

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E12409-0001  
Claimant : STAT, Inc  
Type of Claimant : OSRO  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$43,999.07

**FACTS:**

***Oil Spill Incident:*** On February 6, 2012, Caldwell County Emergency Management (EMA) discovered diesel fuel in Lower Creek which is a tributary of the Catawba River, a navigable waterway of the US.<sup>1</sup> Approximately 1.5 miles of Creek was impacted and the local fire department responded by booming several points along the waterway. Caldwell EMA determined that the spill originally occurred on Saturday, February 4, 2012, from a demolition site and Caldwell EMA ordered the Responsible Party (RP) to hire a response contractor.

The property owner and Responsible Party for the spill identified as Applied Abatement Concepts, LLC doing business as, Applied Abatement Demolition and Trucking of Kings Mountain, NC (Applied Abatement or Responsible Party).<sup>2</sup> The RP hired STAT Inc. who then contracted with Lighthouse Technical Environmental Consultants as a subcontractor to perform an assessment of soil impacts from the diesel spill. Lighthouse issued a written report to the RP which detailed some of the incident facts.

The report from Lighthouse states that on February 4, 2012, an employee of Applied Abatement was removing a large diesel fuel powered pump from a building located at 419 Virginia Street, Lenoir, NC when the day tank began to leak fuel. The exact amount of fuel released is unknown however the quantity was estimated to be between 100 and 150 gallons.<sup>3</sup>

[REDACTED] of the United States Environmental Protection Agency (USEPA) was the Federal On-Scene Coordinator (FOSC) for this incident. Mr. [REDACTED] worked directly with North Carolina Department of Environment and Natural Resources (NCDENR) and Caldwell EMA during response actions. The FOSC identified Applied Abatement Demolition and Trucking as the Responsible Party (RP) under the Oil Pollution Act of 1990. Federal Project Number E12409 was assigned.<sup>4</sup>

***Description of Removal Actions Performed:*** STAT, Inc. responded to the incident on Monday, February 6, 2012. Stat, Inc. deployed nine personnel, two service trucks, a vacuum truck and vacuum tanker, a Bobcat front-loader and an excavator to remove the oil from Virginia Avenue down gradient to Lower Creek. STAT personnel immediately began to place absorbent booms in the creek at several locations. Two vac trucks were mobilized to remove fuel. The drain on the property was flushed with water numerous times as was the large culvert that flowed under the adjacent properties. Pumps with high flow nozzles were used to remove fuel from the vegetation along the accessible creek banks. Underflow dams and vac trucks were used to capture the fuel that was released from the banks of the creek.

On February 7, 2012, excavation of contaminated soils near the point of release began. Lighthouse Technical assisted Stat, Inc. by screening soils during the excavation with a photo ionization detector (PID). Soil that contained readings above 5 parts per million (ppm) were further excavated until readings of less than 5 ppm were achieved.

<sup>1</sup> See EPA Polrep #1 dated February 6, 2012.

<sup>2</sup> See EPA Polrep #1 dated February 6, 2012.

<sup>3</sup> See Assessment Report dated February 27, 2012 from Lighthouse Technical to Applied Abatement.

<sup>4</sup> See USEPA POL REP One in Administrative Record

**Claim:** STAT, Inc. (Stat or Claimant) is an Oil Spill Response Organization (OSRO) hired by Applied Abatement Demolition and Trucking (RP) to handle response actions and associated disposal. On February 20, 2012, STAT, Inc presented its invoicing to the RP. The invoicing included the following items: dailies with personnel and hours, equipment and materials. Two Bills of Lading (#01561 & 01562) and five signed non-hazardous waste manifests (#38312, #3831, #35563, #35562, #38313). The RP failed to pay the invoice and on May 30, 2012, STAT, Inc. submitted a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF) seeking reimbursement in the amount of \$43,999.07 in uncompensated removal costs. Claimant provided the above items in support of its costs and submitted two rate sheets requested by the NPFC after receipt of the claim.

The NPFC notified the Responsible Party that STAT, Inc presented a claim for uncompensated removal costs to the National Pollution Funds Center (NPFC). In a letter dated June 9, 2012, George Culver responded to the NPFC stating that he is unable to pay STAT's invoice and could only make payment arrangements on the debt.<sup>5</sup>

**Geologist Report:** Within Stat Inc.'s removal claim there is a cost for "engineering report"<sup>6</sup> for \$5,473.02. Steve Lucas of Lighthouse Technical Environmental Consultants (Lighthouse) of Huntersville, North Carolina provided the RP and NCDENR with a written report that confirms the cleanup removed all the discharged oil and that there is no future threat of discharge to the waterway. Lighthouse invoice #2012015 for \$4,759.15 dated February 27, 2012 was paid by Stat Inc.<sup>7</sup> On July 23, 2012 Stat confirmed in an email to the NPFC that it compensated Lighthouse.<sup>8</sup> Additionally, on July 24, 2012 Lighthouse confirmed that it paid Pace Analytical for its invoice.<sup>9</sup>

#### **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 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 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the

<sup>5</sup> See letter from [REDACTED] to NPFC received at the NPFC June 20, 2012

<sup>6</sup> See Stat Inc Daily Work Summary for February 8, 2012 in claim submission

<sup>7</sup> See email of Stat Inc. invoice of February 20, 2012.

<sup>8</sup> See copy of Stat In cashed check in admin record.

<sup>9</sup> See email from Lighthouse July 24, 2012 with attachment of paid Pace Analytical invoice.

denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

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. "NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4)."
2. The incident involved the report of a 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 period of limitations for claims. 33 U.S.C. § 2712(h)(2);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and has determined that the actions are reasonable, necessary and in accordance with 33 CFR 136.203 & 205.

#### **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, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

On February 20, 2012 the Claimant presented its removal cost claim for \$43,999.07 to the Responsible Party. Claim was presented to the RP more than 90-days prior to the Claimant seeking uncompensated removal costs from the Oil Spill Liability Trust Fund (Fund). The NPFC received STAT, Inc's claim on May 30, 2012 and notified the Responsible Party of claim.

The owner of Applied Abatement Concepts, [REDACTED] wrote the NPFC on June 9, 2012 stating that he could not pay STAT, Inc.'s invoice because he does not have insurance for this incident and

he cannot afford to pay the entire invoice at this time. Mr. [REDACTED] suggested paying STAT, Inc. using a payment plan.<sup>10</sup>

On July 10, 2012, the Claims Manager emailed Mr. [REDACTED] owner of STAT, Inc and requested STAT, Inc's rate sheet and requested documentation for all STAT' payments made, specifically for Lighthouse and Pace Analytical. Mr. [REDACTED] sent the rate sheet via email on July 10, 2012 and provided proof of payment for Lighthouse Technical's invoiced costs. STAT, Inc. explained that labor hours after 5 PM, before 8 AM, and on weekends are invoiced at time and a half.<sup>11</sup> A supplemental rate sheet was submitted September 26, 2012 showing some items that were not included on the original rate sheet.<sup>12</sup>

On July 16, 2012, the Claims Manager contacted the FOSC, Jordan Garrard, to confirm the nature and scope of the removal actions by STAT, Inc. and to confirm the extent of removal activities seen in STAT, Inc.'s dailies and invoice. The FOSC stated that it was necessary for STAT, Inc. to work overnight to stop the diesel-oil from continuing to contaminate Lower Creek. Additionally, the FOSC explained that the spill went down a steep grade and that it was difficult to access the creek which required more time and effort.<sup>13</sup> Also, that FOSC approved the use of a geologist to confirm that there was no residual oil that would continue to contaminate the water since the Catawba River is a source of drinking water downriver.<sup>14</sup>

*Geologist's Report:* Lighthouse (Lighthouse) provided a written report to the RP that is required by State law. The FOSC stated that he approved of this action because Lower Creek connects to the Catawba River which is used for drinking water and there was a concern that there was no further threat of pollution entering the waterway.<sup>15</sup>

The NPFC finds the Lighthouse Technical Environmental Consultants written report of February 27, 2012 was approved by the FOSC and is a compensable removal activity as defined under OPA. The NPFC approves Lighthouse invoice of \$4,759.15 that was paid by STAT, Inc and included Pace Analytical laboratory analysis that Lighthouse paid.<sup>16</sup>

Following is an itemized list of denied costs by the NPFC and associated with this claim submission:

On Feb. 6, 2012, STAT billed a total of \$96.00 for PVC pipe. The NPFC denies this amount as this item is not listed on STAT's rate sheet nor did STAT provide a third party receipt to support the charge billed and as such, this cost is denied as unsubstantiated based on the rate schedule in place at the time services were rendered;

On Feb. 6, 2012, STAT charged \$400.00 for a mob/demob fee. It is important to note that this ancillary charge was not identified on the vendor rate schedule and is therefore denied;

On Feb. 8, 2012, STAT billed \$5,473.02 associated with Lighthouse's invoicing. It is important to note that the Lighthouse invoice was actually only for \$4,759.15 which STAT provided proof of payment in that amount. As such, the 15% markup STAT has attached to Lighthouse invoicing is not supported by the vendor rate schedule or identified under Terms and Conditions of the rate schedule and as such, the NPFC denies the 15% markup in the amount of \$713.87 as not in accordance with the rate schedule; and

<sup>10</sup> See letter from [REDACTED] received at the NPFC June 20, 2012

<sup>11</sup> See Stat Inc's rate sheet attached to email July 10, 2012 and supplemental rate sheet September 27, 2012

<sup>12</sup> See copy of supplemental rate sheet submitted by email on September 26, 2012

<sup>13</sup> See photos Lighthouse written report of February 27 with diagrams and photos and USEPA POL REP 1

<sup>14</sup> See USEPA POL REP 1 in admin record and email to [REDACTED]

<sup>15</sup> See email from [REDACTED] USEPA dated July 16, 2012. USEPA also wrote a letter on February 29, 2012 to [REDACTED] Safety Supervisor for Applied Abatement Demolition and Trucking requesting additional information.

<sup>16</sup> See copies of Pace Analytical invoices of February 16, 17 & 27 totaling \$2,021.00

On Feb. 8, 2012, STAT billed \$172.50 associated with water flushing but did not provide any documentation to support the charge nor does the rate schedule articulate billing for such services. As such, this charge was denied.

Lastly, the Claimant's invoice was for \$43,999.07 although the daily field logs only totaled \$43,997.07, which is a difference of \$2.00. As such, the NPFC denied the \$2.00 as an unidentified cost.

The NPFC has denied a total of \$1,384.37 in unsubstantiated costs.

**C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$42,596.15 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# E12409-0001. All costs deemed compensable are for charges incurred in response to the pollution incident on February 6, 2012 and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Claim Supervisor

Date of Supervisor's review: *10/4/12*

Supervisor Action: *Approved*

Supervisor's Comments: