

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail: Myocard.Lombardi@uscg.mil
Fax: 202-493-6937

5890
10/14/2009

Via email: shawanesse@dhec.sc.gov

SC DHEC
Attn: Mrs. Elizabeth Shawanesse
2600 Bull Street
Columbia, SC 29201

Re: Claim Number 909116-001

Dear Mrs. Shawanesse:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$2182.65 is full compensation for OPA claim number 909116-001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.ccr.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at [202-493-6937](tel:202-493-6937).

Signed:

A large black rectangular redaction box covering the signature of the Claims Manager.

Myocard Lombardi
Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

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Claim Number: 909116-001	Claimant Name: SC DHEC ATTN: Mrs. Elizabeth Shawanesse 2600 Bull Street Columbia, SC 29201
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I, the undersigned, ACCEPT the determination of \$2182.65 as full compensation for the claim listed above.

This determination represents full and final release and satisfaction of all removal cost claims under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/14/2009
Claim Number	: 909116-001
Claimant	: South Carolina Department of Health and Environmental Control
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$2182.65

FACTS:

- 1. Oil Spill Incident:** The South Carolina Department of Health and Environmental Control (SC DHEC), reports that on October 23, 2007, household garbage and 11 one-gallon containers of used oil were discovered abandoned. Some of these containers were ruptured and discharged both on the Dye Road bridge—which had storm drains—and an intermittently dry creek bed, which led to McFadden Branch Creek, a navigable waterway of the US. Because it was raining on the day of the spill, and because this creek bed was within 1.5 miles of McFadden Creek, the oil spill posed a serious threat.¹

The incident was reported to the National Response Center (NRC) on October 25, 2007 at approximately 13:44 pm ET via report # 852677 by Mr. Ryan McDaniel, with SC DHEC. The report described the incident as sheen in an unnamed creek.² SC DHEC responded on-scene on 10/24/2007 due to a complaint from the owner of the land where the drum was deposited. Mr. Paul Edinger and Mr. Steven Moseley arrived and noted that several of the containers had ruptured and the used oil was released into the creek.³

It is important to note that Ms. Ashley Sundeen is identified as the potential responsible party. The NPFC issued an RP Notification letter to Ms. Sundeen and to date, no response has been received.

- 2. Description of removal actions performed:** The claimant, SC DHEC, hired out Advanced Environmental Options (AEO), who arrived on October 27, 2007, to assess and clean up the spill site. SC DHEC had already placed absorbent pads in the puddles that had formed during the rain. AEO replaced the absorbent pads and also removed the contaminated soil in a 6X6 foot square area. Both the contaminated soil and the soiled sorbent pads were containerized in six 55-gallon drums and disposed.⁴

- 3. The Claim:** On October 24, 2007, South Carolina Department of Health and Environmental Control (SC DHEC) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of

¹See, SC DHEC Incident Report # 200706455, opened on 10/24/2007, Claim submission forms, submitted by SC DHEC to the NPFC on 9/15/2009 and email from Mr. Keith Lane to Ms. Alyssa Lombardi, NPFC, dated 10/13/2009

² See, NRC report # 852677 dated 10/25/2007

³ See, SC DHEC Incident Report # 200706455, dated 10/24/2007

⁴ See Claim submission forms, submitted by SC DHEC to the NPFC on 9/15/2009 and emails from Ms. Elizabeth Shawanese, dated 10/06/2009 and 10/08/2009, and Mr. Steven Moseley, dated 10/13/2009, to Ms. Alyssa Lombardi, NPFC

\$2182.65 for the services provided from October 23, 2007 through October 24, 2007. 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 provided in the claim submission.

This claim consists of copies of the invoicing and associated dailies, contracted rate schedule, a copy of the Disposal of Non-Hazardous Waste Manifests, NRC report # 852677, SC DHEC Incident Report # 200706455, written correspondence from AEO, 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 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. The FOSC coordination has been established via SC DHEC Incident Report Number 200706455.⁵
2. The incident involved the report of a 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 on time.
5. The Responsible Party has been contacted by the NPFC but to date, there has been no response.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

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.

⁵ See SC DHEC Incident Report # 200706455, opened on 10/24/2007, submitted with the Claim

The Claims Manager confirmed that the claimant did in fact perform a site assessment with EPA OSC on February 19, 2009. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$3176.40 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #909116-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of February 25 through February 26, 2009. 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 \$2182.65 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 909116-001. 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: \$2182.65

Claim Supervisor:  *Donna Heiberg*

Date of Supervisor's review: *10/15/09*

Supervisor Action: *Approved*

Supervisor's Comments: