

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/3/2010
Claim Number	: 910044-001
Claimant	: HEPACO, Inc
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$11,922.09

### **FACTS:**

**1. Oil Spill Incident:** On July 19, 2008, the National Response Center (NRC) received a report of a sheen from an unknown source on the Cooper River that had been discovered on July 18, 2008. The incident was reported to the NRC via report # 877802.<sup>1</sup> On that same day, The United States Coast Guard Sector Charleston Pollution Investigators responded to a report of a sunken vessel in Moncks Corner, South Carolina. The vessel, *Freelander III*, sank at the Strawberry Pier in the Cooper River in Moncks Corner, discharging three gallons of diesel fuel, which created a sheen. The Cooper River is a navigable waterway of the United States.

Initially, after several failed attempts by the Coast Guard to contact the vessel owner, the Federal On-Scene Coordinator Representative (FOSCR), MSTC ██████████, then decided to federalize the clean up. HEPACO, the claimant, was called by the Coast Guard to do the clean up. However, upon his arrival to the incident site, the owner, ██████████, took responsibility for the clean up and signed a contract with the claimant for the clean up. Therefore, the federalized project was cancelled by the FOSCR.

**2. Description of removal actions:** HEPACO provided immediate response and cleanup of the spill by placing boom around the vessel. Mr. S ██████ informed the FOSCR that he would lift the vessel from the water the next morning. Claimant removed the boom on July 22, 2008 after confirmation that the vessel was afloat and the discharge was secure.

**3. The Claim:** On December 31, 2009, the Claimant submitted a removal cost claim in the amount of \$11,922.09 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated response costs. The claim consists of the July 19, 2008 signed Blanket Rapid Response Services Agreement, incident billing summary, dailies, photographs, invoices of work performed and supplies used during the clean up.

### **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).

<sup>1</sup> See NRC Report #877802 dated July 19, 2008.

"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 Federal On-Scene Coordination was provided by MSTC [REDACTED] of Coast Guard Sector Charleston.
2. The incident involved 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 NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

**B. Analysis:**

The NPFC Claims 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 claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on July 19, 2008. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by Claimant. The NPFC confirmed the rates charged were in accordance with the rate schedule in place at the time the services were rendered and that the FOSCR has confirmed that the actions taken were reasonable, necessary and consistent with the NCP.

**C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$11,922.09 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 910044-001.

**AMOUNT: \$11,922.09**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review:

Supervisor Action: