

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	916024-0001
<b>Claimant:</b>	South Carolina DHEC
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$7,207.63

### **FACTS:**

**Oil Spill Incident:** On September 16, 2015, a civilian member of a work crew reported to the South Carolina Department of Health and Environmental Control (SC DHEC), “blue liquid smelling like diesel fuel on Capital Road in Jacksonboro, SC.”<sup>1</sup> The SC DHEC responded to the scene on September 17, 2015, and discovered diesel oil floating in a ditch along Ace Basin Parkway, a highway that cuts through a swampy area adjacent to the Edisto River, a navigable waterway of the US. Subsequent to both a physical inspection and well testing of a nearby service station, the SC DHEC was unable to determine the etiology of the spill. Moran Environmental Recovery (Moran) was hired to conduct appropriate pollution removal activities.<sup>2</sup>

**Description of Removal Activities for this Claimant:** On September 17, 2015, SC DHEC hired Moran Environmental Recovery to remove approximately 15 to 20 gallons of fuel from the ditch. Moran responded by deploying sorbent boom to soak up diesel fuel present along the ditch. From September 18, 2015, through September 26, 2015, Moran responded to the spill site a total of four times, replacing and disposing of sorbent boom from the ditch. Cleanup was completed on September 28, 2015, when the last of the oiled sorbents and diesel oil contaminated soil were properly disposed of at Waste Management Oakridge Landfill in Dorchester, SC.

**The Claim:** On January 20, 2016, the South Carolina Department of Health and Environmental Control (SC DHEC) submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs totaling \$7,207.63.<sup>3</sup>

### **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

<sup>1</sup> See, DHEC Environmental Facility Information Case Report 201504211.

<sup>2</sup> See, DHEC Environmental Facility Information Case Report 201504211.

<sup>3</sup> See, South Carolina DHEC claim dated January 20, 2016.

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. [REDACTED], US EPA Region 4, as the Federal On-Scene Coordinator (FOSC) for this incident, determined that the actions undertaken by the South Carolina DHEC were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);<sup>4</sup>
2. The incident involved the 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 statute of limitations. 33 U.S.C. § 2712(h)(1);
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. 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 to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant for this incident were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the costs were billed in accordance with the rate schedule that was in place at the time the services were rendered and were determined by the NPFC and the FOSC to be consistent with the NCP. The costs denied by the NPFC are in the total amount of \$688.68 for costs affiliated with the disposal of drums containing oiled sorbents and contaminated soil. Specifically, SC DHEC claimed \$1,800.00 for the disposal of oil contaminated sorbents. However, the company that performed disposal, Waste Management, only charged \$966.39 for the disposal of oiled sorbents to the Claimant. Pursuant to the terms and conditions of the pricing schedule between SC DHEC and the contractor, third party services are to be charged at a cost plus 15% allowable markup and as such, when you take the confirmed charged price of \$966.39 to SC DHEC by Waste Management and add a 15% markup which equates to \$144.96, the appropriate amount reimbursable by the Fund for the services is \$1,111.32 and as such, the difference is hereby denied.<sup>5</sup>



---

<sup>4</sup> See, [REDACTED], EPA FOSC, signed DHEC memo dated December 28, 2015.

<sup>5</sup> See, NPFC spreadsheet for claim 916024-0001.

Based on the foregoing, the NPFC determines that the OSLTF will pay \$6,518.95 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916024-0001. 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: \$6,518.95**


Claim Supervisor: 
Date of Supervisor's review: <i>2/24/16</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: