

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 913070-0001
Claimant	: South Carolina Department of Health and Environmental Control
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$19,235.42

**FACTS:**

- 1. Oil Spill Incident:** The South Carolina Department of Health and Environmental Control (SC DHEC) reports that on February 6, 2013, a log truck and a passenger vehicle collided on a bridge at US 601 and Gatehill Road, in Eastover, SC. The crash caused a fire and a fuel leak that was washed off the bridge during the fire response. The bridge runs over Bates Old River, which is a tributary to the Congaree River, a navigable waterway of the US, as well as a wetlands area of the Congaree Swamp. The incident was reported to the National Response Center (NRC) via Case # 1037739<sup>1</sup> that same day.

The Responsible Party (RP), Mr. [REDACTED], died of a heart attack on-scene, and did not have current insurance at the time of the incident.

- 2. Description of removal actions performed:** The Claimant, SC DHEC, responded to the incident and hired HEPACO for cleanup and removal activities. Once the logs had been removed from the roadway, HEPACO team members used a sweeper to move the absorbent material and debris to a collection point. The material was placed into 55-gallon drums by crew members with hand tools. Absorbent material was again spread on the roadway to remove any remaining fuel, and then disposed of into the drums.

Between February 7 and 8, 2013, boom was placed at four points along the river, wherever standing oil and diesel fuel was found under the bridge. On February 15, 2013, the site was deemed clean and the boom was removed and was disposed of properly.

- 3. The Claim:** On June 13, 2013, SC DHEC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$19,235.42 for the services provided from February 6 through February 5, 2013. 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 file.

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.

<sup>1</sup> See NRC Report # 1037739, dated 2/06/2013.

**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. FOSC Coordination has been established via US EPA Region IV.<sup>2</sup>
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 within the three year statute of limitations. 33 U.S.C. § 2712(h)(1).
5. The RP has been identified, but is deceased. 33 U.S.C. § 2701(32).
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.

The Claims Manager validated the costs incurred and determined what, of these costs, were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from February 6 through February 5, 2013. The claimant represents that the costs it paid are compensable removal costs, payable by the OSLTF as presented by the claimant.

After a review of the file and reports written by both the state and US EPA Region IV personnel on-scene for this incident, the response by SC DHEC appears reasonable and justified to mitigate any further damage the oil may have caused.

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<sup>2</sup> See SC DHEC Concurrence Letter, signed by Mr. [REDACTED], US EPA Region IV, and dated 2/07/2013.


As SC DHEC amended the HEPACO invoices when submitting its claim (from the HEPACO total amount of \$20,915.42 to the claim amount of \$19,235.42) due to contract pricing matters, the amount approved for Insurance costs claimed was adjusted accordingly. Additionally, as the "Reimbursement Terms and Conditions" referenced in the "Fuel Surcharge" section (Exh A, F1) was not provided with the claim, fuel costs could not be determined. A total of \$2,888.25 has been denied (see enclosed Audit of Costs spreadsheet).

On that basis, the Claims Manager hereby determines that the claimant incurred \$16,347.17 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 #913070-0001.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$16,347.17 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 913070-0001. 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. \$2,888.25 in claimed costs are denied.

**AMOUNT: \$16,347.17**

Claim Supervisor 

Date of Supervisor's review: 7/8/13

Supervisor Action: *Approved*

Supervisor's Comments: