U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6694
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Fax: 202-493-6937

5890
5/4/2011

SENT VIA E-MAIL: [redacted]@dhec.sc.gov

South Carolina DHEC
ATTN: Elizabeth Shawanesse
2600 Bull Street
Columbia, SC 29201

Re: Claim Number 911048-0001

Dear Ms. Shawanesse:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $2,610.00 is full compensation for OPA claim number 911048-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.ccr.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6694.

[redacted]laims Manager

ENCL: Claim Summary/Determination
Acceptance/Release Form

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Claim Number: 911048-0001	Claimant Name: South Carolina DHEC ATTN: Elizabeth Shawanesse 2600 Bull Street Columbia, SC 29201

I, the undersigned, ACCEPT the determination of $2,610.00 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

Title of Person Signing	Date of Signature
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

Title of Witness	Date of Signature
Typed or Printed Name of Witness	Signature

TIN Required for Payment	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/3/2011
Claim Number	: 911048-0001
Claimant	: South Carolina DHEC
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Felita Jackson
Amount Requested	: $2,610.00

FACTS:

1. ***Oil Spill Incident:*** On October 21, 2009, the South Carolina Department of Health and Environmental Control (SC DHEC) received notification of oil discharging from Harbin Brothers Motor City (Harbin Brothers), an automotive repair business. The business is located at 704 Poinsett Highway in Greenville, South Carolina. The drain inside the repair bay leads directly to a drainage ditch and storm drain located in front of the business. The storm drain empties into an unnamed tributary of the Reedy River in Greenville, South Carolina, a navigable waterway of the United States. The National Response Center (NRC) was called and informed that approximately 30 gallons of oil had been discovered in the storm drain.[1] The State on Scene Coordinators (SOSC), James Rice and Ryan McDaniel of SC DHEC, witnessed the discharge near the river and requested the activation of the State clean-up contract to remove the oil before it reached the river. Harbin Brothers, the responsible party, could not be reached, after several attempts in a five hour time span, to respond to the discharge. The SCDHEC Emergency Response Manager, Paul Lee, coordinated the clean-up activities with Matthew Huyser, the Federal on Scene Coordinator (FOSC), of the United States Environmental Protection Agency (USEPA). The claimant called Advanced Environmental Options, Incorporated (AEO) for response and cleanup of the spill.

2. ***Description of Removal Activities for this Claim:*** AEO deployed a project manager and three field technicians; an ER trailer; and a vacuum truck. The contractor used ten bags of Quikleen absorbents for the clean-up and used a 55 gallon drum for disposal. The RP arrived at the incident during the clean-up efforts and resumed the clean-up. AEO's cleanup, as noted by the Claimant, was consistent with the National Contingency Plan.

3. ***The Claim:*** On April 6, 2011, The State of South Carolina submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of $2,610.00 for the services provided by AEO. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is in the claim file.

   This claim consists of copies of the invoicing, State of South Carolina Incident Report summary, photographs taken by the Claimant, disposal manifests, a March 22, 2010 letter to Harbin Brothers from the Claimant requesting payment for clean-up by AEO, the FOSC Coordination statement dated October 21, 2009, and map of incident site.

[1] See NRC Report #921213.

On April 13, 2011, the National Pollution Funds Center (NPFC) mailed an RP Notification Letter to Harbin Brothers. The Letter was returned as undeliverable by the United States Post Services on April 27, 2011.

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 FOSC, and (4) whether the costs were adequately documented.

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. The FOSC coordination was provided by Mr. Matthew Huyser of the United States Environmental Protection Agency (USEPA) - Region 4 via a signed statement dated October 21, 2009.
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 for removal costs.
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 NPFC Claims Manager has reviewed the actual cost documents 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, and (4) whether the costs were adequately documented and reasonable.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on October 21, 2009. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by Claimant. The NPFC confirmed the rates charged were in accordance with

the rate schedule in place at the time the services were rendered and that the FOSC has confirmed that the actions taken were reasonable, necessary and consistent with the NCP.

C. Determined Amount:

The NPFC determines that the OSLTF will pay $2,610.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 911048-0001.

AMOUNT: $2,610.00

Claim Supervisor: ***Donna Hellberg***

Date of Supervisor's review: ***5/4/11***

Supervisor Action: ***Approved***

Supervisor's Comments: