

CLAIM SUMMARY / DETERMINATION FORM

Date : 5/3/2011
Claim Number : 911048-0001
Claimant : South Carolina DHEC
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$2,610.00

FACTS:

- 1. Oil Spill Incident:** On October 21, 2009, the South Carolina Department of Health and Environmental Control (SC DHEC) received notification of oil discharging from Harbin Brothers Motor City (Harbin Brothers), an automotive repair business. The business is located at 704 Poinsett Highway in Greenville, South Carolina. The drain inside the repair bay leads directly to a drainage ditch and storm drain located in front of the business. The storm drain empties into an unnamed tributary of the Reedy River in Greenville, South Carolina, a navigable waterway of the United States. The National Response Center (NRC) was called and informed that approximately 30 gallons of oil had been discovered in the storm drain.¹ The State on Scene Coordinators (SOSC), [REDACTED] and [REDACTED] of SC DHEC, witnessed the discharge near the river and requested the activation of the State clean-up contract to remove the oil before it reached the river. Harbin Brothers, the responsible party, could not be reached, after several attempts in a five hour time span, to respond to the discharge. The SCDHEC Emergency Response Manager, [REDACTED] coordinated the clean-up activities with [REDACTED] the Federal on Scene Coordinator (FOSC), of the United States Environmental Protection Agency (USEPA). The claimant called Advanced Environmental Options, Incorporated (AEO) for response and cleanup of the spill.
- 2. Description of Removal Activities for this Claim:** AEO deployed a project manager and three field technicians; an ER trailer; and a vacuum truck. The contractor used ten bags of Quikleen absorbents for the clean-up and used a 55 gallon drum for disposal. The RP arrived at the incident during the clean-up efforts and resumed the clean-up. AEO's cleanup, as noted by the Claimant, was consistent with the National Contingency Plan.
- 3. The Claim:** On April 6, 2011, The State of South Carolina submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$2,610.00 for the services provided by AEO. 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 in the claim file.

This claim consists of copies of the invoicing, State of South Carolina Incident Report summary, photographs taken by the Claimant, disposal manifests, a March 22, 2010 letter to Harbin Brothers from the Claimant requesting payment for clean-up by AEO, the FOSC Coordination statement dated October 21, 2009, and map of incident site.

¹ See NRC Report #921213.

On April 13, 2011, the National Pollution Funds Center (NPFC) mailed an RP Notification Letter to Harbin Brothers. The Letter was returned as undeliverable by the United States Post Services on April 27, 2011.

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 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 FOSC coordination was provided by Mr. [REDACTED] of the United States Environmental Protection Agency (USEPA) - Region 4 via a signed statement dated October 21, 2009.
2. The incident involved the 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 removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has reviewed the actual cost documents 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 FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on October 21, 2009. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by Claimant. The NPFC confirmed the rates charged were in accordance with

the rate schedule in place at the time the services were rendered and that the FOSC has confirmed that the actions taken were reasonable, necessary and consistent with the NCP.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$2,610.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 911048-0001.

AMOUNT: \$2,610.00

Claim Supervisor:

Date of Supervisor's review: *5/4/11*

Supervisor Action: *Approved*

Supervisor's Comments: