

CLAIM SUMMARY / DETERMINATION

Claim Number:	920012-0001
Claimant:	South Carolina Department of Health and Environmental Control
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)(b) (6)(b) (6)
Amount Requested:	\$12,033.32
Action Taken:	Offer in the amount of \$12,033.32

EXECUTIVE SUMMARY:

On February 1, 2019, the South Carolina Department of Health and Environmental Control (SC DHEC or Claimant) was notified of a discharge of diesel fuel from a saddle tank attached to a truck into a ditch in Georgetown, South Carolina. This spill posed a substantial threat to the Yauhannah Creek; a navigable waterway of the United States.¹ CA Jones Farms (CA Jones Farms or RP) was the owner of both the truck and saddle tank,² and CA Jones Farms was identified as the responsible party (RP)³, as defined by the Oil Pollution Act of 1990.⁴

SC DHEC was dispatched to assist with the cleanup of the oil spill into the ditch.⁵ SC DHEC coordinated with EPA Region 4, who served as the Federal On Scene Coordinator (FOSC) liaison for the spill.⁶ On February 25, 2020, SC DHEC presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$12,033.32.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that the requested amount of \$12,033.32 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On February 1, 2019, a tractor trailer truck attached with a saddle tank drove into a ditch in Georgetown, South Carolina. The spill from the tractor's saddle tank flowed downstream along an unpaved logging road off of State Highway 701 at a location south of Yauhannah Creek; a navigable waterway of the United States. There is a surface water path of 0.41 miles to Yauhannah Creek, and the spilled material posed a substantial threat to the navigable waterway.⁹

¹ National Response Center Incident Report #1236732, dated February 4, 2019.

² SC DHEC claim submission, dated February 24, 2020.

³ National Response Center Incident Report #1236732, dated February 4, 2019.

⁴ 33 U.S.C. § 2701(32).

⁵ SC DHEC Initial Abatement Actions Report, dated March 1, 2019.

⁶ Acknowledgement of Response Actions, signed by EPA Region 4 on February 21, 2020.

⁷ Email from EPA Region 4 to the NPFC, dated March 6, 2020.

⁸ SC DHEC claim submission, dated February 24, 2020.

⁹ Email from EPA Region 4 to the NPFC, dated March 6, 2020.

SC DHEC, in its capacity as the State On Scene Coordinator (SOSC), was dispatched to the scene following their notification of the spill. The SOSC coordinated with EPA Region 4, who served as FOSC liaison for the spill.¹⁰ SC DHEC contracted Geological Resources, Inc. (GRI) to handle cleanup and disposal of the spill.¹¹ SC DHEC assisted with and monitored GRI's cleanup activity.¹²

Responsible Party

An employee of CA Jones Farms was the operator of the tractor trailer truck that drove into the ditch. CA Jones Farms is identified as the owner of the truck and the owner of the saddle tank that discharged oil into the ditch. The South Carolina Department of Health and Environmental Control identified CA Jones Farms as the RP on February 1, 2019.¹³ The NPFC issued a Responsible Party Notification Letter to CA Jones Farms on February 26, 2020.¹⁴ The NPFC has received no notification or response from the RP.

Recovery Operations

On February 4, 2019, GRI was notified by SC DHEC of the oil spill release off of State Highway 701 in Georgetown, South Carolina, and was contracted to assist with cleanup.¹⁵ Hazmat Emergency Response and Remediation, Inc. (HERR) was subcontracted by GRI for contaminated soil excavation purposes. GRI and HERR arrived on-site and began cleanup on February 4, 2019.¹⁶ A mini excavator was used to recover approximately 45.59 tons of affected soil. Three dump trucks were loaded and transported to S&R Farms, LLC, a permitted disposal facility in Fair Bluff, North Carolina for disposal.¹⁷ Three loads of clean backfill were placed in the excavated area and compacted with the excavator. Cleanup operations were completed on February 4, 2019.¹⁸

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁹ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²⁰

SC DHEC stated it submitted its request for compensation to the RP for \$12,033.32 on February 28, 2019.²¹ The RP did not reply and has not settled the claim.

III. CLAIMANT AND NPFC:

¹⁰ Email from EPA Region 4 to the NPFC, dated March 6, 2020.

¹¹ SC DHEC Claim Submission, dated February 24, 2019.

¹² SC DHEC Initial Abatement Actions Report, dated March 1, 2020.

¹³ National Response Center Incident Report #1236732, dated February 4, 2019.

¹⁴ NPFC RP Notification Letter to CA Jones Farms, dated February 26, 2020.

¹⁵ SC DHEC Initial Abatement Actions Report, dated March 1, 2019.

¹⁶ SC DHEC Incident Report #201900482, dated February 4, 2019.

¹⁷ Copies of the non-hazardous waste manifests, dated February 4, 2019.

¹⁸ End Incident Report #1236732, dated February 7, 2019.

¹⁹ 33 U.S.C. § 2701 et seq.

²⁰ 33 CFR 136.103.

²¹ SC DHEC Claim Submission, dated February 24, 2019.

When an RP has not settled a claim after ninety days of receipt, a claimant may elect to present its claim to the NPFC.²² On February 25, 2020, the NPFC received a claim for \$12,033.32 from the SC DHEC, dated February 24, 2020.²³

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁴ 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.²⁵ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁶ 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:

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.”²⁷ 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.”²⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁰ The claimant bears the burden of providing all evidence, information, and

²² 33 CFR 136.103.

²³ SC DHEC claim submission, dated February 24, 2020.

²⁴ 33 CFR Part 136.

²⁵ 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)).

²⁶ 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).

²⁷ 33 U.S.C. § 2701(31).

²⁸ 33 U.S.C. § 2701(30).

²⁹ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁰ 33 CFR Part 136.

documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.³¹

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.³²
- (d) That the removal costs were uncompensated and reasonable.³³

The NPFC analyzed each of these factors and determined that all costs incurred and submitted by SC DHEC herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, SC DHEC's request for uncompensated removal costs is approved in the full amount of \$12,033.32.

This determination is a settlement offer,³⁴ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁵ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁶ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

³¹ 33 CFR 136.105.

³² There was not a FOSC present on-site for this incident. The regional office of the U.S. Environmental Protection Agency which would have been the FOSC for this incident signed an Acknowledgement of Response Actions document, declaring their opinion that actions taken were consistent with the National Contingency Plan. To ensure that SC DHEC met its burden with respect to this factor, the NPFC coordinated with the EPA. The EPA agreed that they had signed the acknowledgement, and after analyzing the spill opined that the actions taken were consistent with the National Contingency Plan. We agree.

³³ 33 CFR 136.203; 33 CFR 136.205.

³⁴ 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).

³⁵ 33 CFR § 136.115(b).

³⁶ 33 CFR § 136.115(b).

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Claim Supervisor: (b) (6)(b) (6)

Date of Supervisor's review: *3/25/2020*

Supervisor Action: *Offer Approved*