CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912048-0001
Claimant	: Rhino Services, LLC
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Amount Requested	: $26,251.79

INCIDENT FACTS:

At about 11:15am on December 30, 2011, a tanker truck owned by Commercial Waste Management was hauling used cooking oil when it rolled over on the highway and spilled about 4,000 gallons of the oil onto the road. The cooking oil went into a storm drain and affected a designated wetland. Rhino Services, LLC (Rhino or Claimant) responded and provided cleanup services for the highway and wetlands. Rhino applied absorbents and neutralizers on the road, and booms at the storm drain outfall and in the wetland area. Because of the location and time of the accident, Rhino collected the contaminated absorbents and debris from the road, then left the site and returned the next morning to perform remediation. EPA Region 4 sent Jordan Garrard to oversee the response.

CLAIMANT AND CLAIM:

Claimant is the Oil Spill Response Organization (OSRO) that was hired to contain and remediate the spilled oil at the incident site. During a phone conversation on February 18, 2012, Commercial Waste Management, the responsible party for this incident, informed Rhino that it could not pay the costs presented. Rhino seeks reimbursement of it uncompensated removal costs for the services it provided in response to the spill.

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:

A. Overview:

1. EPA FOSC Jordan Garrard oversaw the response.
2. The incident **did not** involve the report of a discharge or substantial threat 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 within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The claim was properly presented to the identified responsible party. 33 U.S.C. § 2713
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the incident is not an OPA incident.

B. ***Analysis:***

The Claims Manager reviewed the documentation provided by the Claimant and the FOSC in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether an OPA-incident gave rise to the claim (i.e. whether there was a discharge or substantial threat of the discharge of oil into a navigable water of the U.S.) (2) whether the actions taken were compensable "removal actions" under OPA and its regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

Claimant provided the following documentation to support its claim:

1. Optional OSLTF Claim form with photocopied signature and one with an original signature.
2. National Response Center report
3. Spill Response Rate Schedule
4. Waste Manifest
5. Cowart Industrial Services work order for 12/31/11.
6. Insurance letter denying coverage
7. Copy of claim letter to RP
8. Invoice #11-741

9. Spill Response Worksheet 23110
10. Rhino Daily Work Order 23347
11. Invoice #11-742
12. Rhino Daily Work Order 20342
13. Spill Response Worksheet 20342
14. Accident Clean-up summary
15. Georgia Environmental Protection Division Release and Remediation Record
16. Rhino Communications Ledger
17. CD/R with 113 photographs
18. Invoices from the subcontractor, Cowart Industrial Services, LLC
19. The waste manifest signed by the receiver at the disposal facility
20. Cowart Industrial Services, LLC's rate sheet

NPFC finds that the Claimant's evidence does not demonstrate that the oil discharged or substantially threatened to discharge into the navigable waters of the U.S. The oil discharged onto the road and some drained into the nearby wetland area. The wetland area drains through a pipe under the highway and into an unnamed creek. In the photos, the only creek shown had no signs of the oil in it. The unnamed creek leads to the North Fork of Peachtree Creek about one mile away from the spill site.[1] Peachtree Creek is a major tributary to the nearest navigable waterway of the U.S., which is the Chattahoochee River.[2] For the oil to reach the Chattahoochee River via Peachtree Creek and the unnamed creek from the spill site, it would have to travel well over 12 miles.[3] There is no evidence demonstrating that the navigable waterway is in any way substantially threatened by this oil spill.

The NPFC, as well as the Claimant, contacted the EPA FOSC Jordan Garrard in an attempt to obtain information from him showing that the navigable water had been affected by the oil or that it was substantially threatened by it. Mr. Garrard merely identified the connections between these different areas, but has not convinced the NPFC that the spill presented any discharge or substantial threat of discharge of oil into the navigable waters of the U.S. given the large distance the oil would have had to travel once it reached the wetland area and if it were able to leave the wetland area and reach the creeks and River (of which there is no evidence).[4] Claimant's own statement is that only 1000 square feet of the outfall area in the wetland was affected.[5]

Based on the foregoing, the NPFC has determined that the oil spill did not discharge or substantially threaten to discharge into a navigable water of the U.S. and thus the spill is not an incident under the Oil Pollution Act of 1990 from which claims can be paid. Therefore, the claim for uncompensated costs related to the response to this spill is denied.

Claim Supervisor: ***Donna Hellberg***

Date of Supervisor's review: ***6/5/12***

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[1] May 29, 2012 email from EPA OSC Jordan Garrard
[2] May 29, 2012 email from EPA OSC Jordan Garrard
[3] Estimated using Google Maps
[4] It has not been made clear how much oil reached the wetland.
[5] Optional OSLTF Claim Form

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

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: [redacted]

5890
6/5/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Rhino Services, LLC
ATTN: Lonnie Blackstone
19 Johnston Circle
Palmetto, GA 30268

RE: Claim Number: 912048-0001

Dear Mr. Blackstone:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number 912048-0001 involving the spill of used cooking oil by Commercial Waste Management. Compensation is denied for the reasons stated in the attached Claim Summary/Determination Form.

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 claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing 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 claim number 912048-0001.

Mail reconsideration requests to:

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

Sincerely,

Eric Bunin
Claims Manager
U.S. Coast Guard