

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

US COAST GUARD STOP  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100  
Staff Symbol: (CA)  
Phone: 202-493-6694  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
5/4/2011

SENT VIA E-MAIL: [REDACTED]@dhec.sc.gov

South Carolina DHEC  
ATTN: Elizabeth Shawanese  
2600 Bull Street  
Columbia, SC 29201

Re: Claim Number 911049-0001

Dear Ms. Shawanese:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$880.50 is full compensation for OPA claim number 911049-0001.

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](http://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 202-493-6694.



[REDACTED]  
Claims Manager

ENCL: Claim Summary/Determination  
Acceptance/Release Form

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  
Staff Symbol: (CA)  
Phone: 202-493-6694  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

Claim Number: 911049-0001	Claimant Name: South Carolina DHEC, ATTN: Elizabeth Shawanesse 2600 Bull Street Columbia, SC 29201
---------------------------	---

I, the undersigned, ACCEPT the determination of \$880.50 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred 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

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/3/2011
Claim Number	: 911049-0001
Claimant	: South Carolina DHEC
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Felita Jackson
Amount Requested	: \$880.50

### **FACTS:**

- 1. Oil Spill Incident:** On October 7, 2009, a 55 gallon metal drum was discovered about eight feet from the edge of Old Highway 601 (Wintertide Drive) in Kershaw, South Carolina. The drum was found on its side, with the bung removed. It appeared that no contents had leaked from the drum, but it was within 100 to 200 yards of the Lynches River, a navigable waterway of the United States. Per the National Response Center (NRC) report, the incident was described as “a potential release” and the actual amount of the unknown oil in the drum was 54 gallons.<sup>1</sup> It was later determined that the contents of the drum was used motor oil. The State On-Scene Coordinators (SOSC), James Rice and Robert Duncan of South Carolina Department of Environmental Control (SC DHEC), witnessed the drum on the side of the highway. Due to the close proximity of the drum to the Lynches River, the Claimant, SC DHEC, wanted the drum removed. The SC DHEC Emergency Response Manager, Paul Lee, coordinated the clean-up activities with Richard Jardine, the Federal on Scene Coordinator (FOOSC), of the United States Environmental Protection Agency (USEPA). The SC DHEC called in their state spill clean-up contractor, Advanced Environmental Options, Incorporated (AEO). Their scope of work was to remove the drum from the roadside and remove any potentially contaminated soil from the incident site.
- 2. Description of Removal Activities for this Claim:** AEO removed the drum from the roadside and removed any potentially contaminated soil from the site to prevent the contents from reaching the river. AEO handled the disposal, as well. The clean-up was consistent with the National Contingency Plan, as noted by the Claimant.

To date, the responsible party remains unknown.
- 3. The Claim:** On April 6, 2011, the Claimant submitted a removal cost claim in the amount of \$880.50 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated State removal costs for the services provided by AEO. 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 in the claim file.

<sup>1</sup> See NRC Report #920008.

The claim consists of the SC DHEC Field Report, waste manifest, a map of the incident site, photographs taken by the Claimant, and AEO invoices.

**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 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. Overview:**

1. The FOSC coordination was provided by Richard Jardine of the United States Environmental Protection Agency (USEPA) – Region 4 via a signed statement dated October 8, 2009.
2. The incident involved the threat of 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 within the six year statute of limitations.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

**B. Analysis:**

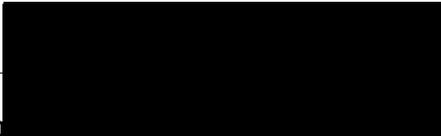
The NPFC Claims Manager has reviewed the actual cost documents to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate 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, and (4) whether the costs were adequately documented and reasonable.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on October 7, 2009. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by Claimant. The NPFC confirmed the rates charged were in accordance with the rate schedule in place at the time the services were rendered and that the FOSC has confirmed that the actions taken were reasonable, necessary and consistent with the NCP.

**C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$880.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 911049-0001.

**AMOUNT: \$880.50**

Claim Supervisor:  *Dennis Rosenberg*

Date of Supervisor’s review: *5/4/11*

Supervisor Action: *Approved*

Supervisor’s Comments: