

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/02/2010
Claim Number	: 910063-001
Claimant	: HEPACO, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$13,892.45

FACTS:

- 1. Oil Spill Incident:*** The South Carolina Department of Health and Environmental Control (SC DHEC),¹ reports that on January 26, 2008, approximately 40-50 gallons of diesel fuel spilled due to a valve failure in the piping of an emergency generator. The fuel spilled into a storm drain and ultimately ended up in the Reedy River, a navigable waterway of the US.

The incident was reported to the National Response Center (NRC) on January 26, 2008 at approximately 09:13 hours ET via report # 860670 by Mrs ██████████ (né ██████████), with SC DHEC.² The report described the incident as sheen in the Reedy River. Mr. ██████████, SC DHEC, responded on-scene to the incident. The City of Greenville's emergency generator was temporarily relocated due to a demolition that was going to take place at the City Hall. The 40-50 gallon diesel fuel spill occurred due to a valve failure in the piping of the emergency generator. The company performing the demolition work, Continental Engines (the Responsible Party (RP)) was using water to spray down the building next to the City Hall to keep the dust down, per the requirements set forth by the City of Greenville. The water and diesel fuel mixture spilled into the storm drain behind the Greenville Peace Center that led directly to the Reedy River. The Greenville Fire Department contained and controlled the spill until the claimant, HEPACO, Inc. (HEPACO), hired by the RP, had arrived on-scene. City of Greenville officials were also on-scene for the initial response and for the duration of the spill clean-up and removal activities.³

- 2. Description of removal actions performed:*** The claimant, HEPACO, was hired out by the RP, arriving in-scene on January 26, 2008, to assess and clean up the spill site. Mr. ██████████, HEPACO Supervisor, met with Mr. ██████████ Continental Engines (RP), and Mr. ██████████, SC DHEC, to discuss the level of response. After the initial discussions and site assessment, HEPACO deployed boom surrounding the affected area. The initial absorbent boom placed by the Greenville Fire Department was replaced with new boom. HEPACO crews used leaf blowers to corral the diesel fuel and contaminated debris into a smaller area to allow them to remove it from the river. HEPACO also used absorbent boom and pads to collect the fuel off the top of the water.⁴

¹ See SC DHEC Incident Report # 200800517, dated 1/28/2008

² See NRC report # 860670 dated 1/26/2008

³ See SC DHEC Incident Report # 200800517, dated 1/28/2008

⁴ See HEPACO Project Summary for Project # 8439005, submitted by HEPACO to the NPFC on 1/21/2010

HEPACO crews went to the generator room of the Continental Engines facility to flush out the contaminated storm water lines using a vacuum truck. The lines were flushed using a hot water pressure washer. The vacuum truck was set up at a man-hole access point just above the outfall into the Reedy River. When the work was completed, Mr. [REDACTED] was brought on-scene and he approved the work activities. HEPACO crews returned to the spill site on Monday, January 28, 2008, to collect the river boom and contaminated absorbent pads. The river boom was decontaminated and the contaminated absorbent pads were placed into four 55-gallon drums for proper disposal. New absorbent boom was placed around the storm water outfall pipe, being removed after the next significant rainfall.⁵

- 3. *The Claim:*** On January 21, 2010, HEPACO, Inc. submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$13,892.45 for the services provided on both January 26 and January 28, 2008. 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, a copy of NRC report # 860670, a copy of SC DHEC Incident Report # 200800517, a copy of the Blanket Rapid Response Services Agreement, a copy of the HEPACO Project Summary for Project # 8439005, a copy of the HEPACO Certificate of Insurance, 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

⁵ See HEPACO Project Summary for Project # 8439005, submitted by HEPACO to the NPFC on 1/21/2010

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 NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the National Contingency Plan (NCP) for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.

The State OSC coordination has been established via SC DHEC Incident Report Number 200800517.⁶

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 FOOSC, to be consistent with the NCP or directed by the FOOSC, 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 \$13,892.45 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 #910063-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on January 26 and January 28, 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 \$13,892.45 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910063-001. 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: \$13,892.45

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *2/2/10*

⁶ See SC DHEC Incident Report # 200800517, dated 1/28/2008

Supervisor Action: *Approved*

Supervisor's Comments: