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	: [redacted]
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. [redacted] owned the affected property [redacted] 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 (NPFC), 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. [redacted]
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. [redacted] NPFC. USES provided a detailed request for reconsideration, along with an email (dated December 9, 2011) from the FOSC, [redacted] 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. [redacted] 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 RGION 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

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[1] See email from Mr. [redacted] 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: $9,71[redacted]

Claim Supervisor: [redacted]

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

Supervisor Action: OLC. APPROVED