

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914001-0001
Claimant	: Lewis Environmental, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$3,632.69

**FACTS:**

**A. Oil Spill Incident:** The United States Environmental Protection Agency (EPA) Region III reports<sup>1</sup> that on July 16, 2013, a 75-gallon above-ground tank containing approximately 40,000 gallons of #6 oil was vandalized, spilling roughly 2,000 gallons of oil into the secondary containment basin. The basin was compromised, and oil leaked into a drainage swale (ditch) then to a storm sewer line. Both the swale and sewer were found to contain significant amounts of oil. Though the oil did not reach the water, as the storm drain eventually leads to an outfall of the Schuylkill River, a navigable waterway of the US, draining approximately ¾ mile upstream of a drinking water intake, it was determined to be a significant threat.

Though it was determined that the spill occurred as a result of vandalism, the EPA states in its report that it is unlikely that the trespassers who caused the release will be identified. Thus, the property 2525 Investors LP, CarVision Inc., of Norristown, PA (CarVision), was tagged as the Responsible Party (RP) and was notified. On July 17, 2013, the RP contracted Lewis Environmental, Inc. (LEI) for cleanup and removal activities.

This incident was reported to the National Response Center (NRC) via report # 1054156.<sup>2</sup>

**B. Description of removal actions performed:** The claimant, Lewis Environmental, Inc. (LEI), arrived on-scene and, after the RP's representative signed a contract and LEI secured a \$5,000.00 deposit, LEI began working. An initial meeting was set up between LEI, local and state agencies, as well as EPA Region III. A vac tanker and a light tower were set up to pump oil out of the affected area. Pump operations continued until approximately 05:30 on July 18, 2013, where a total of 510 gallons were recovered from the area. The oily soil and debris were disposed of properly on July 18, 2013.

**C. The Claim:** On October 8, 2013, LEI submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$3,632.69 for the services provided from July 17-18, 2013. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

The review of the actual cost invoicing and dailies 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

<sup>1</sup> See US EPA Region III POLREP #1, dated 7/21/2013.

<sup>2</sup> See NRC Report # 1054156, opened 7/17/2013.

were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

**APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

"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".

"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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

33 USC § 2712(f), which is entitled "Rights of Subrogation," provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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. FOSC Coordination has been established via the United States Environmental Protection Agency Region III.<sup>3</sup>
2. 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.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party was determined but, to date, has not submitted payment to the claimant. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all removal costs presented were for actions in accordance with the NCP and that 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 Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

Both the National Response Center (NRC) and US EPA Region III were aware of the incident and the actions LEI performed. The Claimant provided dailies and invoicing of its

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<sup>3</sup> See US EPA Region III POLREP #1, dated 7/17/2013.

personnel and equipment costs, which were deemed reasonable to accomplish the response objective. Additionally, the Claimant did attempt to collect from the RP, but was unsuccessful.

The contractor rate schedule in place at the time services were rendered was reviewed and the oversight by the Federal On Scene Coordinator, Mr. [REDACTED] of US EPA Region III, was confirmed. Thus, the work performed to remove the free product from the basin, swale and sewer line and also the removal of petroleum contaminated soil has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the spill. The RP did email LEI on July 25, 2013, to state why he did not agree with the charges invoiced, but has yet to pay the difference of the invoice less the \$5,000.00 deposit made to the claimant.<sup>4</sup>

Based on the evidence in this claim submission and affirmation by the FOSC for the actions undertaken by LEI and its contractor, the Claims Manager hereby determines that the claimant did incur \$3,632.69 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by LEI and submitted to the NPFC under claim #914001-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from July 17-18, 2013. LEI represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the claimant.

**C. Determined Amount: \$3,632.69**

The NPFC hereby determines that the OSLTF will pay \$3,632.69 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914001-0001. 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.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *11/12/13*

Supervisor Action: *Approved*

Supervisor's Comments:

<sup>4</sup> See RP letter dated March 5, 2013.