

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/5/2009
Claim Number	: 909092-001
Claimant	: STAT, Inc.
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Felita Jackson
Amount Requested	: \$33,285.00

FACTS:

1. Oil Spill Incident: On March 30, 2009, an underground storage tank (UST) was found leaking at 101 Caldwell Street in Rhodhiss, North Carolina, a vacant property owned by the Bridge of Rutherford County Incorporated (Bridge of Rutherford County), a non-profit organization. The Caldwell County Emergency Management Division reported the incident to the National Response Center (NRC) via Report # 901423.¹ It was reported that No. 6 fuel oil was found floating in the Catawba River from the vacant property due to the leaking of an underground storage tank. The Catawba River is a navigable water of the United States. It was determined that the UST was left on the property without being cleaned out. Rainwater entered the tank, causing the No. 6 oil to come out of the top of the tank and then discharged into the Catawba River. The oil discharge created a rainbow sheen that was 30 feet long. The Catawba River is a drinking water source for the cities downstream. The water supply was contaminated by the discharge.

On March 31, 2009, Mr. Tommy Courtner, Director of the Caldwell County Office of Emergency Services, contacted STAT, Incorporated (STAT) to clean up the spill, after receiving authorization to do so from a Bridge of Rutherford County representative, Bryan Davis. Mr. Kenneth B. Rhame, of the United States Environmental Protection Agency (EPA), was notified of the discharge by the NRC. He arrived at the site on March 31, 2009 as the Federal On-Scene Coordinator (FOSC) for the incident. Mr. Rhame interviewed the Bridge of Rutherford County representative. On April 1, 2009, Mr. Rhame spoke with another representative of the Bridge of Rutherford County and issued Project # FPNE09448.

Mr. Robert Van Buskirk, Chairman of the Board of the Bridge of Rutherford County, acknowledged that the Bridge of Rutherford County as the responsible party (RP).

2. Description of removal actions: On March 31, 2009, STAT arrived at the incident site and contained the sheen on the Catawba River with booms and fencing, providing response and cleanup of the spill. STAT continued the clean up efforts on April 1, 2009 and April 2, 2009. They deployed up to nine employees to handle the clean up, as well as a service truck, a tool truck, vacuum trucks, excavators, vacuum tanker, boat, and a dump trailer.

3. The Claim: On May 20, 2009, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement in the amount of \$33,285.00

¹ See, NRC Report # 901423

for their uncompensated removal costs. The claim consists of invoices of the work performed and supplies used during the clean up, daily work summaries and disposal manifests. The Claims Manager obtained a copy of the NRC Report for this incident.

On June 6, 2009 the Claims Manager wrote to the RP to inform that National Pollution Funds Center (NPFC) had received a claim from STAT requesting to be compensated for removal costs regarding the incident.

In his correspondence response of June 11, 2009 to the NPFC, Mr. Van Buskirk explained that his organization is a federal charity and that the property where the spill occurred was a charitable gift from a family who had owned the property for fifty years. He added that he would have emptied the UST and sold it for scrap if the family had advised him that there was a UST on the property. The RP also included that the property was cleaned up and the old Burlington Mills plant was removed upon receiving it as a gift. The RP informed that as a charitable organization, they did not have the funds to pay STAT.

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 Federal On-Scene Coordination was provided by Mr. Kenneth B. Rhame of the United States Environmental Protection Agency (EPA).
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 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 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 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, and (4) whether the costs were adequately documented and reasonable.

In reviewing daily work summaries, the Claims Manager discovered discrepancies between the work summaries and the rate schedule submitted by the Claimant.

The work performed on the March 30, 2009 work summary has billed a mini excavator at \$65.00 for five hours for a total of \$325.00. It is listed on the rate schedule for \$35.00 per hour. Claimant will be compensated for the five hours at \$35.00 for a total of \$175.00. The tool truck was billed at \$20.00 per hour for five hours for a total of \$100.00. The rate schedule lists the billing rate at \$15.00 per hour. Claimant will be compensated at the \$15.00 rate for five hours for a total of \$75.00.

For work performed on March 31, 2009, Claimant billed for an excavator at \$125.00 per hour for twelve hours at a total cost \$1,500.00. However, the rate schedule lists the billing rate at \$75.00 per hour. Claimant will be compensated at the rate schedule listed rate for twelve hours for a total amount of \$900.00. The tool truck was billed at \$20.00 per hour for fourteen hours at a total cost of \$280.00. The rate schedule lists the billing rate at \$15.00 per hour. Claimant will be compensated at the \$15.00 rate for fourteen hours for a total of \$210.00.

The April 1, 2009 work summary noted the excavator was billed at \$85.00 per hour for four hours for a total billing of \$340.00. The rate schedule lists the billing rate at \$75.00 per hour. Compensation will be given at the \$75.00 rate for a total of \$300.00. Claimant billed for the disposal of 24,000 gallons of oil at \$.75 per gallon. However, the manifests submitted show a total of 22,000 gallons for disposal. Compensation will be for the 22,000 gallons at \$.75 per gallon for a total of \$16,500.00. Claimant billed \$500.00 for the plastic purchased for the clean up. The receipt provided tallied the total cost at \$394.94. Compensation will be for \$394.94. The fencing was billed for \$260.00, but the receipt total for the fencing is \$223.61. Compensation will be for \$223.61. The river booms were billed at \$100.00 each for ten. The rate schedule lists the river booms at \$15.00 per section, per day. Therefore, compensation will be for \$150.00 for the ten river booms.

Based on the NPFC's denial of \$3,376.45 the NPFC determines that the OSLTF will pay \$29,908.55 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909092-001.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$29,908.55 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909092-001.

AMOUNT: \$29,908.55

Claim Supervisor: ***Donna Hellberg***

Date of Supervisor's review: ***10/8/09***

Supervisor Action: ***Approved***

Supervisor's Comments:

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: 2-██████████-4
E-mail: ██████████@uscg.mil
Fax: 202-493-6937

5890
10/8/2009

SENT VIA E-MAIL: ██████████@charter.net

STAT, Inc.
ATTN: Mr. Garry Sparks
P.O. Box 1443
Lenoir, NC 28645

Re: Claim Number 909092-001

Dear Mr. Sparks:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$29,908.55 is full compensation for OPA claim number 909092-001.

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 2-██████████-3-██████████

Sincerely,

Felita Jackson
Claims Manager

ENCL: Claim Summary/ Determination
Acceptance/Release Form

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: 2 [REDACTED]

E-mail: [REDACTED]@uscg.mil

Fax: 202-493-6937

Claim Number: 909092-001	Claimant Name: STAT, Inc P.O. Box 1443 Lenoir, NC 28645
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I, the undersigned, ACCEPT the determination of \$29,908.55 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal cost 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