

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E11620-0001
Claimant : Triad Emergency Response, LLC
Type of Claimant : Corporate (US)
Type of Claim : Removal Costs
Claim Manager : XXXXXXXXXX
Amount Requested : \$198,591.07

FACTS:

On May 29, 2011, Southwest Rice Mill employees were cleaning a ditch when the employee operating an excavator struck and broke a valve off of a tank located alongside the Acadiana rail spur, adjacent to the ditch. The oil in the tank drained into Bayou Blanc, a navigable water of the U.S. The responsible party, the owner of the tank, is currently unknown.

Claimant and Claim

The claimant, Triad Emergency Response, LLC (Triad) is an oil spill response company contracted by the mill owner to conduct removal actions. The Authorization to Proceed was executed by both parties on May 30, 2011; however the mill owner dismissed Triad on June 1 and refused to pay for the actions taken. The EPA FOSC verified by letter dated June 8, 2011 that Triad's actions were necessary, appropriate and consistent with the National Contingency Plan.

Triad submitted its invoices to the mill owner on May 29, 2011 – June 1, 2011, assuming that he was the responsible party. The mill owner denied the claim. Because the owner of the tank has not been identified, i.e., there is no known responsible party at this time,¹ the Claimant submitted its claim to the National Pollution Funds Center (NPFC) for reimbursement of uncompensated removal costs to the NPFC on June 10, 2011. These costs encompass services rendered by Triad from May 29, 2011 through June 1, 2011.

APPLICABLE LAW:

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC § 2712(a)(4) and 2713 of OPA 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 (NCP) 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 such an incident." 33 USC § 2701(31).

The Claims Regulations at 33 CFR § 136.105(b) provide that each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. Claimant bears the burden of providing all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim. 33 CFR 136.105(a). In addition, the claimant bears the burden to prove the removal actions were reasonable in response to the

¹ If a responsible party is subsequently identified the NPFC will bill that RP for the costs paid from the Oil Spill Liability Trust Fund for this claim.

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 [Federal On-Scene Coordinator] 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].

Claims for uncompensated removal costs must be presented to the Fund within six years after the date of completion of all removal actions for that incident. 33 USC § 2712(h).

DETERMINATION OF LOSS:

A. Overview:

1. The removal actions were coordinated with the FOSC as evidenced by the letter from the EPA FOSC dated June 8, 2011.
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 certified that it has filed no suit in court for the claimed uncompensated removal costs.
4. The claim was submitted within six years after the date of completion of all removal actions for this incident.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that the most 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 excepted or denied costs are itemized in the attached spreadsheet.

B. Analysis:

Claimant states that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of May 29 through June 1, 2011. The Claimant represents that all costs claimed are compensable removal costs, payable by the OSLTF.

The NPFC Claims Manager reviewed the Claimant’s actual cost invoices/dailies, rate schedule and receipts to confirm that the Claimant had incurred the costs claimed, that the costs were uncompensated, and that the costs were adequately documented and reasonable. Because the services and materials/equipment listed on the daily sheets were provided pursuant to a contract with specified rates and the FOSC verified the necessity of the costs, NPFC further finds that

Triad has satisfied its burden of showing that the amounts claimed were reasonable and necessary.²

The Claims Manager confirmed that the removal costs were: for compensable "removal actions" under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) incurred as a result of these actions; and (3) incurred for removal actions determined by the FOSC to be consistent with the NCP or directed by the FOSC.

As detailed in the attached spreadsheet, the NPFC has approved \$191,460.80 in OPA-compensable costs. The Claims Manager found that most of the costs were compensable. Some of the costs were reduced or denied for several reasons, including lack of documentation such as receipts/proof of payment, denial if not supported by receipt or existence on rate sheet, adjustment to match rate schedule, and adjustment to match subcontractor invoice. The total denied is \$7,130.27. On this basis, the NPFC Claims Manager hereby determines that the Claimant did incur \$191,460.80 of uncompensated removal costs that are supported by the record and that this amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under the claim.

AMOUNT:

The NPFC hereby determines that the OSLTF will pay **\$191,460.80** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E11620-0001.

Claim Supervisor:

Date of Supervisor's review: *8/1/11*

Supervisor Action: *Approved*

Supervisor's Comments:

² NPFC policy provides that a written agreement between the responsible party and the cleanup contractor for removal actions evidences that the removal costs and resources incurred pursuant to that agreement are deemed reasonable and compensable.