

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGP922003-URC001
<b>Claimant:</b>	Lewis Environmental, Inc.
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$9,125.75
<b>Action Taken:</b>	Offer in the amount of \$8,895.25

### **EXECUTIVE SUMMARY:**

On April 10, 2021 at approximately 1:46pm local time, the Pennsylvania Turnpike Commission reported that a vehicle was leaking diesel fuel due to a broken drive axel on the Pennsylvania Turnpike highway in Lower Mifflin Township, PA.<sup>2</sup> The vehicle was reported as being registered to a trucking company named L&B Logistics, LLC<sup>3</sup> and the operator of the vehicle was identified as Mr. (b) (6) (“Responsible Party” or “RP”).<sup>4</sup> Due to rain events in the area, an estimated five to ten gallons of fuel entered into several storm drains which lead to the Doubling Gap Creek<sup>5</sup>, a tributary of the Susquehanna River, a navigable waterway of the United States.<sup>6</sup> The Pennsylvania Turnpike Commission contacted Lewis Environmental, Inc. (“Claimant” or “Lewis”) to perform removal and disposal operations.<sup>7</sup>

Lewis presented its removal costs to the RP.<sup>8</sup> After ninety days, having not reached a settlement with the RP<sup>9</sup>, Lewis presented its uncompensated removal costs claim to the National

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<sup>1</sup> This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated with this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

<sup>2</sup> Pennsylvania Turnpike Commission Computer Aided Dispatch (CAD) Report, event number 2104001698, dated April 10, 2021.

<sup>3</sup> Pennsylvania Turnpike Commission Computer Aided Dispatch (CAD) Report, event number 2104001698, entry identified as 14:44:00 by [REDACTED] dated April 10, 2021

<sup>4</sup> Lewis Environmental Customer Work Authorization Agreement dated April 16, 2021; Attachment C to Lewis Environmental claim submission received December 7, 2021.

<sup>5</sup> Lewis Environmental Original Claim Submission, Attachment A, page 4 of 32 Description of work performed and dated April 10, 2021 on daily field log.

<sup>6</sup> Lewis Environmental Original Claim submission received December 7, 2021, OSLTF Claim Form, Question 2, Description of the incident outlines the spill pathway.

<sup>7</sup> Lewis Environmental Original Claim submission received December 7, 2021, OSLTF Claim Form, Question 2, Description of the incident states PA Turnpike Commission contacted Lewis Environmental.

<sup>8</sup> Email from Lewis to NPFC with additional information dated January 7, 2022; see page 16 of 16, copy of certified mail receipt dated January 5, 2022 showing evidence that the invoicing was sent to the RP.

<sup>9</sup> 33 CFR 136.103(c).

Pollution Funds Center (NPFC) for \$9,125.75 on December 7, 2021.<sup>10</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$8,895.25 of the requested amount is compensable and offers this amount as full and final compensation of the claim.

### **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

#### ***Incident***

On April 10, 2021, Pennsylvania Turnpike Commission received a report and responded to a disabled vehicle was leaking diesel fuel due to a broken drive axel on the Pennsylvania Turnpike highway in Lower Mifflin Township, PA that was leaking oil into a storm drain connected to the Susquehanna River, a navigable waterway of the United States.<sup>11</sup> The fuel leak was dammed up, diverted from the storm drains, and approximately ten absorbent pads were laid on the ground while awaiting Lewis to come on scene for removal and disposal services.<sup>12</sup> Lewis performed removal and disposal operations on April 10, 2021; April 12, 2021; and completed response actions on April 22, 2021.<sup>13</sup>

#### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, the owner/operator of the L&B Logistics vehicle, is the Responsible Party (RP) for the incident.<sup>14</sup> On December 9, 2021, the NPFC issued a Responsible Party Notification Letter to L&B Logistics, LLC. via certified mail.<sup>15</sup> A Responsible Party Notification letter notifies the RP that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vehicle that was identified as the source of substantial threat of a discharge of oil to navigable waters of the United States.

#### ***Recovery Operations***

On April 10, 2021, Lewis arrived to the scene and located diesel fuel spilled on the shoulder of the road and in a few storm drains. The affected areas were cleaned with granular and non-slip absorbents. Oil boom was placed in the storm drains after the fuel was recovered from each of the drains. Oil was found where the storm water discharges into the Doubling Gap Creek. Sections of oil boom and oil pads were deployed to contain the oil and recover the oil from the discharge area. As a result, no oil entered the creek.<sup>16</sup> The absorbents were collected into a drum and transported to Lewis 10-day for disposal. Oil booms were left in the storm drains and

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<sup>10</sup> Lewis Environmental Original Claim Submission dated December 7, 2021

<sup>11</sup> Pennsylvania Turnpike Commission Computer Aided Dispatch (CAD) Report, event number 2104001698, dated April 10, 2021.

<sup>12</sup> Pennsylvania Turnpike Commission Computer Aided Dispatch (CAD) Report dated April 10, 2021

<sup>13</sup> Lewis Environmental Original Claim Submission, Attachment A, pages 4 through 32, dated December 7, 2021.

<sup>14</sup> 33 U.S.C. § 2701(32).

<sup>15</sup> NPFC RP Notification Letter sent to L&B Logistics, LLC dated December 9, 2021.

<sup>16</sup> Lewis Environmental Original Claim Submission, Attachment A, pages 11-12 received December 7, 2021

Doubling Gap Creek to inspect any possible oil leakage after the rain ceased.<sup>17</sup> On April 12, 2021, waste was transported to Lewis 10-day pending disposal.<sup>18</sup> On April 22, 2021, Lewis returned to the site to inspect the booms around all storm drains and discharge areas. All booms were collected, placed in drums, and transported to Lewis 10-day for disposal.<sup>19</sup>

## **II. CLAIMANT AND RP:**

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>20</sup> require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.<sup>21</sup> When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.<sup>22</sup> Lewis presented its claim to L&B Logistics via Lewis invoice # 52789 in the amount of \$9,125.75 dated May 21, 2021.<sup>23</sup> The invoice was sent via certified mail to the RP on January 5, 2022.<sup>24</sup> To date, Lewis has received no payment for its services.<sup>25</sup> The RP signed both work and waste authorization forms for Lewis Environmental.<sup>26</sup>

## **III. CLAIMANT AND NPFC:**

When a RP has not settled a claim after ninety days of receipt or denies a claim, a claimant may elect to present its claim to the NPFC.<sup>27</sup> The Claimant submitted all costs to the RP via certified mail on January 5, 2022.<sup>28</sup> On December 7, 2021, the NPFC received a claim for uncompensated removal costs from Lewis Environmental.<sup>29</sup>

Lewis provided the NPFC with an invoice package, email documents attempting to obtain pay, and work and waste authorization forms signed by the RP.<sup>30</sup> Additional information submitted to the NPFC included proper presentment and clarification on daily work schedule personnel hours.<sup>31</sup>

## **IV. DETERMINATION PROCESS:**

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<sup>17</sup> Lewis Environmental Original Claim Submission, Attachment A, page 4 received December 7, 2021

<sup>18</sup> Lewis Environmental Original Claim Submission, Attachment A, page 6 received December 7, 2021

<sup>19</sup> Lewis Environmental Original Claim Submission, Attachment A, page 8 received December 7, 2021

<sup>20</sup> 33 U.S.C. § 2701 et seq.

<sup>21</sup> 33 CFR 136.103.

<sup>22</sup> *Id.*

<sup>23</sup> Lewis Invoice # 52789 dated May 21, 2021.

<sup>24</sup> Email from Lewis to NPFC with additional information dated January 7, 2022; see page 16 of 16, copy of certified mail receipt dated January 5, 2022 showing evidence that the invoicing was sent to the RP.

<sup>25</sup> See, OSLTF Claim Form, question #6, received December 7, 2021.

<sup>26</sup> Lewis Environmental Original Claim Submission, Attachments C & D, received December 7, 2021

<sup>27</sup> 33 CFR 136.103.

<sup>28</sup> Email from Lewis to NPFC with additional information dated January 7, 2022; see page 16 of 16, copy of certified mail receipt dated January 5, 2022 showing evidence that the invoicing was sent to the RP.

<sup>29</sup> Lewis Environmental Original Claim Submission received December 7, 2021.

<sup>30</sup> Lewis Environmental Original Claim Submission received December 7, 2021

<sup>31</sup> Email from Lewis to NPFC with additional information dated January 7, 2022; see page 16 of 16, copy of certified mail receipt dated January 5, 2022 showing evidence that the invoicing was sent to the RP.

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>32</sup> As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.<sup>33</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>34</sup> If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

## **V. DISCUSSION:**

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.<sup>35</sup> An RP's liability is strict, joint, and several.<sup>36</sup> When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."<sup>37</sup> OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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."<sup>38</sup> The term "remove" or "removal" means "containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches."<sup>39</sup>

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<sup>32</sup> 33 CFR Part 136.

<sup>33</sup> See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

<sup>34</sup> See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

<sup>35</sup> 33 U.S.C. § 2702(a).

<sup>36</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>37</sup> *Apex Oil Co., Inc. v. United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

<sup>38</sup> 33 U.S.C. § 2701(31).

<sup>39</sup> 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>40</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>41</sup> The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.<sup>42</sup>

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.<sup>43</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>44</sup>

The NPFC analyzed each of these factors and determined the majority of the costs incurred by Lewis and submitted herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

The amount of compensable costs is \$8,895.25 while \$230.50 was denied. As follows:

1. Lewis submitted a request for costs described as Sweep in the amount of \$215.00 per bale.<sup>45</sup> Lewis provided a copy of their rate schedule which shows the price for a bale of sweep as \$130.00 per bale.<sup>46</sup> Based on the credible evidence presented, the NPFC denies the price differential of amount requested and amount permitted via the rate schedule in the total amount of \$85.00;<sup>47</sup>
2. Lewis submitted a request for costs described as Drum Labels in the total amount of \$12.50.<sup>48</sup> Lewis provided a copy of their rate schedule which does not have drum

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<sup>40</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>41</sup> 33 CFR Part 136.

<sup>42</sup> 33 CFR 136.105.

<sup>43</sup> US Environmental Protection Agency Region 3 was assigned to the region where this incident took place. To ensure that Lewis met its burden with respect to the cleanup activity, the NPFC coordinated with the regional office's of EPA Region 3. After analyzing the spill and the actions taken by Lewis, EPA R3 opined that the actions taken were consistent with the National Contingency Plan and that Lewis was indeed present in response to the oil spill. We agree. Evidence provided by the Claimant as a justification of costs supports Lewis's presence in response to the oil spill between April 10, 2021 and April 22, 2021. See, February 9, 2022 email from EPA FOSC providing FOSC coordination.

<sup>44</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>45</sup> Lewis Environmental Original Claim Submission, Attachment A, page 5 of 32 received December 7, 2021.

<sup>46</sup> Email from Lewis to NPFC with additional information dated January 7, 2022; see page 14 of 16.

<sup>47</sup> See, Enclosure (3) Summary of Costs spreadsheet, line 16.

<sup>48</sup> Lewis Environmental Original Claim Submission, Attachment A, page 5 and 9 of 32 received December 7, 2021.

labels as an itemized cost.<sup>49</sup> Based on the credible evidence presented, the NPFC denies the price of drum labels as not a listed service and presumed to be a “no cost” item;<sup>50</sup> and

3. Lewis submitted a request for costs described as Fuel Surcharge in the total claimed amount of \$133.00.<sup>51</sup> Lewis provided a copy of their rate schedule which shows the price for fuel surcharge may apply to all vehicles and equipment based on the current market price.<sup>52</sup> Based on the credible evidence presented, the NPFC denies all fuel surcharges claimed since Lewis has not provided the basis and cost evidence that supports an across the board 10% application each day to the day rate of the vehicle(s) invoiced.<sup>53</sup>

**Overall Denied Costs:** \$230.50<sup>54</sup>

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Lewis Environmental, Inc. request for uncompensated removal costs is approved in the amount of **\$8,895.25**.

This determination is a settlement offer,<sup>55</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>56</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>57</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6)  
Date of Supervisor's review: *4/15/2022*  
Supervisor Action: *Offer Approved*

(b) (6)

<sup>49</sup> Email from Lewis to NPFC with additional information dated January 7, 2022; see pages 6 of 16.

<sup>50</sup> See, Enclosure (3) Summary of Costs spreadsheet, lines 18 and 56.

<sup>51</sup> Lewis Environmental Original Claim Submission, Attachment A, pages 4,6, and 8 of 32 received December 7, 2021.

<sup>52</sup> Email from Lewis to NPFC with additional information dated January 7, 2022; see page 15 of 16, item # 16 under the Notes section.

<sup>53</sup> See, Enclosure (3) Summary of Costs spreadsheet, lines 24, 41, and 66.

<sup>54</sup> See, Enclosure (3) Summary of Costs spreadsheet.

<sup>55</sup> Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

<sup>56</sup> 33 CFR § 136.115(b).

<sup>57</sup> 33 CFR § 136.115(b).