

CLAIM SUMMARY / DETERMINATION

Claim Number:	913074-0001
Claimant:	Lewis Environmental Inc.
Type of Claimant:	Corporate (US)
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$5,707.70

FACTS:

Incident

On or about 28 August 2011, flood waters from the Pennypack Creek caused tanks and drums of waste oil and other petroleum products to be knocked over, releasing oil which impacted the building and parking lot of property owned by Horizon Property Management (Horizon) at 332 South York Road, Hatboro, PA. This location is adjacent to the Pennypack Creek, a tributary of the Delaware River, a navigable waterway of the United States.

Claim & Claimant

This claim was presented to the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC) on 9 July 2013 for reimbursement of uncompensated removal costs in the amount of \$5,707.70. The Claimant, Lewis Environmental, was hired by the Responsible Party (RP), Horizon Property Management to perform clean-up and removal actions associated with this incident. The Claimant submitted invoices for this work to the RP who has failed to pay as of the date of this determination. The NPFC issued an RP Notification letter to Horizon Property Management on July 12, 2013, and to date they have not responded.

Removal Actions

According to the narrative provided by the Claimant, they mobilized to the spill site under the direction of the Hatboro Fire Chief, [REDACTED] and Montgomery County HAZMAT official, [REDACTED]. The concern was the potential impact of flood damage materials and products impacting the Pennypack Creek, a nearby waterway.

Flood waters damaged materials located at the job location and brought the materials to an outside parking lot. The photographic evidence presented by the Claimant shows that the waters of the Pennypack Creek were impacted. Once on site, the crew discussed the scope of work with the involved parties.

The Claimant discussed the scope of work with all involved parties. Absorbent materials were deployed at strategic locations. A drain was opened to lower the level of the water, while passing the water through absorbent material.

Oil-dri was deployed, spread, collected and placed in a container (drums) to remove residual material that was left behind. At 5:00 p.m. the need for additional material was realized and additional support was released. Material was left with the customer contact who was satisfied

with the clean-up an intended to perform additional services in—house. The crew was demobilized from the job site. The Claimant's crew then returned to their offices and re-stocked and staged equipment. Pursuant to the terms of the contract, the product was left on scene for the RP to handle disposal which is why the Claimant has not included disposal costs in this submission.

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].

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:

Overview:

1. Based on the facts of the incident, the NPFC is exercising its delegation authority under Section 1012(a)(4) of the Oil Pollution Act of 1990 and has determined that the actions taken were in accordance with the National Contingency Plan (NCP), as required under the Claims Regulations, 33 CFR 136.203 & 205
2. The Claimant has demonstrated that the incident involved the report of a discharge and substantial threat of a discharge of oil into “navigable waters” as defined in OPA 90, 33 U.S.C. 2701.
3. The claim was submitted within the six (6) year statute of limitations. 33 U.S.C. 2712(h)(1).
4. A Responsible Party was determined for the incident. 33 U.S.C. 2701(32)
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions associated with a discharge of oil into “navigable waters” as defined by OPA 90 and were actions in accordance with the National Contingency Plan (NCP).

Analysis:

NPFC CA reviewed the documentation submitted in support of the Claimant’s submission for reimbursement of uncompensated removals costs to the Fund. The review focused on (1) whether the incident involved a discharge or substantial threat of a discharge into “navigable waters”, (2) 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); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

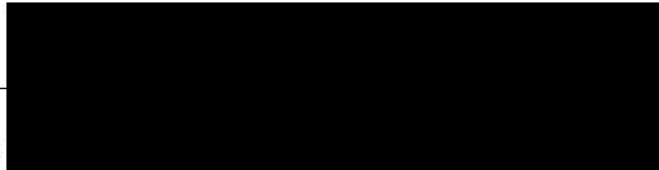
The NPFC reviewed the submission which stated that the actions were directed by the Chief of the Fire Department, Hatboro, PA and not the FOSC. However, based on the facts of the incident, the NPFC has made a decision to exercise its delegation authority under Section 1012(a)(4) and therefore the actions taken and costs incurred were in line with the Claims

Regulations. See 33 CFR 136. The Claimant should be aware, that any future claims submitted to the OSLTF for reimbursement should include clear evidence of FOSC coordination by either USEPA or USCG depending on the location and jurisdiction of the incident.

The NPFC has reviewed all the costs submitted with are reasonable and compensable and should be paid in the total amount \$5,707.70

AMOUNT: \$5,707.70

Claim Supervisor:



Date of Supervisor's review: *8/15/13*

Supervisor Action: *Approved*