U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [redacted]
E-mail: [redacted]@uscg.mil
Fax: 703-872-6113

5890
1/10/13

VIA EMAIL: [redacted]@dhec.sc.gov

State of South Carolina
ATTN: Elizabeth Shawanesse
Department of Health and Environmental Control (DHEC)
2600 Bull Street
Columbia, SC 29201

RE: Claim Number: 913007-0001

Dear Ms. Shawanesse:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number 913007-0001 involving a non functioning refrigerated trailer, with thawing turkeys inside, that was left adjacent to the Great Pee Dee River. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number 913007-0001.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[redacted]

Galen Wetzel
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 913007-0001
Claimant	: State of South Carolina
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Galen Wetzel
Amount Requested	: $15,454.27

FACTS:

Oil Spill Incident: On July 25, 2011, The State of South Carolina, Department of Health and Environmental Control (SCDHEC) received an odor complaint associated with a tractor trailer located at TA Travel Center of I-95 exit 164. It was reported that the refrigerated trailer was no longer functioning, causing frozen fowl to thaw. SCDHEC made contact with the responsible party (owner, Mr. Tirrell Anderson) and advised him that the trailer must be removed and contents disposed of at local landfill.

On August 8, 2011,SCDHEC received a call from Carrier Transicold Mid-Atlantic (CTMA) reporting that the referenced trailer was recently removed from the property after an extended period of time, creating significant odor issues (resulting in CTMA sending staff home). When the trailer was removed, by an unknown person, the thawed liquid was spilled at several locations along freight Road, TV Road, Pocket Road and SC Highway 327.

On August 9, 2011, while SDHEC was trying to determine the location of trailer, CTMA reported that they received an anonymous phone call that stated to look along Highway 34 in Marlboro County. When SDHEC investigator told CTMA representative that that was too broad of a description he was told "Pee Dee". The trailer was found along SC Highway 34 under a bridge adjacent to the Great Pee Dee River covered with flies and leaking liquid.

Description of Removal Activities for this Claimant: On August 10, 2011, A&D Environmental Services was contacted by SCDHEC and provided a description of the trailer and location and asked to prepare a cost estimate to offload the turkeys and to transport the waste to a disposal facility. SCDHEC then contracted A&D to proceed with the response.

A&D personnel made preparations and mobilized the necessary equipment for the response on August 11, 2011. Clean-up response activities commenced on August 12, 2011. A&D personnel removed the turkeys and placed them in staged roll-off containers. After the removal of the turkeys from the trailer, the interior of the trailer was then cleaned. Pulverized lime was then spread on the ground by SCDHEC.

A total of three roll-off containers were used for 15.25 tons of solid food waste. This material was disposed of at the Lee County Landfill in Bishopville, SC. A total of 1200 gallons of liquid waste was collected from the clean out of the trailer and disposed of at the Lee County landfill in Camden, SC. The liquid waste consisted of water, turkey residue, and maggots.

The Claim: On October 17, 2012, SCDHEC submitted a removal cost claim to the National Pollution Funds Center (NFPC) seeking reimbursement of their alleged uncompensated removal costs in the amount of $15,454.27.

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. After the fact FOSC coordination was made by U.S. EPA, Mr. Matthew Huyser on March 20,2012.
2. 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.
3. The claim was submitted within the six year statute of limitations for removal costs.
4. The Claimant has failed to demonstrate how the spill posed a substantial threat of discharge into a navigable waterway.

B. Analysis:

NPFC CA 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.

National Response Center Notification was made on March 12, 2012 via report number 1005478. After the fact FOSC Coordination was made on March 20, 2012 which was some seven months after the fact.

The NPFC has determined that the response to this incident has more than one purpose and that any oil spill resulting from the thawed turkey parts is not the primary purpose of the emergency response. The primary purpose of this incident appears to be the removal of a health and/or biological hazard and not an oil removal activity compensable by the OSLTF.

NPFC also determines that there is little evidence that shows how the turkeys, animal fats and oils, posed a substantial threat of discharge into the Big Pee Dee River. The product was contained within its packaging and then inside a container trailer. The 1200 gallons of liquid waste are identified as water, turkey residue and maggots which were all removed from within the trailer. No product was found in the surrounding area and as such, there is no evidence that the contents within the trailer posed a substantial threat of discharge into the navigable waterway.

C. Determined Amount:

Based upon the foregoing, the NPFC denies this claim because the Claimant has failed to demonstrate that the product contained within the trailer posed a substantial threat of discharge into or upon a navigable waterway. It is also important to note

that while the EPA Federal On Scene Coordinator (FOSC) signed that the response was consistent with the NCP, there is no evidence in the record to demonstrate that he was provided information to support a substantial threat of discharge from the trailer into the waterway.

Amount: ***$0.00***

Claim Supervisor: ***Donna Heilberg***

Date of Supervisor's review: ***1/10/13***

Supervisor Action: ***Denial approved***

Supervisor's Comments: