

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/12/2011
Claim Number	: 910064-001
Claimant	: Hepaco, Incorporated
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$26,700.58

FACTS:

Oil Spill Incident: On the evening of July 31, 2007, Hepaco received a call from Mr. ██████████ of East Port Marina and Resort, LLC requesting Hepaco respond to a gasoline spill on the water in Luka, MS. Mr. ██████████ advised Hepaco that the fuel line running from the above ground storage tank to the boat dock gas pumps had formed a leak and released product into the lake. Upon arriving on site, Mr. ██████████ of Hepaco met with local and state EMA personnel to discuss the cleanup of the product. Mr. ██████████ observed that the dock areas had been partially contained by the local fire department. Mr. ██████████ and Mr. ██████████ agreed on the process of removal and disposal of the product from the waters around the marina.

Description of Removal Activities: On July 31, 2007, Mr. ██████████ of Hepaco received a call from Mr. ██████████ of East Port Marina and Resort, LLC. At 7:20pm, Mr. ██████████ spoke with Hepaco personnel to mobilize all necessary personnel and equipment to respond to East Port Marina. At around 8:15pm, Mr. ██████████ met with Mr. ██████████ and at around 9:50pm, Mr. ██████████ met with local and state officials from the EMA and Department of Environmental Quality (DEQ) along with the fire department that had responded to the scene. Around 10:10pm, Mr. ██████████ made a site walk around A, B, and C docks where the contamination had occurred and was temporarily contained by some disposable boom and fire hose that the fire department deployed. Mr. ██████████ observed the largest amount of oil contamination around dock B and between docks B and C. At approximately 11:45pm, Hepaco response personnel arrived on site with equipment and a boom trailer. Around 11:50pm, Hepaco performed a site inspection in order to determine a plan of action.

On August 1, 2007, Hepaco met with Mr. ██████████ and advised of their plan of action for response to the spill. Personnel deployed boom via boat in order to completely contain the oil for the night. Later in the day, Hepaco had a three man crew start on dock A beginning dipping and removing product from the water while a two man crew in a boat removed product while pulling boom. By mid morning, dock A cleanup was complete and the boom was returned back to the boat ramp.

A two man crew on dock C began to remove product while a two man crew in a boat went out of the channel to the river in order to check along the shore lines for possible product or debris. Later in the day, MDEQ asked Mr. ██████████ to remove padding from around the damaged coupling where the leak had originated from in order to inspect and see if it was still leaking. Once the padding was removed, a small leak was detected. Hepaco began to apply plug and dyke to the hole in the coupling to temporarily stop the leak until a company can arrive to replace with a new coupling and hose.

By mid afternoon, dock C cleanup was complete and all booms were pulled in tight around dock B in order to begin removal of product from the dock B area. Hepaco used a five man crew to perform cleanup around dock B. Cleanup continued throughout the day and in the evening when operations were stopping for the day, MDEQ requested that boom be left until Southern Company had completed the repairs to the fuel line in the event another failure.

On August 2, 2007, dock B cleanup was completed and Southern Company was on site in order to pressure test the repaired line. Once Southern Company was done, Hepaco began removing all the boom from the water. On August 28, 2007, time associated with finalizing invoices etc. and closeout of the job was completed.

The Claim: On March 6, 2010, Hepaco submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of the uncompensated removal costs in the total amount of \$46,700.58 for the services provided to East Port Marina in Luka, MS from July 31, 2007 through August 2, 2007, and August 28, 2007. This claim is for removal costs based on the claimant's emergency response rate schedule in place at the time services were provided. It is important to note that the Responsible Party paid Hepaco a partial payment of \$20,000.00 via check dated November 2, 2007 although no further payments were ever made to the Claimant by the Responsible Party.

The claim consists of Hepaco invoicing, dailies, disposal manifests, contracted rate schedule, photographs, information pertaining to the State on Scene Coordinator, Mr. [REDACTED] [REDACTED] of Mississippi Department of Environmental Quality (MDEQ) along with his contact information, and a Hepaco signed Agreement to Conduct Emergency Response Services.

Upon receipt of the claim, the NPFC sent an RP Notification Letter to East Port Marina to the attention of Mr. [REDACTED] [REDACTED]. On March 6, 2010, Mr. [REDACTED] [REDACTED] sent a letter to the NPFC stating he is aware of the balance owed to Hepaco although he has not paid the balance due to a lawsuit he has pending against the former owners of the Marina for reimbursement of the expenses. Mr. [REDACTED] goes on to say that if his civil action is favorable, he intends on paying Hepaco the balance of the bill and if it unfavorable, he will make every effort to work out a payment plan with Hepaco.

On December 27, 2010, the NPFC contacted Mr. [REDACTED] [REDACTED] via email to inquire on his current situation although to date he has not responded to the NPFC.

The review of the actual cost invoicing and dailies focused on: (1) whether the actions taken were compensable "removable 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 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 NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the discharge and continuing substantial threat of 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 statute of limitations for removal costs.
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 “removable 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 and reasonable.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$26,684.58 of uncompensated removal costs and that the amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # 910064-001. The NPFC is denying \$16.00 for which the NPFC has been unable to identify such costs within the Hepaco invoices. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of July 31, 2007, through August 2, 2007, and August 28, 2007. 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 \$26,684.58 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 910064-001. 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 present by the Claimant.

AMOUNT: \$26,684.58

Claim Supervisor: 

Date of Supervisor's review: *3/14/11*

Supervisor Action: *Approved*

Supervisor's Comments: