

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/5/2009
Claim Number	: 909092-001
Claimant	: STAT, Inc.
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$33,285.00

FACTS:

1. Oil Spill Incident: On March 30, 2009, an underground storage tank (UST) was found leaking at 101 Caldwell Street in Rhodhiss, North Carolina, a vacant property owned by the Bridge of Rutherford County Incorporated (Bridge of Rutherford County), a non-profit organization. The Caldwell County Emergency Management Division reported the incident to the National Response Center (NRC) via Report # 901423.¹ It was reported that No. 6 fuel oil was found floating in the Catawba River from the vacant property due to the leaking of an underground storage tank. The Catawba River is a navigable water of the United States. It was determined that the UST was left on the property without being cleaned out. Rainwater entered the tank, causing the No. 6 oil to come out of the top of the tank and then discharged into the Catawba River. The oil discharge created a rainbow sheen that was 30 feet long. The Catawba River is a drinking water source for the cities downstream. The water supply was contaminated by the discharge.

On March 31, 2009, Mr. ██████████, Director of the Caldwell County Office of Emergency Services, contacted STAT, Incorporated (STAT) to clean up the spill, after receiving authorization to do so from a Bridge of Rutherford County representative, ██████████. Mr. ██████████, of the United States Environmental Protection Agency (EPA), was notified of the discharge by the NRC. He arrived at the site on March 31, 2009 as the Federal On-Scene Coordinator (FOSC) for the incident. Mr. ██████████ interviewed the Bridge of Rutherford County representative. On April 1, 2009, Mr. ██████████ spoke with another representative of the Bridge of Rutherford County and issued Project # FPNE09448.

Mr. ██████████, Chairman of the Board of the Bridge of Rutherford County, acknowledged that the Bridge of Rutherford County as the responsible party (RP).

2. Description of removal actions: On March 31, 2009, STAT arrived at the incident site and contained the sheen on the Catawba River with booms and fencing, providing response and cleanup of the spill. STAT continued the clean up efforts on April 1, 2009 and April 2, 2009. They deployed up to nine employees to handle the clean up, as well as a service truck, a tool truck, vacuum trucks, excavators, vacuum tanker, boat, and a dump trailer.

3. The Claim: On May 20, 2009, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement in the amount of \$33,285.00

¹ See, NRC Report # 901423

for their uncompensated removal costs. The claim consists of invoices of the work performed and supplies used during the clean up, daily work summaries and disposal manifests. The Claims Manager obtained a copy of the NRC Report for this incident.

On June 6, 2009 the Claims Manager wrote to the RP to inform that National Pollution Funds Center (NPFC) had received a claim from STAT requesting to be compensated for removal costs regarding the incident.

In his correspondence response of June 11, 2009 to the NPFC, Mr. [REDACTED] explained that his organization is a federal charity and that the property where the spill occurred was a charitable gift from a family who had owned the property for fifty years. He added that he would have emptied the UST and sold it for scrap if the family had advised him that there was a UST on the property. The RP also included that the property was cleaned up and the old Burlington Mills plant was removed upon receiving it as a gift. The RP informed that as a charitable organization, they did not have the funds to pay STAT.

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 Federal On-Scene Coordination was provided by Mr. [REDACTED] of the United States Environmental Protection Agency (EPA).
2. The incident involved the 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 NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

In reviewing daily work summaries, the Claims Manager discovered discrepancies between the work summaries and the rate schedule submitted by the Claimant.

The work performed on the March 30, 2009 work summary has billed a mini excavator at \$65.00 for five hours for a total of \$325.00. It is listed on the rate schedule for \$35.00 per hour. Claimant will be compensated for the five hours at \$35.00 for a total of \$175.00. The tool truck was billed at \$20.00 per hour for five hours for a total of \$100.00. The rate schedule lists the billing rate at \$15.00 per hour. Claimant will be compensated at the \$15.00 rate for five hours for a total of \$75.00.

For work performed on March 31, 2009, Claimant billed for an excavator at \$125.00 per hour for twelve hours at a total cost \$1,500.00. However, the rate schedule lists the billing rate at \$75.00 per hour. Claimant will be compensated at the rate schedule listed rate for twelve hours for a total amount of \$900.00. The tool truck was billed at \$20.00 per hour for fourteen hours at a total cost of \$280.00. The rate schedule lists the billing rate at \$15.00 per hour. Claimant will be compensated at the \$15.00 rate for fourteen hours for a total of \$210.00.

The April 1, 2009 work summary noted the excavator was billed at \$85.00 per hour for four hours for a total billing of \$340.00. The rate schedule lists the billing rate at \$75.00 per hour. Compensation will be given at the \$75.00 rate for a total of \$300.00. Claimant billed for the disposal of 24,000 gallons of oil at \$.75 per gallon. However, the manifests submitted show a total of 22,000 gallons for disposal. Compensation will be for the 22,000 gallons at \$.75 per gallon for a total of \$16,500.00. Claimant billed \$500.00 for the plastic purchased for the clean up. The receipt provided tallied the total cost at \$394.94. Compensation will be for \$394.94. The fencing was billed for \$260.00, but the receipt total for the fencing is \$223.61. Compensation will be for \$223.61. The river booms were billed at \$100.00 each for ten. The rate schedule lists the river booms at \$15.00 per section, per day. Therefore, compensation will be for \$150.00 for the ten river booms.

Based on the NPFC's denial of \$3,376.45 the NPFC determines that the OSLTF will pay \$29,908.55 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909092-001.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$29,908.55 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909092-001.

AMOUNT: \$29,908.55

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *10/8/09*

Supervisor Action: *Approved*

Supervisor's Comments: