

## 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	: Gina Strange
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. John Sumpter 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, Bill Hyatt, HEPACO's Emergency Response Project Manager, mobilized an emergency response team to the site. HEPACO's supervisor met with John Sumpter and Jason Lambert with the South Carolina DHEC to discuss clean up procedures. Mr. Sumpter 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. Sumpter 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. Sumpter for payment under the terms of the contract. Evidence in the claims submission indicates that Mr. Sumpter submitted these invoices

to his insurance company for payment under the terms of an insurance policy. The insurance company failed to pay Mr. Sumpter under the terms of that policy and Mr. Sumpter 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)<sup>1</sup>
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.

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<sup>1</sup> Delegation of Authority from COMDT letter 5402 of 19 March 1992

**AMOUNT: \$11,112.32**

Claim Supervisor: *Donna Hellberg*

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

Supervisor Action: *Approved*

Supervisor's Comments:

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 2 [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
10/19/2010

VIA EMAIL: [REDACTED]@hepaco.com

Hepaco, Incorporated  
ATTN: Amber Heintz  
2711 Burch Drive  
Charlotte, NC 28269

Re: Claim Number 910069-001

Dear Ms. Heintz:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$11,112.32 is full compensation for OPA claim number 910069-001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at [www.ccr.gov](http://www.ccr.gov). Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at [REDACTED]

Sincerely,

Gina Strange  
Claims Manager

ENCL: Claim Summary Determination Form  
Acceptance/Release Form  
Excel spreadsheet

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

Claim Number: 910069-001	Claimant Name: Hepaco, Incorporated 2711 Burch Drive Charlotte, NC 28269
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I, the undersigned, ACCEPT the determination of \$11,112.32 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number