

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/22/2010
Claim Number	: 910089-001
Claimant	: State of South Carolina
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,361.28

### **FACTS:**

- 1. Oil Spill Incident:** On May 20, 2009, the South Carolina Department of Health and Environmental Control (SC DHEC) was alerted by Piedmont Fire Department of an unknown substance resembling oil on a boat landing at a Saluda River access in Anderson County, SC. The spill was not in the water at the time of the report, but was pooling and moving down hill. SC DHEC responder [REDACTED] was subsequently deployed to assist with the investigation. Upon arrival, she reported approximately thirty to fifty gallons had been dumped on the boat landing. The puddle was two to three inches deep, twenty feet long, and about two feet wide.

The incident was reported to the National Response Center (NRC) on the day after the incident via report # 906211. Investigation revealed no known source of the spill.

- 2. Description of Removal Actions:** Since the spill was moving towards the river and was spilled in such close proximity to the waterway, SC DHEC found this to be an immediate and substantial threat to the river and surrounding environments. Advanced Environmental Options (AEO) was hired by SC DHEC to assist with the cleanup. AEO removed the contaminated soils and cleaned the surrounding area where the spill occurred in order to prevent any material from migrating to the river.
- 3. The Claim:** The SC DHEC submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs associated with this incident in the amount of \$4,361.28. The claim consisted of invoices, proof of payment, SC DHEC Report, NRC Report, contractor dailies, AEO rate schedule, EPA FOSC coordination form, and Disposal Manifest.

### **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. US EPA provided FOSC coordination via a form dated September 30, 2009.

2. The incident involved the report of a discharge of “oil” and a substantial threat as defined in OPA 90, 33 USC § 2701(23) to navigable waterways.
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 majority of the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

***B. Analysis:***

NPFC CA 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 to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the claim, the Claims Manager hereby determines that there are discrepancies with regards to the reimbursement requested and the cost documentation provided in support of such by the claimant. The AEO invoice billed for 2.75 hours of work performed by the emergency response manager and two technicians on May 20, 2009. However, the AEO signed daily for May 20, 2009 shows that these employees only worked 1.75 hours. The AEO invoice also billed for 4.75 hours of work performed by the emergency response manager, three technicians, and one heavy equipment operator on May 21, 2009. The signed AEO daily from May 21, 2009 only notes 3.75 hours worked by the emergency response manager, 4.15 hours by the three technicians, and 4.15 hours by the heavy equipment operator.

In addition, on the AEO invoice for May 21, 2009, there are pieces of equipment listed that are not noted on the signed daily: one service vehicle and one dump truck. Finally, the AEO rate schedule that was provided by SC DHEC did not include the price for the back fill that was listed on the AEO invoice and therefore the back fill cost price is unsubstantiated. A third party receipt for the back fill was also not provided. Therefore, the NPFC has adjusted the amount payable to \$3,411.68, for a total denied amount of \$949.60.

Based on the NPFC’s denial of \$949.60, the NPFC determines that the OSLTF will pay \$3,411.68 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #910089-001.

***C. Determined Amount:***

The NPFC hereby determines that the OSLTF will pay \$3,411.68 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910089-001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

**AMOUNT: \$3,411.68**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *4/22/10*

Supervisor Action: *Approved*

Supervisor's Comments: