

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/19/2010
Claim Number	: 910069-001
Claimant	: Hepaco, Incorporated
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$11,699.79

FACTS:

1. Oil Spill Incident:

On 17 June 2009, the claimant, HEPACO, Inc. received a call from the Responsible Party, Mr. ██████████ the owner and operator of J's Trucking to respond to a diesel spill at the intersection of Old River Road and Francis Marion Road in Florence, South Carolina. The incident was the result of a tractor/trailer rollover where approximately 75 gallons of diesel fuel spilled onto the roadway and into a ditch. The ditch empties into Willow Creek, Jeffries Creek, which enters the system downstream to Claussen Branch and eventually into the Pee Dee River, a navigable waterway of the United States.

2. Description of removal actions:

In responding to the incident, ██████████, HEPACO's Emergency Response Project Manager, mobilized an emergency response team to the site. HEPACO's supervisor met with ██████████ ██████████ with the South Carolina DHEC to discuss clean up procedures. Mr. ██████████ signed HEPACO's Blanket Rapid Response Agreement.

HEPACO set up vacuum operations to skim off the product off the water and began placing absorbent pads and boom in the ditch. Once the tractor/trailer was removed the crew members continued clean up collecting spent absorbent pads and boom and placed it into drums. The crew members were allowed limited duties until the wrecker service reloaded the truck with trees and removed it from the area. Once the tractor trailer was removed, the crew members continued clean up collecting spent absorbent pads and absorbent boom and placed it into drums.

The crew placed additional boom into the ditch left it there for a few days to absorb any residual product. The site was secured and demobilized. The equipment was cleaned and re-stocked.

On 25 June 2009 HEPACO returned to the site to remove the absorbent boom. On that day, they collected the snare and absorbent boom from the ditch and placed it into drums. A total of six drums were collected for proper disposal.

3. The Claim:

HEPACO entered into a written contract with Mr. ██████████ for their services of responding to and cleaning up the oil that discharged into the ditch. A signed copy of that contract is included in the claims submission. The claimant asserts that costs incurred in response to this incident totaled \$11,699.79. HEPACO submitted the invoices to Mr. S. ██████████ for payment under the terms of the contract. Evidence in the claims submission indicates that Mr. ██████████ submitted these invoices

to his insurance company for payment under the terms of an insurance policy. The insurance company failed to pay Mr. [REDACTED] under the terms of that policy and Mr. [REDACTED] did not pay HEPACO under the terms of the contract he signed with them.

The claimant made presentment to the RP as required under the provisions of OPA. The NPFC received the claim on or about 20 February 2010. The NPFC notified the claimant of receipt of the claim and also sent notification to the RP that the NPFC had received a claim for these costs. After reviewing the submission the claims manager requested evidence of whether the Federal On Scene Coordinator (FOSC) was on scene and if not whether they had received after the fact coordination with the FOSC. The NPFC was informed that the FOSC was not present at the time of the incident, nor was the incident reported to the National Response Center (NRC). The NPFC contacted the State DHEC for further clarification on the actions taken at the time of the incident. They informed that the incident was reported to their office at the time of the incident. They further informed that it was not within their standard operating procedure to report a spill of this size to the NRC or the FOSC. The claims manager also made requests for additional information and clarification of documentation submitted from claimant, both of which were received.

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 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 National Contingency Plan (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,” and is consistent with the provisions of 33 U.S.C. Section 2701(b)(1)(B)¹
2. The incident involved the discharge of “oil” and substantial threat 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 determined that the majority of the 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 to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The facts of the incident indicate that the discharge of diesel occurred into ditches alongside the road that contained water. In order to determine whether those ditches posed a substantial threat to a navigable water, the Claims Manager conducted a search of Google Maps which indicated that Claussen’s Branch was slightly south of the intersection of Old River Road and Francis Marion Road, where the incident occurred. The map indicated that Claussen’s Branch led directly to a larger navigable waterway, the Pee Dee River, as asserted by the claimant in its claims submission. The claimant informed that the Pee Dee River was approximately five (5) miles from the location of the incident (discharge). Based on the location of the waterway and its proximity to the location of the accident it is reasonable to believe that a discharge of oil into these ditches could pose a substantial threat to this navigable waterway. The Claims Manager validated the costs incurred and determined that the majority of them were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

Although the claimant’s submission asserts that it incurred costs in the amount of \$11,699.74, the NPFC has only been able to account for \$11,292.31 of costs incurred. Of those costs only \$11,112.32 have been determined to be compensable as uncompensated removal costs. \$180.00 of the costs are being denied because they exceed the claimants published rates. The remaining \$227.48 of the costs are being denied because they are undocumented and unsubstantiated by the documentation provided by the claimant.

¹ Delegation of Authority from COMDT letter 5402 of 19 March 1992

AMOUNT: \$11,112.32

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *10/19/10*

Supervisor Action: *Approved*

Supervisor's Comments: