CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/22/2010
Claim Number	: 910091-001
Claimant	: State of South Carolina
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [redacted]
Amount Requested	: $6,304.29

FACTS:

1. ***Oil Spill Incident:*** On January 7, 2009, South Carolina Department of Health and Environmental Control (SC DHEC) received a call from Region 1- Anderson Environmental Health, which stated that a rural mail carrier had spotted a truck with a plain steel tank releasing a black liquid into a creek. When the caller (mail carrier) approached the truck it quickly sped off, but the mail carrier was able to remember the tag# of the vehicle. SC DHEC assigned [redacted], Jr., to investigate the incident. Mr. [redacted] was unable to identify the exact location. On January 8, 2009, the person (mail carrier) who observed the truck called back and provided a clearer description of the location and release. The spill was located and both Solid Waste Compliance Enforcement and the Emergency Response Section were notified. SC DHEC Duty officer [redacted], with coordination from [redacted], hired Advanced Environmental Options, Inc (AEO) as clean-up contractor for the state.

   The incident was reported to the National Response Center (NRC) via report # 894324 to FOSCR [redacted] on March 2, 2009. Investigation revealed no known source of the spill.

2. ***Description of removal actions:*** SC DHEC activated the Emergency Response Contract with AEO, who arrived onsite approximately 1845 hours on January 8, 2009, and used a screening kit to test the soil for the unknown liquid ([redacted] of AEO) . Under lighting powered by a generator, the contractor removed 6-10 inches of soil which was contaminated and filled one roll off box. The contractor loaded equipment and left the site at approximately 0015 hours, and agreed that site stabilization would take place the following day.

   On January 9, 2009, AEO left a message with SC DHEC [redacted] stating they had arrived on-scene at approximately 1230 hours to begin the stabilization process as requested. Rip rap was placed below the outlet of the pipe coming from under the road, a rip rap check dam was built approximately 15' downgradient, and more rip rap was placed at the most downgradient slope of the disturbed area. Silt fencing was installed along the downgradient end of the disturbance, grass seed was spread and the area covered with straw. AEO removed and disposed of the contaminated waste.

3. ***The Claim:*** 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 $6,304.29. The claim consisted of description of route to the navigable water, maps and photos of incident location, Internal Incident Report and NRC Report, an FOSC coordination statement,

contractor invoices, accounting information, vendor rate schedule, and disposal/waste manifests.

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. USEPA provided FOSC coordination via a letter dated March 2, 2009.
2. The incident involved the report of a discharge of "oil" and substantial threat 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 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.

The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur $6,304.29 of uncompensated removal costs in order to remove and further mitigate the substantial threat of discharge and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #910091-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on January 7, 2009. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay $6,304.29 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim 910091-001. 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: $6,304.29

Claim Supervisor: [redacted]

Date of Supervisor's review: ***4/27/10***

Supervisor Action: ***Approved***

Supervisor's Comments: