

CLAIM SUMMARY / DETERMINATION

Claim Number:	919029-0001
Claimant:	SC Department of Health and Environmental Control
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$2,098.50
Action Taken:	Offer in the amount of \$2,098.50

EXECUTIVE SUMMARY:

On July 11, 2018, a dump truck was involved in a single vehicle accident on I-95 which resulted in the truck overturning and releasing approximately 50 gallons of diesel into a trench that connects to Bees Creek, a navigable waterway of the United States.¹ [REDACTED] of Zelaya Trucking (Responsible Party or “RP”), is the owner of Zelaya Trucking and the operator of the dump truck involved in the incident.²

In accordance with the Oil Pollution Act of 1990, Mr. [REDACTED] is identified as the RP for the truck.³ The South Carolina Department of Health and Environmental Control (“SCDHEC” or “claimant”), was the State On Scene Coordinator (SOSC) for the incident. SCDHEC reported the incident to the United States Environmental Protection Agency (USEPA).⁴ SCDHEC reported the incident to the National Response Center (NRC) on July 13, 2018.⁵

United States EPA in its capacity as the Federal On Scene Coordinator (FOSC), acknowledged that the response actions directed by the SOSC were performed in coordination with the FOSC and were consistent with the National Contingency Plan (NCP).⁶ On July 12, 2018, SCDHEC hired Geological Resources Inc. via their contract dated October 23, 2017.⁷ SCDHEC presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$2,098.50 on July 29, 2019.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$2,098.50 is compensable and offers this amount as full and final compensation of this claim.⁹

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

¹ OSLTF Claim submission letter dated July 29, 2019.

² OSLTF Claim submission letter dated July 29, 2019.

³ Mr. [REDACTED] of Zelaya Trucking is the owner and operator.

⁴ SCDHEC Acknowledgment of Response Actions form dated December 6, 2018.

⁵ National Response Center Incident Report # 1218297 dated July 13, 2018.

⁶ SCDHEC Acknowledgment of Response Actions form dated December 6, 2018.

⁷ SCDHEC Purchase Order # 4600600666.

⁸ OSLTF Claim submission letter dated July 29, 2019.

⁹ 33 CFR 136.115.

On July 11, 2018, a dump truck, owned and operated by Zelaya Trucking, was involved in a single vehicle accident that resulted in the truck overturning and releasing approximately 50 gallons of diesel into a trench that connects to Bees Creek, a navigable waterway of the United States.¹⁰ SCDHEC, in its capacity as the SOSC, took the lead to hire Geological Resources Inc (GRI) and monitored the response actions.¹¹ GRI was hired on July 12, 2018 by SCDHEC to contain the diesel spill in the waterway and the RP contracted Hepaco who handled vacuum truck services for the removal of contaminated liquids.¹²

Responsible Party

Mr. [REDACTED] of Zelaya Trucking is the owner and operator of the truck, and was designated the responsible party (RP) for the oil spill incident.¹³

The NPFC issued a Responsible Party (RP) Notification letter dated August 1, 2019 to Mr. [REDACTED].¹⁴ A Responsible Party Notification letter notifies the owners and/or operators that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

The NPFC used the last known address provided by SCDHEC.¹⁵ US Postal Service confirmed the RP's receipt of the letter on August 15, 2019 via certified mail.¹⁶ To date, the NPFC has not received a response from the RP.

Recovery Operations

SCDHEC hired Geological Resources Inc. On July 12, 2018, Geological Resources Inc. applied sorbent material to contain 50-100 gallons of diesel fuel released from the overturned truck. The RP contracted Hepaco to handle response services.¹⁷

II. CLAIMANT AND RP:

Claims for removal costs or damages may first be presented to the Fund by the Governor of a State for costs that are incurred by the State.¹⁸ SCDHEC reported that there was communication between the SOSC and the RP via telephone on the day of the incident. The SOSC stated he advised the RP that a contractor would be hired and that the RP would be responsible for

¹⁰ OSLTF Claim submission letter dated July 29, 2019.

¹¹ OSLTF Claim submission letter dated July 29, 2019.

¹² SOSC [REDACTED] Notes, page 5 of 12 of the SCDHEC claim submission.

¹³ SOSC [REDACTED] Notes, page 5 of 12 of the SCDHEC claim submission.

¹⁴ NPFC RP Notification Letter dated August 1, 2019.

¹⁵ OSLTF Claim submission letter dated July 29, 2019.

¹⁶ Signed certified mail card 7018 1830 0002 0525 1922 signed by [REDACTED] date stamped August 15, 2019.

¹⁷ SOSC [REDACTED] Notes, page 5 of 12 of the SCDHEC claim submission.

¹⁸ 33 U.S.C. § 2713(b)(1)(c).

payment.¹⁹ Once SCDHEC received the invoice from GRI, they tried to contact the RP although attempts failed so SCDHEC paid the invoice.²⁰

III. CLAIMANT AND NPFC:

Since claims for removal costs or damages may first be presented to the Fund by the Governor of a State for costs that are incurred by the State²¹, the NPFC received a claim for uncompensated removal costs from SCDHEC dated June 29, 2019.²² The claim included the Geological Resources Inc invoice totalling \$2,098.50, proof of payment to the contractor, NRC Report, SOSOC notes page, email communications, contract with GRI, signed statement of response actions between SCDHEC and the FOSC.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²³ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.²⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁵ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.²⁶ An RP's liability is strict, joint, and several.²⁷ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly

¹⁹ August 29, 2019 email between SOSOC and SCDHEC regarding notification to RP that he would be responsible for payment of the contractor hired by SCDHEC.

²⁰ October 22, 2018 email from SCDHEC to SCDHEC regarding inability to reach RP.

²¹ 33 U.S.C. § 2713(b)(1)(c).

²² OSLTF Claim submission letter dated July 29, 2019.

²³ 33 CFR Part 136.

²⁴ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

²⁵ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

²⁶ 33 U.S.C. § 2702(a).

²⁷ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

favoring those responsible for the spills.”²⁸ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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.”²⁹ The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”³⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³² The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.³³

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.³⁴
- (d) That the removal costs were uncompensated and reasonable.³⁵

The amount of compensable removal costs is \$2,098.50.

Upon adjudication of the claim, the NPFC requested several pieces of information from the claimant in support of its submission. The claimant responded and provided the NPFC a copy of the rate schedule pricing for the contractor invoice, a copy of the FOSC coordination statement, and the NPFC obtained specifics on the product spilled and nexus to the navigable waterway.³⁶

The NPFC confirmed that the services provided by the State’s response contractor, Geological Resources, Inc. invoiced its personnel, materials and equipment in accordance with

²⁸ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

²⁹ 33 U.S.C. § 2701(31).

³⁰ 33 U.S.C. § 2701(30).

³¹ See generally, 33 U.S.C. § (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³² 33 CFR Part 136.

³³ 33 CFR 136.105.

³⁴ SCDHEC took the lead on the response effort in its capacity as the State On Scene Coordinator.

³⁵ 33 CFR 136.203; 33 CFR 136.205.

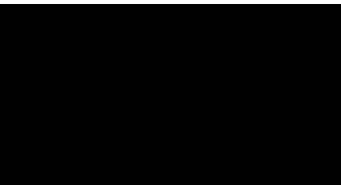
³⁶ August 13, 2019 email from SCDHEC to NPFC with attachments and information.

the established at the time services were rendered. The NPFC confirmed the nexus to the navigable waterway establishing an OPA event and the NPFC obtained confirmation that the FOSC coordinated the response actions with SCDHEC ensuring that the response was determined to be consistent with the National Contingency Plan (NCP). Lastly, the NPFC confirmed that SCDHEC paid the contractor and substantiated that the costs it claimed were uncompensated removal costs.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, SCDHEC’s request for uncompensated removal costs is approved in the amount of \$2,098.50.

This determination is a settlement offer,³⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor	
Date of Supervisor’s review:	<i>8/23/19</i>
Supervisor Action:	<i>Offer Approved</i>
Supervisor’s Comments:	

³⁷ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

³⁸ 33 CFR § 136.115(b).

³⁹ 33 CFR § 136.115(b).