CLAIM SUMMARY / DETERMINATION

Claim Number:	913075-0001
Claimant:	Lewis Environmental, Inc.
Type of Claimant:	Corporate (U.S.)
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$3,642.25

FACTS:

Incident:

On or about 8 September 2011, for the second time in approximately two weeks, the floodwaters from the Pennypack Creek caused tanks, drums and waste oil to be knocked over, releasing oil which impacted the building and parking lot at Horizon Property Management located at 332 South York Road, Hatboro, PA. The discharge impacted the Pennypack Creek, a tributary of the Delware River, a navigable water 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 $3,642.25. The Claimant is Lewis Environmental, who was hired by the Responsible Party, Horizon Property Management to perform clean-up and removal actions associated with this incident. The Claimant performed the services and submitted the costs to the RP who has not paid as of the date of this determination. The NPFC issed an RP Notification letter to Horizon Property Management on July 12, 2013 and to date no response has been received.

Removal Actions:

According to the narrative provided by the Fire Deparment, they were dispatched to investigate an "odor of gas" inside a commercial building. The Department personnel arrived on scene to find overturned oil tanks and drums leaking inside of multiple auto repair shops. In response, they boomed each bay door to keep the product from entering the parking lot, storm drain and manholes in the parking lot and to further prevent the product from reaching the Creek.

The Fire Department contacted the Department of Environmental Protection, who dispatched a HazMat officer. Once on scene, the HazMat officer attempted to contact the tenant who wasn't available via phone. The Fire Marshal contacted the clean-up company who dispatched personnel to the scene. Once on scene, the owner of the property signed a contract with the Claimant, Lewis Environmental.

The narrative provided by the Claimant in the claims submission states that as a result of this incident, the Claimant, Lewis Environmental mobilized the Field Supervisor to the site to

investigate a discharge of oil from the mechanic shop. Once on site, he met with the Fire Marshal, Bob Stauch and RP (property owner) George. The Claimant personnel were advised to pick up and skim oil from flooded areas of the parking lot and place absorbent boom to collect future oil from the parking lot with up coming rain event.

The Claimant also stated that drums needed to be retrieved and placed inside the garage in case of future flooding. Lewis dispatched a crew to assist with the clean-up and to secure boom. The crew was on-site at 2:00pm and began to place boom on the inside of garage doors to prevent further leaching of oil from the garage.

The crew placed boom and unloaded a box truck that was used to retrieve drums from the 28 Augut 2011 oil pollution incident and placed them into the garage. They staged 12 drums and re-labeled them. They began to set up and skim the flooded area of the parking lot and assisted with the unclogging of the drain to allow the size of the flood to drain out to allow for better skimming procedures. The crew then picked up absorbent applied by Hatboro Fire Department and began to containerize into the drums. Three (3) drums of absorbent were used to store Fire Department absorbents. The crew secured the boom at the inlet of the parking lot to continue to trap oil from the parking lot and stop it from releasing into the Creek.

Three drums were left with Horizon, the RP for their own response inside of the garage.

At the end of the response, the crew returned to their shop where they restocked and staged materials and equipment.

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:

Overview:

1. Based on the facts of the incident, the NPFC has determined it is proper to exercise its delegation authority under Section 1012(a)(4) of the Oil Pollution Act of 1990 and has determined that the action 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. This claim was submitted within the six (6) year statute of limitations. 33 U.S.C. 212(h)(1).
4. A Responsibe Party was determined for this 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 oil oil into "navigable waters" as definef 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 removal 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 of 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 of Hatboro, Pa and not the FOSC. However, based on the facts of the incident, the NPFC has decided to exercise its delegation authority under Section 1012 (a)(4) and therefore the actions taken and costs incurred are determined to be consistent with the NCP and were in line with the Claims Regulations. See 33 CFR 136. The claimant should be aware, that any future claims submitted to the Fund should include clear evidence of FOSC Coordination.

As part of the submission, the narrative stated that the RP provided a $4,000.00 deposit to the Claimant for removal actions. The NPFC had a question about this deposit. The Claimant provided clarification that there was only one $4,000.00 deposit and that was for the incident that occurred on or about 28 August 2011 (NPFC Claim Number 913074-0001). That deposit was applied to the costs in that claim accordingly.

The NPFC has reviewed all the costs submitted and has determined that all costs are reasonable and compensable and should be paid in the total amount of $3,642.25

AMOUNT: $3,642.25

Claim Supervisor: [redacted]

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

Supervisor Action: ***Approved***

Supervisor's Comments: