

CLAIM SUMMARY / DETERMINATION

Claim Number:	915103-0001
Claimant:	South Carolina DHEC
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$4,663.62

FACTS:

1. **Oil Spill Incident:** The South Carolina Department of Health and Environmental Control (SC DHEC) reports that on January 7, 2015 that there was a discharge of approximately 110 gallons of diesel fuel from a 150-gallon saddle tank that fell off a commercial vehicle at Mile Marker 14 in Jasper County, South Carolina. The saddle tank was discovered in a drainage ditch along Interstate-95 that flows into Great Swamp Creek which flows to the Great Swamp River that flows to the Atlantic Ocean; a navigable waterway of the U.S.¹

SC DHEC responded to the spill and reported the incident to the National Response Center (NRC) via report # 1105098.² SC DHEC contracted with Moran Environmental to handle response actions as no Responsible Party (RP) could be identified.

On January 12, 2015, the SC DHEC coordinated its removal activities with [REDACTED] of the United States Environmental Protection Agency (USEPA) who was the Federal On-Scene Coordinator (FOSC) for this incident.³

2. **Description of removal actions performed:** The Claimant, SC DHEC, hired [REDACTED] Environmental Recovery (Moran) to handle clean up of the spill site and associated disposal. [REDACTED] employed absorbent boom and pads, a vacuum truck and pickup trucks to the scene along with three of its employees. [REDACTED] was on-scene for two days and removed .44 tons of contaminated waste and 1600 gallons of non-hazardous liquids from the spill. The waste material and petroleum contaminated liquids were delivered and disposed of by Waste Management in Savannah, GA at Superior Landfill in Savannah.⁴
3. **The Claim:** On August 19, 2015, SC DHEC presented its removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the total amount of \$4,663.62 for the removal services provided by [REDACTED] from January 7, 2015 to January 8, 2015. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the [REDACTED] vendor rate schedule was provided by [REDACTED] in an email attachment after the NPFC requested additional information August 25, 2015.

¹See, SC DHEC Incident Report # 201500087, and the Optional OSTLF Claim Form, received by the NPFC on August 19, 2015

²See NRC report in admin file

³See receipts for waste disposal

⁴See SCDHEC coordination statement dated January 12, 2015 by the FOSC.

⁵See Moran contract and Invoices and waste disposal manifests

This claim consists of copies of the invoices and associated dailies, contracted rate schedule and copies of the Disposal of Non-Hazardous Waste Manifests, NRC Report # 1105098, SC DHEC Incident Report # 201500087, and SC DHEC incident memoranda.

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:

"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 has been established via a signed statement from USEPA dated January 12, 2015. Mr. [REDACTED] of USEPA, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the report of a 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 within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. A Responsible Party was not identified by SC DHEC.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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 NPFC reviewed the Moran rate schedule that was in place with the Claimant at the time the services were provided; the NPFC obtained a full copy of the rate schedule directly from the Claimant’s contractor, Moran, and based its adjudication of these costs on that rate schedule. Based on its review, the NPFC determined that most of the claimed costs are reimbursable from the Fund and were for actions taken to minimize and mitigate the effects of the incident, were reasonable and necessary and were directed by the FOSC.

The NPFC does note that the Moran rate schedule and contract did not identify the rate for liquid disposal by the gallon as invoiced by Moran therefore the NPFC researched what the industry standard price for the disposal of liquids was and has determined that the price identified by Moran is within the reasonable range of price as invoiced. The NPFC also confirmed that Moran had a contemporaneous daily field log that specifically identified liquid disposal at a rate of \$.44 a gallon for a total of 1600 gallons disposed of and combined with the production of a liquid disposal manifest, the NPFC has determined that the Claimant should be reimbursed for liquid disposal in the amount of \$704.00 vice the \$720.00 invoiced on the basis that the contemporaneous pricing is a more

accurate reflection of disclosed pricing vice the amount identified on the Moran invoice produced at a later date.

Based on the foregoing, the NPFC hereby determines that the Claimant did in fact incur \$4,647.60 in uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #915103-0001.⁵ The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from January 7, 2015 through January 8, 2015. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

The NPFC has denied \$16.02 which is the difference in the liquid disposal pricing by the gallon as identified on the contemporaneous daily field log vice the Moran actual invoice. Since the Moran contract and rate schedule does not disclose the intended price of liquid disposal by the gallon, the finds the contemporaneous daily to be the governing pricing document for the services provided.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$4,647.60 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 915103-0001. 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: \$4,647.60

Claim Supervisor:	
Date of Supervisor's review:	8/27/15
Supervisor Action:	<i>Approved</i>
Supervisor's Comments:	

⁵ See NPFC attached spreadsheet entitled: SC DHEC Removal Claim Vender Costs 915103-0001