

CLAIM SUMMARY / DETERMINATION

Claim Number:	918025-0001
Claimant:	Clean Harbors Environmental Services
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$40,932.16

FACTS:

Oil Spill Incident:

On October 20, 2016 at approximately 1230pm, Ms. ██████████, from Quanex Building Products (Quanex), made a spill report to the State of Ohio Environmental Protection Agency (OH EPA).¹ The OH EPA investigation report states that at approximately 1253pm, the State On Scene Coordinator (SOSC), Mr. ██████████, received an email notification from the OH EPA District Office advising that there was a diesel fuel release in Perrysburg, OH at the Quanex Building Products facility. The initial report details provided by Ms. ██████████ (reporting party and Corporate employee of Quanex) stated that it was a 60-gallon diesel spill that occurred on the property and that a response contractor, Safety Kleen, had been hired and that there was no impact to the water.

The SOSC then decided to make contact with Ms. ██████████ (reporting party) who informed him that she was an employee located in the State of Washington and not actually at the spill location. The SOSC requested that she contact the affected facility and confirm that there were no oil impacts to any waterways and to send some photos to him of the spill site. Ms. ██████████ stated that the release occurred from a Kaliria Trucking² truck that was making a delivery to the site and had a damaged saddle tank upon arrival and delivery.

The SOSC received ten (10) photos from Ms. ██████████ and was provided an update at approximately 1:40pm that the Plant Manager, Mr. ██████████, had reported that the diesel fuel spill was discovered in a storm sewer which discharges into an off property retention pond. The SOSC requested the contact number for the Plant Manager and advised her to contact the Perrysburg Fire Department. The SOSC also asked Ms. ██████████ to confirm with the response contractor that they were equipped to handle the response cleanup and necessary containment actions. The SOSC also gave her the number to the Wood County Emergency Management Agency (EMA).

At 1:53pm, the SOSC sent a request to his Supervisor to engage and respond based on the spill update he had received and the apparent lack of containment in the retention pond, as well as the known downstream migration of the fuel due to heavy rains. The SOSC then contacted the

¹ See, State of Ohio Environmental Protection Agency, Emergency Response Section – District Office Investigation Report (DOIR) dated October 20, 2016, Spill ID # 1610-87-2054, page 1 of 4.

² See, State of Ohio Environmental Protection Agency, Emergency Response Section – District Office Investigation Report (DOIR) dated October 20, 2016, Spill ID # 1610-87-2054, page 3 of 4.

Wood County EMA Director and updated him on the situation and the SOSC advised him that he was going to contact the Perrysburg Township Fire Department.

At 2:10pm, the SOSC's Supervisor approved his request to respond to the incident and at 2:12pm, the SOSC contacted the Quanex Plant Manager, Mr. [REDACTED] who advised him that the response contractor, Safety Kleen, had activated Clean Harbors who was now on scene responding. The SOSC was also updated that the Fire Department responders were in the process of checking the fuel migration in the retention pond. At 2:30pm, the SOSC departed for the spill location.³

State status actions resulting from the incident:

Ohio Environmental Protection Agency issued a Notice of Violation (NOV) to Pawa Trucking, on October 20, 2016 for the oil spill incident. On October 31, 2016, Pawa Trucking was issued a Resolution of Violation (ROV) by Ohio Environmental Protection Agency because it was determined by the State of Ohio that all violations that were discovered on October 20, 2016 response had been resolved.

Ohio Revised Code (ORC) 6111 – Water Pollution Control, Unauthorized Release to Waters of the State had been satisfied, at the state level, because the migration of diesel fuel was stopped from entering the waterways, the fuel and contaminated debris from the spill site and waterways was removed, the waste generated was disposed of in accordance with State and Local Laws and Regulations, and according to the document written on October 31, 2016, the RP provided Ohio EPA with all documentation regarding clean-up actions were taken.

Discharge and pathway to navigable waters:

The retention pond flows into a drainage ditch that runs parallel to Oregon Road, (State Road 795). The ditch then runs north to its confluence with Dry Creek. The migration path from Dry Creek flows north and east until it meets Crane Creek, west of Billman Road, in Ottawa/Lucas County. Crane Creek then flows north and east to Cedar Creek which flows to the navigable waters of, Lake Erie.^{4 5}

It is important to note that the NPFC reached out to the SOSC and requested a detailed description and explanation of the substantial threat that existed to the navigable waterway and also requested a description of the nexus from the retention pond to the navigable waterway. As an initial matter, the SOSC advised the NPFC that at the time of the oil spill incident, and during cleanup operations, heavy winds and rain pushed the oil away from the discharge point of the retention pond that was located in the northeast corner of the retention pond although oil sheen was detected in the retention pond, it also was detected downstream of the containment material that had been installed, and as such,

³ See, State of Ohio Environmental Protection Agency District Office Investigations Report (DOIR) dated October 20, 2016, page 3 of 4.

⁴ See, Wood County Engineers Office email to NPFC Claims Manager, [REDACTED], dated March 07, 2018.

⁵ See, Diagram of the retention pond, provided by Wood County Engineers office.

the surface water flow in the road side drainage ditch was moving so high and fast that it was actually not possible to see the sheen once in the ditch.⁶

On March 5, 2018, the SOSOC and NPFC had several email transmissions back and forth regarding the discharge description of the oil product and it was in this email transmission that the SOSOC affirmatively answered that the oil did escape the retention pond and was traveling towards the navigable waterway.⁷

Description of Removal Activities for this Incident:

The immediate goals of the Ohio Environmental Protection Agency, (OH, EPA) was to stop the migration of diesel fuel to and from the retention pond; remove all fuel from the surface waters and from any nexus (i.e, drainage ditch) that leads to the navigable waterway; remove any contaminated debris from the spill site and affected surface waters; and then properly dispose of all waste that was generated in accordance with Ohio State and local laws and regulations, provide Ohio, EPA with all documentation on clean-up actions taken.⁸

Safety-Kleen, was the initial response contractor on the scene who deployed boom on the retention pond until such time as it was determined that more assets were needed to perform cleanup and then Safety Kleen contacted Cleans Harbors.⁹ Clean Harbors (Claimant) was then contracted by Quanex to perform oil spill response operations.¹⁰ . The team of oil spill responders (OSROS) utilized absorbent materials and barriers to contain the oil and mitigate further damages.

Marine Pollution Control (MPC), subcontractor to Clean Harbors, arrived with vacuum trucks and worked to siphon out the contaminated water in the storm drains and retention pond.¹¹ Clean Harbors also provided field personnel, absorbent materials, boom, vehicles, miscellaneous tools, and waste disposal equipment. Cleanup operations began October 20, 2016 and continued until October 21, 2016. Based on the disposal manifests, all disposals were properly managed in accordance with National Contingency Plan (NCP).¹² Clean Harbors and its subcontractors worked under the direction of the State On-Scene Coordinator.

Responsible Party and Presentment:

The Responsible Party under the Oil Pollution Act (OPA) is Pawa Trucking, Inc. The Responsible Party has refused to pay Clean Harbors for the services rendered in October 2016. Pawa Trucking's attorney, Mr. [REDACTED], Jr., sent Clean Harbors a letter, dated April 10,

⁶ See, Ohio EPA SOSOC email to [REDACTED] dated March 6, 2018.

⁷ See, Email trail of communications between Mr. [REDACTED] and personnel at the NPFC dated March 5, 2018.

⁸ See, State of Ohio Environmental Protection Agency, Emergency Response Section – District Office Investigation Report (DOIR) dated October 20, 2016, Spill ID # 1610-87-2054, pages 1 – 4.

⁹ See, State of Ohio Environmental Protection Agency, Emergency Response Section – District Office Investigation Report (DOIR) dated October 20, 2016, Spill ID # 1610-87-2054, page 1, paragraph 2.

¹⁰ See, Clean Harbors Emergency Response Agreement dated and executed on October 20, 2016 with Quanex.

¹¹ See, Claimant and SOSOC pictures that were provided demonstrating the response actions.

¹² See, Uniform Hazardous Waste Manifest Numbers 008778806 FLE and 1556-MPC

2017 stating, "...the guilty party is Quanex Building Products."¹³ On June 1, 2017, Ms. [REDACTED], Clean Harbors' Senior Collections Specialist, sent Pawa Trucking an inquiry as to the payment status of open, unpaid, invoices.¹⁴ On June 5, 2017, Clean Harbors received another letter from Mr. [REDACTED] stating, "...Clean Harbors is not going to get paid by Pawa Trucking, Inc."¹⁵

The National Pollution Funds Center (NPFC), Claims Manager, sent a certified letter to Mr. [REDACTED], indicating the NPFC was in receipt of Clean Harbors' invoices and if the NPFC pays this claim, it may seek to recover from, Pawa Trucking, any compensation paid by the Oil Spill Liability Trust Fund (OSLTF) as well as all costs incurred by the Fund.¹⁶ Mr. [REDACTED] sent the NPFC a reply, via letter, dated March 26, 2018, stating Quanex is responsible because it was out of compliance with the applicable stormwater retention rules. In the same letter, Mr. [REDACTED] admits that Pawa's contracted truck was the original source of the leak.¹⁷ The NPFC sent Pawa Trucking a certified RP notification letter, directly to them, on April 16, 2018. The NPFC has received the return receipt demonstrating Pawa Trucking has received the letter however, as of the date of this Determination, the NPFC has not heard directly from Pawa Trucking.

Claim and Claimant:

On February 23, 2018, the Claimant, Clean Harbors, submitted a pollution removal cost claim to the NPFC for reimbursement of its uncompensated pollution removal costs totaling, \$40,932.16 for the services they provided to Quanex for the oil spill incident that occurred at the Quanex facility in Perrysburg, OH.¹⁸

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

¹³ See, [REDACTED] letter to Clean Harbors, dated April 10, 2017.

¹⁴ See, email from [REDACTED] to Pawa Logistics, dated, June 1, 2017.

¹⁵ See, [REDACTED] letter to Clean Harbors, dated June 5, 2017.

¹⁶ See, RP Notification letter to Pawa Trucking C/o Mr [REDACTED], dated February 26, 2018.

¹⁷ See, [REDACTED] Letter to [REDACTED], Claims Manager, United States Coast Guard, dated March 26, 2018.

¹⁸ See, Optional OSLTF Claim Form from Clean Harbors to NPFC, dated February 23, 2018.

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:

A. Overview:

1. NPFC has determined that the actions undertaken by Clean Harbors, and its associated subcontractors, 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 costs 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 substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 to “navigable waters;”
3. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1);
4. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs claimed were associated with OPA compensable removal actions in accordance with the NCP and that costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.¹⁹

B. NPFC Analysis

NPFC CA reviewed Clean Harbors’ invoiced costs 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 to be consistent with the NCP, and (4) whether the costs were adequately documented and reasonable.

During the NPFC’s adjudication of the claim, the NPFC obtained evidence that payment had been made by the Claimant to all of its third party contractors.^{20 21} The NPFC made several requests for information to substantiate the claim submission and based on all information provided, the NPFC was able to determine that the majority of costs were billed in accordance with the rate schedule pricing at the time the services were provided and that proper disposal was performed in accordance with the National Contingency Plan (NCP).

Oversight was provided by Mr. [REDACTED], in his capacity as the SOSC for this incident. The NPFC has determined that most of the costs that were incurred by Clean Harbors were reasonable and necessary to mitigate the affects of the incident. The NPFC has determined that the payable costs were billed in accordance with or equitable to industry stand and were determined by the SOSC and the NPFC to be consistent with the NCP.

The NPFC has denied a total of \$1,929.23 of costs not properly supported by the record and they are as follows:

1. 10/20/16 – 30 HP Boiler Unit in the total amount billed of \$1,600.00. This item is not on any contemporaneous daily field log nor is it on any rate schedule and as such, the use of this item is not properly supported and denied;

¹⁹ See, Encl (1) NPFC Summary of Costs spreadsheet.

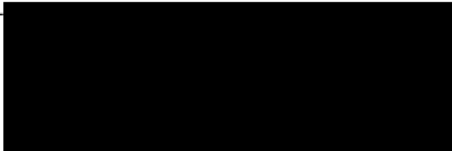

²⁰ See, Proofs of Payment for Spill Tek, Enviro Solids, Marine Pollution Control Corp, from [REDACTED], Field Administration Manager, Clean Harbors.

²¹ See, Citizens Bank Commercial Account Statement, provided by Clean Harbors.

2. 10/20/16 – Electric drum head, vacuum system in the total amount of \$7.00. This item is not on any contemporaneous daily field log nor is it on any rate schedule and as such, the use of this item is not properly supported and denied;
3. 10/26/16 – 9% Recovery Fee for the total amount determined not OPA compensable in the total amount of \$144.63; and
4. 10/26/16 – Hubtrans charge in the total amount of \$177.60 as the transportation charge is not outlined or described in the rate schedule or in its terms and conditions and there is no other evidence that such a charge could be incurred.²²

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer **\$39,002.94**²³ as full compensation for the reimbursable removal costs incurred by Clean Harbors and submitted to the NPFC under claim #918025-0001. All reimbursable costs are for charges paid by the Claimant for removal actions as that term is defined in OPA and are compensable removal costs by the OSLTF as presented by the Claimant.

AMOUNT: \$39,002.94


Claim Supervisor: 
Date of Supervisor's review: <i>5/3/18</i>
Supervisor Action: <i>Approved</i>

²² See, Encl (1) NPFC Summary of Costs spreadsheet.

²³ *Id.*