

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	914019-0001
<b>Claimant:</b>	SC Department of Health & Environmental Control
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$4,878.19

### **FACTS:**

**Oil Spill Incident:** On 24 Sep 2013, South Carolina Department of Health and Environmental Control (SC DHEC) responded to an incident involving a 1000 gallon diesel fuel storage tank that had been dumped at the intersection of Cosgrove Ave and I-26, Charleston County, SC. Apparently, a truck carrying the storage tank struck a bridge support on the I-26 bridge, knocking the tank onto the side of the road. The owner of the truck fled the scene and remains unknown to the SC DHEC. Approximately 200 hundred gallons of diesel fuel was discharged from the tank into a drainage ditch that drained into a wetland that was contiguous to the Ashley River, a navigable waterway of the United States. SC DHEC notified the CG National Response Center.<sup>1</sup>

**Description of Removal Activities for this Claimant:** Moran Environmental Recovery was hired by SC DHEC to conduct cleanup operations. They removed approximately 1 ton of oil contaminated soil from the drainage ditch and pumped down the remaining diesel fuel from the diesel fuel storage tank. Cleanup was complete on 24 Sep 2013. The oil contaminated soil was properly disposed of at Oakridge Landfill. The oil recovered from the diesel fuel storage tank was properly disposed of at U.S. Water. On 26 Nov 2013, USCG Sector Charleston Federal On-Scene Coordinator signed a statement attesting to the fact that the State's response to the spill was in coordination with the OSC and consistent with the NCP.<sup>2</sup>

**The Claim:** On 17 Jan 2014, SC DHEC presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the total amount of \$5,199.20. However, they couldn't support their removal costs for the disposal of liquid oil waste associated with this response or for the purchase of four 55 gallon drums used for oil contaminated soil storage. On 18 Feb 2014, SC DHEC requested to remove those costs from this claim and voluntarily reduce their sum certain to \$4,878.19.<sup>3</sup>

<sup>1</sup> See NRC Report #1061068 dated 24 Sep 2013

<sup>2</sup> See Sector Charleston FOSC concurrence letter dated 26 Nov 2013

<sup>3</sup> See email from SC DHEC dated 18 Feb 2014

**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].

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 oil spill response actions undertaken by SC DHEC personnel were determined by USCG Sector Charleston FOSC to be consistent with the NCP.<sup>4</sup> 33 U.S.C. 2702 (b)(1)(B) and 2712 (a)(4);
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. 2701 to a tributary of “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 costs;
4. In accordance with 33 U.S.C. 2712(h)(1), the claim was submitted within six year period of limitations for removal costs;
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and the costs for these actions were reasonable and allowable under OPA and 33 CFR 136.205.

#### **B. Analysis:**

NPFC CA reviewed the actual cost invoice 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 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 NPFC has determined that the Claimant’s cost for the disposal of oily waste associated with this response and the purchase of four 55 gallon drums for oil contaminated soil storage could not be supported. As such, the Claimant requested to remove those costs from this claim and reduce their sum certain to \$4,878.19.<sup>5</sup> The remaining costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. It is important to note that while all the disposal costs were not completely supported, the NPFC was able to see disposal manifests that indicated proper disposal at a facility. In addition, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or

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<sup>4</sup> See Sector Charleston FOSC concurrence letter dated 26 Nov 2013

<sup>5</sup> See email from SC DHEC dated 18 Feb 2014



contractual agreements in place at the time of the services were rendered and were determined by the FOSC and determined to be consistent with the NCP.<sup>6</sup>

**AMOUNT:** \$4,878.19

**DETERMINATION:** The NPFC hereby determines that the OSLTF will pay \$4,878.19 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914019-0001. 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 Claimants.

Claim Supervisor:

Date of Supervisor's review: *2/24/2014*

Supervisor Action: *Approved*

Supervisor's Comments:

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<sup>6</sup> See Sector Charleston FOSC concurrence letter dated 26 Nov 2013