

CLAIM SUMMARY / DETERMINATION FORM

Date	: 11/09/2009
Claim Number	: 910027-001
Claimant	: Environmental Products and Services of Linden, NJ
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$50,000.00

FACTS:

- 1. Oil Spill Incident:*** The New Jersey Department of Environmental Protection, Bureau of Emergency Response (NJ DEP BER) reports that on March 8, 2009, a three-tractor fire at the Delaware Truck Stop in Knowlton, Warren County caused the release of diesel fuel into an unpaved parking lot, onto the roadway and into a storm drain system.¹ Approximately 300 gallons of diesel fuel discharged into a storm drain that fed to a creek that led to the Delaware River, a navigable waterway of the US.² This incident was reported to the National Response Center by NJ DEP BER representative [REDACTED] on March 8, 2009.³

Mr. [REDACTED] responded to the scene of the fire, along with the [REDACTED] Fire Departments and the NJ State Police Arson Investigation Unit. The NJ DEP BER contacted Environmental Products and Services of Linden, New Jersey (EPS) for removal operations.

The Potential Responsible Parties (PRP) in this incident have been determined, through an investigation by the New Jersey State Police Arson and Bomb Unit (NJSP)⁴ to be Mr. [REDACTED], of Adria Trucking Company, Inc. (ATCI). Mr. [REDACTED] was the initial owner of ATCI, but had transferred ownership over to his fiancé, Ms. [REDACTED] though he portrayed himself as an owner during the initial investigations. At the outset, ATCI filed a claim with their insurance company, Canal Insurance, but Canal refused to pay out the policy proceeds due to non-cooperation on the part of ATCI. Additionally, Canal denied responsibility to the State of New Jersey for coverage under MCS-90, as the fire incident did not arise out of negligence, but rather the intentional acts of arson and vandalism.⁵ Both Canal Insurance and the NJSP were unable to move forward with their cases, which included meeting with the suspected PRPs and their lawyers, because both Mr. [REDACTED] departed the country in June/July, 2009. The investigation, however, is still open and the NJSP are attempting to charge these two individuals.⁶

- 2. Description of removal actions performed:*** The claimant, EPS, was hired to recover all contained free product, to deploy additional containment materials within the storm drain

¹See, NJ DEP BER Investigation Report # 09-03-08-0502-55, opened on 3/13/2009 and Claim submission forms, submitted by Environmental Products and Services of Linden, New Jersey to the NPFC on 10/14/2009

² See, NJ DEP BER Investigation Report # 09-03-08-0502-55, opened on 3/13/2009

³ See, NRC Report # 899361, opened on 3/08/2009.

⁴ See, email from Det. [REDACTED], NPFC, dated 11/06/2009.

⁵ See, email from Mr. [REDACTED], NPFC, dated 11/02/2009.

⁶ See, email from Det. [REDACTED], NPFC, dated 11/06/2009.

system, to remove all grossly contaminated soils at the parking lot location, to containerize all generated waste into roll-off boxes and to dispose of all waste generated during cleanup activities.⁷

Upon arrival to the spill site, EPS utilized sorbent material to pad up the fuel in the parking lot, bagging it for disposal. Speedy dry was spread on the roadway surface where the fuel entered the storm drain. A bobcat was used to scrape the affected area of contaminated stone and soil, which was loaded into rolloffs for disposal. Filter fences were constructed in the creek to contain the fuel. The Knowlton Fire Department did a massive flush of the storm drains affected, and a vacuum truck was used to collect the 3200 gallons of oil-contaminated water for removal. A total of three rolloffs of oil contaminated soil, stone and debris were generated and removed from the site from March 8 – March 9, 2009.

On March 25, 2009, the crew returned to the spill site to inspect the creek and remove all the oil-contaminated debris and drum for disposal. The creek was inspected and no visible sign of additional oil was present. The boom was removed, along with a total of four drums of oil-contaminated debris.⁸

- 3. *The Claim:*** On September 15, 2009, Environmental Products and Services of Linden, NJ submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$50,000.00 for the services provided March 8 through March 9, 2009 and on March 25, 2009. 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 submission.

This claim consists of copies of the invoicing and associated dailies, a copy of EPS contracted rate schedule, copies of the Disposal of Non-Hazardous Waste Manifests, a copy of the EPS Emergency Response Incident Report, a copy of the New Jersey Department of Environmental Protection BER Investigation Report # 09-03-08-0502-55, a copy of Canal Insurance Company Declination of Coverage for Claim # L453089, photographs and internal email correspondence.

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

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).

⁷ See, NJ DEP BER Investigation Report # 09-03-08-0502-55, opened on 3/13/2009

⁸ See EPS Emergency Response Incident Report, submitted with the claim on 10/14/2009

"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:

A. Overview:

1. The FOSC coordination has been established via NJ DEP BER Report # # 09-03-08-0502-55.⁹
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
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 on time.
5. Responsible Party was found, but was unable to provide contact due to the nature of the on-going investigation.
6. 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 confirmed that the claimant did in fact perform a site assessment with NJ DEP BER OSC on March 8, 2009. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The Claims Manager hereby determines that, while the claimant claims to have incurred removal costs of \$50,000.00, the invoicing provided in the claim submission only supports uncompensated removal costs of \$49,737.90. On that basis, \$49,737.90 is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #910027-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from March 8 to March 9, 2009 and March 25, 2009. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$49,737.90 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 910027-001. 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.

⁹ See, NJ DEP BER Investigation Report # 09-03-08-0502-55, opened on 3/13/2009

AMOUNT: \$49,737.90

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *11/10/09*

Supervisor Action: *Approved*

Supervisor's Comments: