

CLAIM SUMMARY / DETERMINATION FORM

Date	: 7/21/2009
Claim Number	: 909091-001
Claimant	: State of South Carolina
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,806.94

FACTS:

- 1. Oil Spill Incident:** On February 26, 2008 a 150 gallon storage tank was found on the side of a dirt road off of the Old Fairfield Highway in Columbia, South Carolina. The tank, containing 50 gallons of oil, fell off a truck and left a track of oil in the soil, and discharged into a nearby ditch that runs into Crane Creek, a tributary of the Congaree River. The Congaree River is a navigable water of the United States. The State on Scene Coordinator (SOSC), [REDACTED] of the South Carolina Department of Health and Environmental Control (SCDHEC), responded and discovered the tank and an oil discharge in the ditch. The SOSC coordinated with [REDACTED], the Federal on Scene Coordinator (FOSC), who then authorized the state to take the lead for the immediate response.

The SOSC hired Nuway Industrial Services, Incorporated (Nuway, formerly Advanced Environmental Options Incorporated) for immediate response and cleanup of the spill. The cleanup, as noted by Claimant, was consistent with the National Contingency Plan.

To date, the responsible party remains unknown.

- 2. The Claim:** On May 12 2009, the Claimant submitted a removal cost claim in the amount of \$4,806.94 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated State response costs. The claim consists of the incident billing summary, invoices, dailies, and proof of payment.

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. The FOSC coordination was provided by [REDACTED] of the United States Environmental Protection Agency (USEPA).
2. The incident involved the substantial 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 on time.
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 Claims Manager's review of the cost documentation has determined that the Claimant will be compensated for removal costs based on the contracted rate schedule that was in place at the time the services were rendered.

In reviewing Nuway's Daily Time Report of February 26, 2008, the booms were billed at \$2.50 per foot. However, the contracted rate schedule shows a rate of \$1.50 per foot. Therefore, the NPFC has adjusted the amount payable to \$1.50 per foot for the forty feet of boom, for a total denied amount of \$40.00.

Nuway also billed \$15.00 per day for box rental on the Daily Time Report of February 27, 2008. The contracted rate schedule shows a rate of \$12.00 per day for the box rental. The NPFC has adjusted the amount payable to \$12.00 per day, for a one day box rental, for a total denied amount of \$3.00. The box rental was billed again at the same rate on the March 3, 2008 Daily Time Report, for a six day rental. The NPFC again adjusted the amount payable to \$12.00 per day for six days, for a total denied amount of \$18.00.

C. Determined Amount:

Based on the NPFC's denial of \$61.00, the NPFC determines that the OSLTF will pay \$4,745.94 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909091-001.

AMOUNT: \$4,745.94

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *7/27/09*

Supervisor Action: *Approved*

Supervisor's Comments: