

CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/31/2009
Claim Number	: 909100-001
Claimant	: State of South Carolina
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$20,354.80

FACTS:

1. Oil Spill Incident: On April 28, 2008, the South Carolina Department of Health and Environmental Control (SCDHEC) received a call from the Parker Fire Department (Parker FD) informing that an initial estimate of 100 to 200 gallons of diesel fuel was found discharged in and around an unnamed tributary of the Reedy River in Greenville County, South Carolina. Reedy River is a navigable waterway of the United States. The incident was reported to the National Response Center (NRC) via report # 869320.¹ The State on Scene Coordinator (SOSC), ██████████ of SCDHEC, responded and confirmed that an oil discharge had occurred and that the Parker FD had contained the spill. The SOSC coordinated with ██████████ of the United States Environmental Protection Agency (USEPA), the Federal on Scene Coordinator (FOSC), who authorized the state to take the lead for the immediate response.

The claimant hired Advanced Environmental Options, Incorporated (AEO) for 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. Description of removal actions: The claimant hired AEO to handle response actions. The contractor used ten (10) people to perform the cleanup, one box truck in order to haul emergency response equipment, one vac truck in order to remove standing puddles of off-road diesel, using one small excavator to remove contaminated soil, using three (3) roll-off bins to transport the contaminated soil, and two dump trucks to transport the clean soil for back fill. The total amount of contaminated material recovered was three (3) roll-off bins of contaminated soil, two vac trucks (3,000 gallons each) of oily water mixture, several booms, several absorbent pads, and several bags of oil dry. The contractor worked for two days in order to complete this project.

3. The Claim: On June 1, 2009, The State of South Carolina submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$20,354.80 for the services provided from April 28, 2008 through on or about May 2, 2008 when disposal was completed. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

¹ See, NRC Report # 869320

This claim consists of copies of the invoicing, contracted rate schedule, NRC report, State of South Carolina Incident Report, internal email correspondence between the claimant and the NPFC, photographs as taken by the claimant, disposal manifests, FOOSC Coordination statement dated 4/28/08, and map. The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

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 Mr. [REDACTED] of the United States Environmental Protection Agency (USEPA) via a written statement dated 4/28/08.
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 NPFC Claims Manager has reviewed the actual cost documents 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.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on April 28, 2008. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by Claimant. The NPFC confirmed the rates charged were in accordance with the rate schedule in place at the time the services were rendered and that the FOSC has confirmed that the actions taken were reasonable, necessary and consistent with the NCP.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$20,354.80 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909100-001.

AMOUNT: \$20,354.80

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *9/1/09*

Supervisor Action: *Approved*

Supervisor's Comments: