

CLAIM SUMMARY / DETERMINATION FORM

Date : 5/3/2011
Claim Number : 911049-0001
Claimant : South Carolina DHEC
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$880.50

FACTS:

- 1. Oil Spill Incident:** On October 7, 2009, a 55 gallon metal drum was discovered about eight feet from the edge of Old Highway 601 (Wintertide Drive) in Kershaw, South Carolina. The drum was found on its side, with the bung removed. It appeared that no contents had leaked from the drum, but it was within 100 to 200 yards of the Lynches River, a navigable waterway of the United States. Per the National Response Center (NRC) report, the incident was described as "a potential release" and the actual amount of the unknown oil in the drum was 54 gallons.¹ It was later determined that the contents of the drum was used motor oil. The State On-Scene Coordinators (SOSC), [REDACTED] and [REDACTED] of South Carolina Department of Environmental Control (SC DHEC), witnessed the drum on the side of the highway. Due to the close proximity of the drum to the Lynches River, the Claimant, SC DHEC, wanted the drum removed. The SC DHEC 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 SC DHEC called in their state spill clean-up contractor, Advanced Environmental Options, Incorporated (AEO). Their scope of work was to remove the drum from the roadside and remove any potentially contaminated soil from the incident site.
- 2. Description of Removal Activities for this Claim:** AEO removed the drum from the roadside and removed any potentially contaminated soil from the site to prevent the contents from reaching the river. AEO handled the disposal, as well. The clean-up was consistent with the National Contingency Plan, as noted by the Claimant.

To date, the responsible party remains unknown.
- 3. The Claim:** On April 6, 2011, the Claimant submitted a removal cost claim in the amount of \$880.50 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated State removal costs 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.

¹ See NRC Report #920008.

The claim consists of the SC DHEC Field Report, waste manifest, a map of the incident site, photographs taken by the Claimant, and AEO invoices.

APPLICABLE LAW:

"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].

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 FOOSC coordination was provided by [REDACTED] of the United States Environmental Protection Agency (USEPA) – Region 4 via a signed statement dated October 8, 2009.
2. The incident involved the 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.
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 FOOSC, 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 7, 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 FOOSC 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 \$880.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 911049-0001.

AMOUNT: \$880.50

Claim Supervisor [REDACTED]

Date of Supervisor’s review: *5/4/11*

Supervisor Action: *Approved*

Supervisor’s Comments: