

CLAIM SUMMARY / DETERMINATION FORM

Date : 12/14/2010
Claim Number : E10621-0001
Claimant : Livingston Parish Department of Homeland Security and Emergency Preparedness
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$162,973.26

FACTS:

- 1. Oil Spill Incident:** On March 30, 2010, at approximately 1400 Hours, a fire broke out in a chemical warehouse operated by Coco Resources, Inc. and located at 30172 Eden Church Road in Denham Springs, LA. The fire spread to encompass the entire 17,000-square foot area, as well as the adjoining storage. Explosions in and out of the warehouse caused heavy smoke in the air. The fire also caused run-off into drainage ditches leading to Grays and Dixon Creeks, both of which flow into Amite River, a navigable waterway of the US.¹ The incident was reported to the National Response Center on March 30, 2010 at 1558 hours local time.²

Oil was identified (through lab analysis) in both the run-off and creek waters, mostly as diesel, lube, greases and other unadulterated oils that flowed off-site when their containers were breeched or melted during the fire. It was visible on the water, and measured about 3 inches thick at some points. Additionally, soil in the ditches and watershed was contaminated with the oil products. Hundreds of drums, totes and containers of diesel/oil/grease were damaged within the warehouse during the fire. As they became unstable (and leakage occurred), temporary containment of the products was implemented. Around 100 additional drums that had minimal damage were separated and moved away from the site.³

The United States Environmental Protection Agency Region 6 (EPA) directed the cleanup and removal activities for this incident.

- 2. Description of removal actions performed:** The claimant, Livingston Parish Department of Homeland Security and Emergency Preparedness (LPOEP) submitted a claim on behalf of the local responders for which it paid costs pertaining to this spill: Hammond Fire Department, Fire Protection District #5 and the Eastside Volunteer Fire Department.

The fire departments responded to the fire, but also built dams and berms to divert the run-off. Personnel, loaders, trucks, fuel and dirt were used to construct the dams. These were built in the affected creeks, as well as in the drainage ditches leading to the creeks. Inside the warehouse, it was determined, after testing, that a good portion of the

¹ See IAP for FPN E10621, written by Mr. [REDACTED] EPA, and submitted to the NPFC by Mr. [REDACTED] via email on 11/02/2010

² See NRC Report # 935709, dated 3/30/2010

³ See IAP for FPN E10621, written by Mr. [REDACTED] EPA, and submitted to the NPFC by Mr. [REDACTED] via email on 11/02/2010

remaining drums and run-off was oil. The contents of the frac tanks and roll-offs were separated between CERCLA and OPA accordingly.⁴

Additionally, LPOEP supplied the EPA with hoses from hydrants to the site. These hoses fed the fire truck that was committed to the response, including the cleanup phase. Water was used not only for suppressing additional small fires, but also for decontamination. LPOEP manned crews for the initial weeks of the response and then turned it over to the EPA's care, as it had certified firefighters on its crew. Hoses, tarps, a radio and turn-out gear were used and damaged as a result. While this fire did involve other hazardous chemicals, the EPA did confirm that there were hoses that were heavily oiled and discarded as such.⁵

- 3. The Claim:** On September 28, 2010, LPOEP submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$162,973.26 for services provided March 30, 2010 through May 5, 2010. This claim is for removal costs based on the rate schedules in place by the local fire department units at the time services were provided. A copy of the vendor rate schedules are provided in the claim file.

This claim consists of copies of the invoicing and associated dailies, a copy of NRC Case # 935709, a copy of the EPA Incident Action Plan, copies of EPA POLREPS #1 and #2, a copy of the CAD Monitor, a copy of the Facility Report from 2/28/2010, copies of receipts, photographs and internal email correspondence.

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 for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into navigable waters or adjoining shorelines is liable for removal costs and damages that result from such incident. U.S.C. § 2702(b). . 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

⁴ See email from Mr. [REDACTED] EPA, to Ms. [REDACTED] NPFC, dated 11/02/2010

⁵ See email from Mr. [REDACTED] EPA, to Ms. [REDACTED] NPFC, dated 11/02/2010

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". 33 U.S.C. § 2701(31).

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. Findings of Fact:

1. The FOSC coordination has been established via US EPA Region 6.⁶
2. The incident involved the report of a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23).
3. The discharge of oil posed a substantial threat into or upon the navigable waters.
4. 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.
5. In accordance with 33 CFR § 136.101(2), the claim was presented within six years after the date of completion of all removal actions for the incident.

⁶ See IAP and POLREPS 1 and 2, filled out by Mr. [REDACTED] US EPA, and email from Mr. [REDACTED] US EPA, to Ms. [REDACTED] NPFC, dated 11/02/2010

6. Presentment of costs to the RP was made by the claimant, prior to the submission of the claim. The NPFC also made notification of claimed costs to the RP, to which the RP denied an ability to pay.

B. Analysis:

NPFC Claims Division 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 "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, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.


The Claims Manager confirmed that the claimant performed a site assessment with EPA FOSC on March 30, 2010. The Claims Manager validated the costs incurred and determined what costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that, of the \$162,973.26 claimed, the claimant incurred \$159,180.23 of uncompensated removal costs.⁷ The denied amounts are due to mathematical errors in the invoicing and/or costs that are not substantiated by the claimant; namely \$3,167.00 from the claimant's "Expenditures", \$295.59 from the "Salaries", and \$1.50 from the "Unit Expenditures" (see Enclosure 1 – NPFC costs spreadsheet).⁸ The NPFC has determined that \$159,180.23 is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim # E10621-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from March 30, 2010 through May 5, 2010. 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 \$159,180.23 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E10621-0001. 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 presented by the Claimant.

AMOUNT: \$159,180.23

Claim Supervisor: 

Date of Supervisor's review: 12/29/10

Supervisor Action: *Approved*

⁷ All denied costs are due to mathematical errors in invoicing and or presentment of costs; namely, \$3167.00 from "Expenditures," \$295.59 from "Salaries" and \$1.50 from "Unit Expenditures."

⁸ See NPFC excel spreadsheet of costs identified as Enclosure 1.