

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
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
1/03/2012

Via email: [REDACTED]@usesgroup.com

United States Environmental Services, LLC
ATTN: Mr. Gregory Johnson
365 Canal Street, Suite 2500
New Orleans, LA 70130

Re: Claim Number 911113-0001

Dear Mr. Johnson:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$9,718.00 is full compensation for OPA claim number 911113-0001.

This reconsideration determination is based on an analysis of information submitted.

Disposition of this reconsideration constitutes final agency action.

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

Director (ca)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

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, your payment will be mailed within 30 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 800-280-7118.

Sincerely,

[REDACTED]

Chief, Claims Adjudication Division

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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ARLINGTON VA 20598-7100

E-mail: [redacted]@uscg.mil
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Claim Number: 911113-0001	Claimant Name: United States Environmental Services, LLC ATTN: Mr. Gregory Johnson 365 Canal Street, Suite 2500 New Orleans, LA 70130
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I, the undersigned, ACCEPT the determination of \$9,718.00 as full compensation for all 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)), arising from the oil pollution incident. 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

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/03/2012
Claim Number	: 911113-0001
Claimant	: United States Environmental Services, L.L.C.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$9,718.00

I. Facts

On March 7, 2011, the Jefferson County Emergency Management Agency (JC EMA) reported a house fire to the Alabama Department of Environmental Management (ADEM). Approximately 110 gallons of gasoline spilled was spilled, flowing from the garage on the premises and into an unnamed tributary of Black Creek, a tributary of Village Creek. The incident was reported to the National Response Center (NRC) at 1436 local time on March 7, 2011, via report # 969401.

As part of the Alabama Emergency Operations Plan, ADEM provided assistance and oversight. The State On-Scene Coordinator (SOSC), as part of this plan, required the removal and disposal of the oil and contaminated soil.

II. Responsible Party

Ms. Annetta Morgan owned the affected property (1004 Lafayette St., Birmingham, AL 35214) at the time of the incident and is a Responsible Party (RP) under the Oil Pollution Act.

III. The Claimant and the Claim

On August 29, 2011, USES submitted a removal cost claim to the National Pollution Funds Center (NPFCC), for reimbursement of removal costs in the amount of \$9,718.20 for the services provided from March 7 through March 10, 2011. This claim was for removal costs based on the rate schedule in place at the time services were provided.

The original claim consisted of the following:

1. The OSLTF Optional Claim Form
2. Copy of the vendor rate schedule
3. Copies of the invoicing and associated dailies
4. Copy of NRC Report # 969401
5. Copies of proofs of payment to third parties
6. Copy of the contract between USES and Ms. Annetta Morgan
7. Copies of the disposal manifests
8. Copy of the ADEM coordination letter, dated 3/14/2011
9. Copies of subcontractor invoicing
10. Copy of the Stillbrook lab results for this incident
11. Photographs of the incident
12. Internal email correspondence.

IV. Request for Reconsideration:

On September 8, 2011, the NPFC issued its initial determination for this claim. The NPFC denied the claim on the basis that USES failed to meet its burden, by the preponderance of the evidence, that the discharge posed a SUBSTANTIAL threat to a navigable waterway. On December 19, 2011, USES made an official request for reconsideration via email to Ms. Alyssa Lombardi, NPFC. USES provided a detailed request for reconsideration, along with an email (dated December 9, 2011) from the FOSC, Mr. Subash Patel, US EPA Region IV.¹ The FOSC confirmed that the response actions were appropriate, providing after-the-fact coordination. More specifically: During response, it was believed that the property was operating as an illegal gas station and had stored many drums of gasoline. Fire fighters sprayed thousands of gallons of water to extinguish the fire which mixed with gasoline. The release flowed towards a culvert that emptied into an unnamed tributary of Black Creek. Black Creek eventually flows into Black Warrior River. Therefore, there was a substantial threat for oil to be discharged into a navigable waterway. Efforts by USES appeared to have prevented a release into the culvert. According to Mr. Michael Smith, State On-Scene Coordinator, if USES did not respond, the release would have reached the culvert.²

V. DETERMINATION OF UNCOMPENSATED REMOVAL COSTS:

A. Overview:

1. The FOSC coordination has been established via US EPA REGION IV.³
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. A Responsible Party was determined, but has not made payment of costs to date. Additionally, the NPFC made notification of this claim to the RP. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if 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 has determined that the costs incurred were reasonable and necessary in order to mitigate the effects of the incident. Upon reconsideration and information provided by the FOSC after the fact, the NPFC has determined that if USES did not respond, the release

¹ See email from Mr. Subash Patel, US EPA Region IV, to Mr. Dennis Schenck, USES, dated 12/09/2011.

² *Ibid.*

³ *Id.*

would have reached the navigable waterway. Therefore, because the actions performed were deemed by the FOSC to be appropriate, the NPFC has determined that these costs are consistent with the NCP. The costs were billed in accordance with the rate schedule in place at the time the services were rendered and consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay **\$9,718.00** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911113-0001. 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.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$9,718.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 911113-0001.

AMOUNT: \$9,718.00

Claim Supervisor:

Date of Supervisor's review: 1/3/12

Supervisor Action: OSLTF APPROVED