

## CLAIM SUMMARY / DETERMINATION

**Claim Number:** 918036-0001  
**Claimant:** MPLX Terminals, Mt. Vernon, IN Terminal  
**Type of Claimant:** Corporate  
**Type of Claim:** Removal Costs  
**Claim Manager:** [REDACTED]  
**Amount Requested:** \$21,845.89

### **FACTS:**

#### ***Oil Spill Incident:***

On May 3, 2018, a substance appearing to be red dyed diesel fuel was observed on the Ohio River at mile marker 830.6, at the MPLX Terminal in Mount Vernon, Indiana. The material created a sheen on the surface of the Ohio River, a navigable waterway of the United States. The sheen, which measured approximately 6' x 50' in diameter appeared after heavy thunderstorms passed through the area and collected in and around the MPLX barge loading terminal.<sup>1</sup>

MPLX personnel discovered the sheen and made telephone notifications as required for reporting an oil spill.<sup>2</sup> They also activated their oil spill response organization, Summit Environmental Services, Inc. (Summit) who responded to conduct pollution containment and removal operations.<sup>3,4</sup> Lastly, they obtained a sample of the material from the Ohio River for analysis at their research lab for verification that the material was a red dyed diesel fuel.<sup>5</sup>

The State On-Scene Coordinator (SOSC) Mr. [REDACTED] from the Indiana Department of Emergency Management (IDEM) also responded to the oil spill incident and provided oversight of the pollution removal activities.<sup>6</sup>

#### ***Description of Removal Activities for this Incident:***

Summit personnel responded to the oil spill with an emergency response trailer, personnel, light plants, skirt boom, boats, skimmers, and a vacuum truck to contain and recover product.<sup>7 8</sup>

Skirt boom was placed on both the upstream and downstream sides of the MPLX dock to contain the red dyed diesel from getting upstream and to contain any liquid from emerging from the bank. Summit also stretched ten-inch and five-inch absorbent booms across the water to contain

---

<sup>1</sup> *See* CG Sector Ohio Valley SITREP dated 041236Z May 2018

<sup>2</sup> *See* CG National Response Center (NRC) Report #1211046 dated May 3, 2018. *See* also Indiana Department of Environmental Management Emergency Response Incident Report #80911 dated May 3, 2018.

<sup>3</sup> *See* Optional OSLTF Claim Form submitted by MPLX dated June 29, 2018.

<sup>4</sup> MPLX Terminals LLC and Summit Environmental Services, Inc., entered into contract with each other on September 28, 2017. Contract No. CW2228239.

<sup>5</sup> *See* Intracompany Correspondence, dated May 9, 2018 submitted as part of the claim submission.

<sup>6</sup> *See* Indiana Department of Environmental Management, Emergency Response Incident Report # 80911 dated May 3, 2018.

<sup>7</sup> *See*, Summit Environmental Invoice # 23730.

<sup>8</sup> *See*, Mr. [REDACTED] email to Mr. [REDACTED] dated Thursday, May 3, 2018, provided by the Claimant.

the oil. All saturated booms and pads were eventually removed and a vacuum truck and boat were used to remove the remaining pockets of red dyed diesel fuel from the river.

Cleanup began May 3, 2018 and continued through May 9, 2018 and all waste generated during the response was disposed of at Central Ohio Oil, Inc. by MPLX as part of their recycling program. As such, the disposal costs associated with this response are not part of the removal claim.<sup>9</sup><sup>10</sup><sup>11</sup> MPLX paid Summit's invoice # 23730 in full on July 3, 2018, for all work performed on May 3, 2018, May 4, 2018, May 5, 2018, May 6, 2018, and May 9, 2018.<sup>12</sup>

***Claim:***

On July 17, 2018, the NPFC received a removal costs claim from MPLX Terminals (MPLX or Claimant), Mt. Vernon, IN Terminal for reimbursement of their uncompensated removal costs paid to Summit Environmental Services for personnel, materials, and equipment, in the total amount of \$21,845.89.<sup>13</sup> The Claimant provided an Optional OSLTF Claim Form, Indiana Department of Environmental Management Emergency Response Incident Report # 80911, Intracompany Correspondence regarding the oil spill analysis, dated May 9, 2018, straight Bill of Lading for the water sample dated, May 3, 2018, Summit Environmental Services Invoice # 23830 in the amount of, \$21,845.89, and email correspondence between MPLX personnel regarding the sample analyses performed by MPLX personnel of the material recovered from the Ohio River and subject to their uncompensated removal costs claim..

**APPLICABLE LAW:**

"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

---

<sup>9</sup> *See*, Summit Environmental Invoice # 23730.

<sup>10</sup> *See* letter from Mr. [REDACTED], Marathon Petroleum Company, to Ms. [REDACTED], NPFC, dated September 7, 2018.

<sup>11</sup> *See*, Straight Bill of Lading, Shipper's No. 6518-MTV, dated June 6, 2018.

<sup>12</sup> *See*, Wire Transfer # 2000024571.

<sup>13</sup> *See*, OSLTF Claim Form signed and dated, June 29, 2018.

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. The NPFC has determined that the actions undertaken by the Claimant 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 cost 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 report of a discharge “oil” as defined in OPA 90, 33 U.S.C. § 2701(23) to navigable waters;
3. A Responsible Party was not determined. 33 U.S.C. § 2701(32);
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. §2712(h)(1);
5. 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.

6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable

***B. Analysis:***

Upon initial review of the claim submission, the NPFC made various requests for additional information to the Indiana Department of Environmental Management (IDEM Southwest Regional Office) State On-Scene Coordinator (SOSC) as described below:<sup>14</sup>

1. Explanation of IDEM's role in the oil spill cleanup;
2. Requested lab analyses of the product recovered from the Ohio River;
3. Inquired as to whether or not a fingerprint sample analysis was performed to rule out the possibility of MPLX Terminals being a potential Responsible Party (RP);
4. How and when waste was disposed for this incident;
5. Where did disposal take place;
6. Were vessels in the vicinity tested;
7. Requested a vessel arrival and departure time line for vessels accessing MPLX terminals;
8. Were vessels at the facility at the time the oil was found on the River;
9. How do you know MPLX was not the source of the spill.

In response to the NPFC's request for additional information, the SOSC provided the following:

1. Confirmation of his response and oversight of the pollution removal activities;<sup>15</sup>  
16
2. IDEM Emergency Response Incident Report;
3. MPLX Intracompany Correspondence with Fingerprint Analysis;

Regarding the oil sample obtained and analyzed by MPLX personnel, the NPFC requested additional information as described below from the Claimant in order to support that the material sampled was a red dyed diesel fuel and proof that MPLX as Claimant was not a potential Responsible Party:<sup>17</sup>

1. Actual lab analysis report(s), other than the intracompany correspondence;
2. Facility lab analysis for use as a comparison from MPLX Terminal facility and the incident sample;
3. How was it determined that MPLX was not the source of the spill;
4. Was it Marathon's intent to not charge for the proper disposal as required by the NCP;

---

<sup>14</sup> *See*, Email to SOSC (b) (6) from Ms. [REDACTED], dated Thursday, July 26, 2018.

<sup>15</sup> *See*, Email from SOSC [REDACTED] to Ms. [REDACTED], dated Friday, July 27, 2018.

<sup>16</sup> *See*, Email from SOSC [REDACTED] to Ms. [REDACTED], dated Tuesday, September 18, 2018.

<sup>17</sup> *See*, Email to Mr. [REDACTED] from Ms. [REDACTED], dated, Monday, July 30, 2018.

5. Were any vessels in the vicinity tested and ruled out as being potential responsible parties;
6. Provide a copy of the MPLX Terminals vessel arrival and departure logs for vessels accessing MPLX Terminals during the two (2) days preceding the incident and day of the incident.

Regarding the uncompensated pollution removal costs associated with the claim, the NPFC requested additional information as described below from the Claimant in order to support its claimed removal costs:<sup>18</sup>

1. Executed contract/service agreement between MPLX Terminals and Summit Environmental;
2. Proof of payment to demonstrate the Summit invoices are in full;
3. The actual Summit Invoices;
4. Summit's daily work sheets / Field notes;
5. Summit's published rate schedule;
6. Summit's invoice and evidence of proper disposal for the product recovered and the contaminated solids (pads, etc.) that resulted from cleanup.

In response to the NPFC's request for additional information, the Claimant provided the following documentation:

1. A signed Optional OSLTF Claim Form;
2. Indiana Department of Environmental Management Emergency Response Incident Report # 80911;
3. Intracompany Correspondence with Fingerprint Analysis;
4. Straight Bill of Lading for water sample;
5. Invoice # 23730;
6. Email between Mr. [REDACTED] and Mr. [REDACTED] regarding the Red Liquid from River Bank, dated Thursday, May 10, 2018;
7. Clarification regarding their sampling efforts and a detailed explanation of drainage system in and around the truck loading rack area;<sup>19 20</sup>
8. Major Environmental Service Contract;
9. Summit Addendum to Existing Contract;
10. Summit Emergency Response Rate Schedule;
11. Proof of payment;
12. Barge Loading and Unloading Tickets;
13. Bill of Lading for Disposal;
14. Vessel logs;
15. Summit Daily Reports;
16. Plot Plan of MPLX.

---

<sup>18</sup> See, Email to Mr. [REDACTED] from Ms. [REDACTED] dated, Monday, July 30, 2018.

<sup>19</sup> See, Marathon Petroleum Company LP letter to Ms. [REDACTED], dated September 7, 2018.

<sup>20</sup> See, Marathon Petroleum Company LP letter to Ms. [REDACTED], dated September 17, 2018.

State On-Scene Coordination of this Claim

State On-Scene Coordinator (SOSC) Mr. [REDACTED] from the Indiana Department of Emergency Management (IDEM), responded to the oil spill and provided oversight to the pollution removal activities being conducted at MPLX Terminals.

Upon arrival on-scene, Mr. [REDACTED] observed a rainbow sheen and coagulated red streamers floating on the Ohio River at the facilities barge loading terminal that he estimated to be less than one barrel of product.<sup>21</sup> SOSC [REDACTED] visually inspected the terminal and barge moored there, as well as the Ohio River bank at the terminal location. In an attempt to assess damages and to find the source of the spilled oil, Mr. [REDACTED] visually inspected the Ohio River up and down stream of the facility as well as the Kentucky shoreline by boat.

Based upon his investigation, SOSC [REDACTED] determined that the visual evidence provided enough information to determine that the release was not from the MPLX terminal. SOSC [REDACTED] provided an email to the NPFC stating that the petroleum coagulated red streamers were aged and not fresh and the free product emitted a septic odor and a strong petroleum odor. Lastly, the barge moored at the terminal had no visual signs of stains, spills, or free product on its hull. It was SOSC [REDACTED] opinion that the oil appeared to have come from further out in the channel and upriver and the river's current forced the oil to remain in the barge loading area and along the river bank.<sup>22</sup>

As part of his response and investigation, SOSC [REDACTED] contacted the United States Environmental Agency (US EPA) and the United States Coast Guard, Sector Ohio Valley (USCG), via telephone to inform them of his oversight activities.<sup>23</sup>

Regarding his oversight of the pollution removal activities,, SOSC [REDACTED] confirmed that the pollution removal activities that took place at the MPLX Terminals, Mt. Vernon, Indiana Terminal, were appropriate, necessary, and conducted in accordance with the National Contingency Plan (NCP). SOSC [REDACTED] also confirmed that MPLX used vacuum trucks to clean pockets of oil as well as boom and pad placement to contain the oil in order to manage the cleanup.<sup>24</sup>

Oil Spill Analysis of the Oil in the Ohio River (RAD 2062327)

MPLX personnel sampled and conducted a fingerprint analysis of the spilled material obtained from the Ohio River on May 3, 2018, as documented on Intracompany Correspondence.<sup>25</sup> The

---

<sup>21</sup> Indiana Department of Environmental Management, Emergency Response Incident Report # 80911.

<sup>22</sup> See, SOSC [REDACTED] email dated, July 27, 2018 to NPFC regarding his observation of oil.

<sup>23</sup> See, SOSC [REDACTED] email dated, July 27, 2018 to NPFC regarding his observation of oil.

<sup>24</sup> See, Phone Call Follow-Up Email between SOSC [REDACTED] and Ms. [REDACTED], dated Tuesday, September 18, 2018.

<sup>25</sup> RAD Internal Sample ID # 2062327 contains water with reddish colored emulsion top layer collected from Ohio River off Mt. Vernon, IN L.P. Terminal. Delivered to MPC RAD in one 1-liter clear glass bottle. Sample emitted a diesel fuel odor and was collected on May 3, 2018.

Claimant's research lab does not provide commercial services therefore, the fingerprint analyses transmitted by internal memorandum are the final results and were provided to the NPFC by the Claimant as confirmation that the material tested was comprised of a diesel emulsion with red dyed diesel fuel.

The scope of that report presents information for the characterization of hydrocarbon material found on the Ohio River at Mt. Vernon, IN Terminals. The conclusions were considered to be qualitative and intended for intra-company informational purposes only. The report does not contain information to be used for regulatory waste disposal purposes.<sup>26</sup>

The Executive Summary indicated that a reddish colored material was observed on the surface of the Ohio River near the Mt. Vernon, IN Facility. Therefore a collection of a sample for fingerprint characterization took place.<sup>27</sup> Analysis of the red material suggested it to be an emulsion of red-dyed and bio-blended diesel fuel. Age determination of the suspected diesel fuel was inconclusive; however, comparison with reference diesel/biodiesel samples indicates the material may have been released to the environment within the last five years.

The analysis provided that the sample's reddish colored top layer was comprised of a diesel emulsion. Relative amounts of n-heptadecane (n-C17) and pristine compared to fresh 95% diesel/5% biodiesel reference indicated a possible release to the environment within the past five years. Normal alkane resolution and peak symmetry in both GS-FID and GS-MS results also indicated the diesel was not heavily aged. The observed presence of fatty acid methyl esters (FAME) indicated that the diesel was bio-blended. The material was suspected of containing a red-dyed diesel, but conclusive verification was not achievable with the provided sample amount.<sup>28</sup>

### The MPLX Facility

The MPLX Facility does not store red dyed diesel in tankage at its Mt. Vernon Facility. However they do store red dye in a stainless steel tote and that red dye is injected as needed into undyed diesel fuel at the facilities truck loading rack. The distance from the truck loading rack to the Ohio River is approximately 900 feet and there are trench drains on the entrance and exit of the loading rack that drain directly into an underground storage tank next to the loading rack. That underground storage tank is self-contained and the only means of emptying that tank once full is by vacuum truck.<sup>29</sup> Based upon that design, it's the Claimant's opinion that red dyed diesel could not have escaped from the truck loading rack and/or underground storage tank, traveled 900 feet over land and discharged into the Ohio River.

### NPFC Review of Evidence

---

<sup>26</sup> See, IntraCompany Correspondence dated, May 9, 2018, provided by Claimant.

<sup>27</sup> See, IntraCompany Correspondence dated, May 9, 2018, provided by Claimant.

<sup>28</sup> Work completed by: B [REDACTED], See IntraCompany Correspondence provided by Claimant.

<sup>29</sup> See, Letter to Ms. [REDACTED] from Mr. [REDACTED], dated September 17, 2018.

As there was not a responsible party associated with this oil spill, the Claimant was asked to provide evidence that the discharge of red dyed diesel fuel did not originate from their facility. In addition, the Claimant was asked to provide evidence that the material recovered from the Ohio River was an oil.

Regarding the source of the discharge, the tote containing the red dye as well as the tank containing the undyed diesel fuel were both inspected and determined to be not leaking as confirmed by MPLX personnel and the site inspection conducted by SOSC [REDACTED] on the day of the event. In addition, both MPLX personnel and SOSC [REDACTED] inspected the Ohio River in the vicinity of the oil spill and were of the opinion that the oil spill originated upstream of the facility. Lastly, MPLX provided information that documented the design of the drainage associated with the facilities loading rack, the distance from the loading rack to the Ohio River and the means associated with draining the underground storage tank associated with the loading rack which reinforced their claim that red dyed diesel fuel could not have escaped from the truck loading rack and discharged into the Ohio River.

As such and based upon the preponderance of credible evidence, it is more likely than not, that the red dyed diesel from the facility's loading rack was not the source of the subject oil spill as there was no evidence of escape from the loading rack to the Ohio River and the underground storage tank associated with the drainage of the loading rack was only capable of being emptied via a tank truck.

Regarding the sample analysis performed by MPLX personnel of the material collected from the Ohio River on the day of the oil spill, analysis of the material suggested it to be an emulsion of red-dyed and bio-blended diesel fuel. Specifically, the analysis provided that the sample's reddish colored top layer was comprised of a diesel emulsion. Relative amounts of n-heptadecane (n-C17) and pristine compared to fresh 95% diesel/5% biodiesel reference indicates a possible release to the environment within the past five years. The observed presence of fatty acid methyl esters (FAME) indicate the diesel is bio-blended. The material is suspected of containing a red-dyed diesel, but conclusive verification is not achievable with the provided sample amount.

As such and based upon the preponderance of credible evidence, it is more likely than not that the material sampled from the surface of the Ohio on the day of the oil spill and subject to this claim was a red dyed and bio-blended diesel fuel.

#### NPFC Adjudication

NPFC CA reviewed all documentation provided. The review focused on: (1) whether a discharge or substantial threat of a discharge to a navigable water waterway occurred; (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 to be consistent with the NCP; (5) whether the costs were adequately documented and reasonable.

Upon adjudication, the NPFC confirmed that the costs before the NPFC were charged based on Summit's published rates for its personnel, equipment, materials, and cost plus line items. The NPFC also confirmed that IDEM, Southwest Regional Office was on-scene and oversaw the cleanup, as referenced in the SITREP created by USCG Sector Ohio Valley and supported by IDEM's Emergency Response Incident Report.

Based on the foregoing, the NPFC hereby determines that they will offer and the OSLTF is available to pay, **\$21,845.89** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # 918036-0001. All of the costs are compensable by the Fund have been 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.

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 U.S.C. §§2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.205, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan. Removal costs are defined as, "the costs of removal that are incurred after a discharge of oil has occurred or, in a case in which there is a substantial threat of discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident."

***C. Determined Amount:***

The NPFC hereby determines, the OSLTF will pay **\$21,845.89** as full compensation for the reimbursable removal costs incurred by Claimant and submitted to the NPFC under claim # 918036-0001.

**AMOUNT: \$21,845.89**

Claim Supervisor:



Date of Supervisor's review: ***October 17, 2018***

Supervisor Action: ***Approved***