

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 911052-0001
Claimant	: Rhino Services, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$13,867.75

I. FACTS:

A. Oil Spill Incident:

On March 17, 2011 a mystery spill of oil was reported to the Duty Officer at the US Environmental Protection Agency (Region IV). The Coweta County Fire Department (Georgia) requested assistance to clean-up approximately 200 gallons of oil that was found in a retention pond on undeveloped residential subdivision property referred to as Concord Court. The nearest street address to the location site is 5629 Gordon Road, Senoia, GA. The oil from an unknown source flowed across a paved road into a retention pond that overflows into an unnamed tributary of the Flint River. The Flint River is a navigable waterway of the United States.

B. FOSC Coordination:

The acting Federal on-Scene Coordinator (FOSC) was [REDACTED] of the U.S. Environmental Protection Agency (EPA), Region IV. Mr. [REDACTED] drove to the site of the spill and met with personnel from the Coweta County Fire Department (CCFD) who also responded to the spill. Mr. [REDACTED] conferred with Rhino Services that arrived mid-day on March 17, 2011 in order to remove and dispose of the discharged oil.

C. Responsible Party:

The EPA POLREP indicated that the property owner was notified of the spill; however, no responsible party has been designated.

D. Claim:

Rhino Services, LLC seeks compensation from the Oil Spill Liability Trust Fund (FUND) for their uncompensated removal costs in the amount of \$13,867.75.

E. Description of Removal Activities for this Claim:

On March 17, 2011 Rhino Services responded to the oil spill. Six employees arrived at the spill site to collect and remove the oil. To check if oil drums were buried on the property, Rhino Services was also instructed by the FOSC to dig six test holes near the spill site. No oil drums were found and no source for the discharged oil was discovered. On March 18, 2011, four Rhino employees returned to the spill site to remove residual oil from the storm drains, catch basin and retention pond. All contaminated soil and materials were placed in lined roll-off containers and transported to Pine Ridge Landfill for disposal. Erosion control measures were taken before leaving the site. Rhino Services submitted a signed manifest from the landfill operator.

II. 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 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].

III. DETERMINATION OF LOSS:

The NPFC Claims Manager has reviewed all documentation submitted with the claim and determined that some of the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

The Claims Manager reviewed Rhino Service's two invoices and two Work Orders for services performed on March 17 and 18, 2011. The Claims Manager focused on: (1) whether the actions taken were compensable "disposal actions" under OPA and the claims regulations at 33 CFR 136 (e.g. actions to prevent, minimize, mitigate the effects of the incident); and (2) whether the costs were incurred as a result of these actions; and (3) whether the actions taken were consistent with the National Contingency Plan (NCP) or, directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

The Claims Manager reviewed Rhino Service's invoices for equipment and materials by way of its daily Work Order and found that the items generally matched the Claimant's current rate schedule.¹ One exception noted was that the rate sheet indicated the daily rate of \$500 for a Cat 312 Excavator. The Claimant invoiced the excavator at \$225 per day. The NPFC finds the invoiced amount of \$225 per day to be the compensable rate. Additionally, the Claims Manager emailed the FOSC requesting that he review the Work Orders and provide affirmation that the equipment was indeed necessary for the response. Mr. [REDACTED] replied by email verifying that the equipment and personnel listed were used for the incident. He also initialed the Work Orders. The NPFC finds that the other equipment listed on the Work Orders and invoices match the Claimant's rate sheet and are compensable.

The Claims Manager compared labor costs on the invoices to their corresponding daily Work Orders and found that the labor invoiced matches the labor rates established on the Claimant's rate sheet. However, there was one exception noted. Three employees on invoice 11-127 do not appear on the daily Work Order #20368. The labor charges for these three employees who are not listed on the daily Work Order (#20368) for March 17, 2011 are as follows:

Director of Emergency Response invoiced (#11-127) at \$123 per day...	\$125.00
Disposal Manager invoiced (#11-127) 2 hours at \$85 per hour.....	\$170.00
Admin Asst./ Clerical invoice (#11-127) 2 hours at \$37 per hour.....	\$ 74.00
Total denied amount.....	\$369.00 ²

The NPFC denies \$396.00 because these costs were not supported by the daily Work Orders therefore denied.

The NPFC has determined \$13,498.75 as full compensation for the reimbursable removal costs incurred by the Claimant.

IV. AMOUNT: \$13,498.75

Claim Supervisor: [REDACTED]
Date of Supervisor's Review: 6/21/11
Supervisor Action: <i>Approved</i>
Supervisor Comments:

¹ See claimant's Spill Response Pricing, (Revised 01/25/11)
² See attached spreadsheet for Invoice 11-127 compared to Work Order