

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	918037-0001
<b>Claimant:</b>	Moran Environmental Recovery, LLC
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	████████████████████
<b>Amount Requested:</b>	\$28,481.78

### FACTS:

- A. *Oil Spill Incident:*** On November 28, 2017, Middle Bay Transportation (MBT) contacted the US Coast Guard National Response Center (NRC), reporting a vehicle accident involving an 18-wheeler and the subsequent discharge of less than 20 gallons of varnish to an isolated area near the intersection of Highway 78 and Highway 178 in Ridgeville, South Carolina.<sup>1 2</sup> In addition, MBT, as the responsible party (RP), reported that soil near the spill was impacted.<sup>3</sup>
- B. *Description of removal actions performed:*** The owner of the 18-wheeler involved in the reported oil discharge, MBT, contracted Moran Environmental Recovery, LLC (Moran) to conduct pollution removal activities including the removal of oil. From November 27, 2017, through December 12, 2017, removal activities involved halting the discharge of oil from the tractor trailer, placing absorbents, collecting samples, digging ditches, and disposing of all non-hazardous waste.

### CLAIM AND CLAIMANTS:

This claim for uncompensated removal costs was presented to the National Pollution Funds Center (NPFC) on July 24, 2018, by Mr. ██████████, of Moran. Moran is specifically seeking uncompensated removal costs in the amount of \$28,481.78, asserting that MBT failed to pay them for their removal costs. In addition, Moran asserts that the RP stated that “they were turning this claim over to their insurance company.”<sup>4</sup>

By letter dated August 2, 2018, the NPFC sent an RP Notification Letter to ██████████ (Ms. ██████) of MBT, notifying MBT of its potential responsibility for the oil removal costs associated with the oil spill incident. Ms. ██████ responded by email dated August 2, 2018, stating that the RP is “working with the insurance party for the other party and expects to have this resolve [sic] promptly.”<sup>5</sup> To date, there has been no additional correspondence received from the RP.

<sup>1</sup> See, USCG NRC report dated November 28, 2017.

<sup>2</sup> See, Optional OSLTF Claim Form dated July 24, 2018.

<sup>3</sup> See, South Carolina Department of Health and Environmental Control (SCDHEC) Environmental Quality Control Incident Report dated November 28, 2017.

<sup>4</sup> See, Optional OSLTF Claim Form dated July 24, 2018.

<sup>5</sup> See, email from Ms. ██████████, RP, to Mr. ██████████, NPFC, dated August 2, 2018.

As evidence of its claim, the claimant submitted numerous documents associated with its response to the oil spill incident. The documents include Invoice # 60461<sup>6</sup> totaling \$28,481.78; several Moran Environmental Recovery daily worksheets for the period from November 27, 2017, through December 12, 2017; Trash Gurl Waste Disposal & Portalets Invoices # 61247<sup>7</sup> and 63221<sup>8</sup>; Herc Rentals Invoices # 29698958-002<sup>9</sup>, 29698958-003<sup>10</sup>, and 29702915-001<sup>11</sup>; Grainger Invoice # 9636653389<sup>12</sup>; and Insight Environmental, LLC Invoice # 2018001.<sup>13</sup>

**Additional Information:** The NPFC identified deficiencies with the claim and requested additional information by email dated August 7, 2018. The NPFC requested the following information: documentation demonstrating that the actions taken by the claimant were determined by the FOOSC to be consistent with the National Contingency Plan (NCP), a copy of the analytical results associated with the Insight Environmental, LLC Invoice # 2018001, proof of payment information from Moran for all third party costs, a copy of the South Carolina DHEC report # 201705014, and documentation including correspondence between the claimant and the RP.<sup>14</sup>

By email dated August 16, 2018, the claimant submitted several documents in response to the NPFC's request. The documents include the following: DHEC Environmental Control Incident Report # 201705014; Check Register History Reports for Hertz dated December 1, 2017, through August 10, 2018; GEL Laboratories LLC Certificate of Analysis Reports dated December 4, 2017, and December 18, 2017; INENVI, GRAIN 1, and TRASHG Check Register History Reports dated December 1, 2017; and several emails between Moran and Container Port from June 29, 2018, through July 9, 2018.

### **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).

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<sup>6</sup> See, Invoice # 60461 describing quantity of items, descriptions, and unit pricing for Moran's response to the ASFTRN Varnish Spill from November 27, 2017, through December 12, 2017.

<sup>7</sup> See, Invoice # 61247 describing the cost of portalet delivery and service for November 29, 2017.

<sup>8</sup> See, Invoice # 63221 describing delivery, can liners, pick up, storage, and transportation of a dumpster for November 28, 2017, through January 10, 2018.

<sup>9</sup> See, Invoice # 29698958-002 describing Tele handler equipment rental for November 28 2017, through November 29, 2017, totaling \$1,267.59.

<sup>10</sup> See, Invoice #29698958-003 describing Min-excavator rental for November 28 2017, through December 1, 2017, totaling \$944.10.

<sup>11</sup> See, Invoice # 29702915-001 describing r Compact Track Loader rental for November 29, 2017, through December 6, 2017, totaling \$1170.24.

<sup>12</sup> See, Invoice # 9636653389 describing the purchase of two (2) fire extinguishers.

<sup>13</sup> See, Invoice # 2018001 describing spill response and analytical charges.

<sup>14</sup> See, email from Mr. [REDACTED], NPFC, to Mr. [REDACTED], Claimant, dated August 7, 2018.

"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. There is no evidence of FOSC coordination.
2. There is no evidence demonstrating that the substance spilled substantially threatened a navigable waterway of the United States.
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 statute of limitations. 33 U.S.C. § 2712(h)(2)

***Analysis:*** The claimant failed to provide substantiation that the actions taken were determined by the FOSC to be consistent with the National Contingency Plan. The claimant failed to provide substantiation that the substance spilled presented a substantial threat to a navigable waterway of the United States.

By email dated August 9, 2018, the NPFC contacted the US Environmental Protection Agency (EPA) Region 4 and requested that the Federal On-Scene Coordinator (FOSC) provide comment on what activities Moran conducted on November 27, 2017, and whether those activities were under their direction and conducted in accordance with the National Contingency Plan and if the material discharged from the vehicle entered or substantially threatened a navigable waterway of the United States.<sup>15</sup> The EPA Region 4 Duty Officer responded via email dated August 9, 2018, stating:

I was the Duty Officer for EPA Region 4 during the week of 11/27/17. No request for coordination came from the State or from Moran Environmental. The spill was reported to be less than 20 gallons (to asphalt), which is below our threshold for response. I confirmed (via landline) that the RP had secured a cleanup contractor. No other EPA FOSC coordinator was requested or occurred.<sup>16</sup>

Therefore, the claimant failed to provide substantiation that the actions taken were determined by the FOSC to be consistent with the National Contingency Plan.

In the Optional OSLTF Claim Form dated July 24, 2018, the claimant stated that “Released fluids impacted storm drain ditches, road and grassy area where truck was moved to by the wrecker company.” As evidence for its claim, the claimant submitted the South Carolina Department of Health and Environmental Control (DHEC) Environmental Control Incident Report for Incident No. 201705014. Under the description of the incident, the DHEC stated, “RP reporting less than 20 gallons of Varnish-non oil base (nonhazardous) to the asphalt, some soil impacted.” In addition, the

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<sup>15</sup> See, email from Mr. [REDACTED], NPFC, to USEPA Region 4 Duty Officer dated August 9, 2018.

<sup>16</sup> See, email from Mr. [REDACTED], EPA Region 4 Duty Officer, to Mr. [REDACTED], NPFC, dated August 9, 2018.

November 28, 2017, USCG National Response Center (NRC) Incident Report documented that the spill is located in an “Isolated Area.”

In line with the above, the claimant failed to provide substantiation that the substance spilled presented a substantial threat to a navigable waterway of the United States. As such, the claim is not compensable under OPA and is therefore denied.

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *8/30/2018*

Supervisor Action: *Denial approved*

Supervisor’s Comments: