has been no response.
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.

⁵ See SC DHEC Incident Report # 200706455, opened on 10/24/2007, submitted with the Claim

The Claims Manager confirmed that the claimant did in fact perform a site assessment with EPA OSC on February 19, 2009. 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 \$3176.40 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 #909116-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of February 25 through February 26, 2009. 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 \$2182.65 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 909116-001. 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: \$2182.65

Claim Supervisor: Donna Heiberg

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

Supervisor Action:

Approved

Supervisor's Comments: