

CLAIM SUMMARY / DETERMINATION FORM

Date	: 7/27/2009
Claim Number	: E08467-001
Claimant	: State of South Carolina
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$7,852.30

FACTS:

Oil Spill Incident: On May 20, 2008 a Falls Express Company (Falls Express) truck was involved in a head-on vehicular accident, causing the release of 60 gallons of diesel fuel from the truck. The spill impacted the surrounding area and threatened a storm drain that leads to an unnamed tributary to Fairforest Creek, in Spartanburg, South Carolina. Fairforest Creek is a navigable water of the United States. The incident was reported to the National Response Center (NRC) via report # 872578. The State on Scene Coordinator (SOSC), ██████████, of the South Carolina Department of Health and Environmental Control (SCDHEC), arrived at the site in response to a call reporting the accident. The SOSC coordinated with ██████████, the Federal on Scene Coordinator (FOSC), to authorize the state to take the lead for the response.

The SOSC 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.

The Responsible Party (RP) is Falls Express. Falls Express refused to be involved in the clean-up efforts. The RP refused to cooperate at the scene of the incident. The RP's insurance company refused payment.

The Claim: On May 12 2009, the Claimant submitted a removal cost claim in the amount of \$7,852.30 to the National Pollution Funds Center (NPFC) for reimbursement for their uncompensated State response costs. The claim consists of the incident billing summary, invoices, incident reporting, NRC report, a copy of a Pollution Removal Funding Authorization (PRFA) which was generated between the Federal On Scene Coordinator (FOSC) and the claimant agency, and proof of payment.

Additional Information: The Pollution Removal Funding Authorization (PRFA) for the SCDHEC was established on June 4, 2008 for services provided and removal costs incurred in response to this pollution incident.

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. Findings:

1. The FOOSC coordination was provided by [REDACTED] of the Environmental Protection Agency (EPA).
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 Claimant seeks reimbursement for their uncompensated removal costs. The emergency response was performed by AEO, on May 31, 2008. However, on June 4, 2008, a Pollution Removal Funding Authorization (PRFA), with an obligation amount of \$25,000.00, was generated by the FOOSC to cover the costs incurred by the claimant. Therefore, the NPFC hereby determines that this claim is denied in accordance with 33 CFR 136.203 & 205 and the costs which are subject of the claim need to be presented directly to the FOOSC for processing under the PRFA.

Please contact [REDACTED], of the United States Environmental Protection Agency (USEPA), at [REDACTED] for information on submitting costs.

AMOUNT: \$0.00

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *8/5/09*

Supervisor Action: *Denial approved*

Supervisor’s Comments: