

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 04/15/2010
Claim Number	: 909112-001
Claimant	: State of Wisconsin
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$23,470.22

### **FACTS:**

- 1. Oil Spill Incident:** On 2 July 2008 at 12:34 the claimant, Wisconsin Department of Natural Resources (WDNR) received a report that a fuel oil tank in the basement of Irv's River Inn located at 623 W. Water Street, in the City of Princeton, Green Lake County, Wisconsin had floated due to flooding and turned on its side, spilling the fuel oil. It was originally estimated that approximately 100 gallons of fuel oil had spilled.

██████████ of WDNR spoke with the duty officer for WDNR on 3 July 2008 and authorized the use of spill funds in order to initiate cleanup. WDNR's Notification Report states that WDNR ██████████ and the Princeton Fire Department (PFD) deployed temporary absorbent boom. ██████████ called Veolia Environmental, a response contractor, and arranged for them to respond to the oil-spill incident location first thing on 4 July 2008.<sup>1</sup>

- 2. Description of removal actions:** The claimant, WDNR, hired Veolia Environmental, to respond to the incident. Veolia responded to the incident on 4 July 2008. An incident response report was prepared by ██████████, the Project Manager on site for Veolia Environmental. The information contained in that report is as follows: that Veolia received a call from WDNR on 3 July 2008 regarding a release of heating oil at 623 W. Water Street in Princeton, WI. WDNR requested that Veolia respond to the incident, which they did on 4 July 2008 at approximately 6:30 a.m. A foreman and three technicians responded to the incident location. Veolia met with the potential responsible party, Ms. ██████████ and conducted a site assessment. Veolia personnel entered the basement of 623 W. Water Street, righted the heating fuel tank and then tied it off. Veolia then deployed 36 sections of boom, throughout the affected area to capture the heating oil.

Veolia returned to the site on 7 July 2008 with a foreman, technician, three vacuum trucks and operators. The flooding had subsided. They removed the absorbent boom and placed them in ten 55-gallon drums. They then removed the oil/water mix from the basement at 623 W. Water Street. The drums of boom and 13,700 gallons of oil/water were transported to Safety Kleen in Kimberly, WI for disposal. On 25 July Veolia was requested to pressure wash the contaminates off the walls and floors of the basement located at 631 W. Water Street and supply a 20 yard roll-

---

<sup>1</sup> See, Wisconsin Department of Natural Resource Substance Release Notification Report created on October 14, 2008.

off box at 623 W. Water Street in order to remove the contaminated items in the basement. On 4 August 2008 Veolia returned to the site with a foreman, three technicians and a vacuum truck with an operator. Veolia removed the debris from the floor at 631 W. Water Street and placed it into a 20 yard roll off. The contractor then used a pressure washer to remove the oil off the walls and floor. The contaminated oil/water mix was retrieved by the vacuum truck. Veolia vacuumed up a total of six drums of oil/water mix out of the basement at 623 W. Water Street. 500 gallons of water/oil was delivered to Safety Kleen in Kimberly, WI for disposal. On 19 August 2008, Veolia returned to the site to remove the contaminated soil in the surrounding yards. A foreman and an operator were on site and used a skid steer to remove the top inch of soil from the contaminated areas, replaced with new topsoil, seed and mats were then applied to the affected areas. All contaminated soil was placed in a 30 yard roll-off box and transported to Veolia ES Solid Waste in Horicon, WI for disposal.

3. ***The Claim:*** On August 24, 2009, Wisconsin Department of Natural Resources (WDNR) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$23,470.22 for the services provided on July 4, 2008. 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, Veolia rate schedule, WDNR Spill Response Notification form, Contractor Daily Field Logs, photographs, Waste Manifest(s), subcontractor invoicing, WDNR billing letter to the Responsible Party, EPA FOOSC coordination letter dated August 13, 2009, 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 FOOSC, 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).

"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].

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. USEPA provided FOSC coordination via a letter dated August 13, 2009.
2. The incident involved the discharge of “oil” and substantial threat 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. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

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 NPFC has denied \$ 2,334.32 of the costs claimed. Of those costs \$25.00 for clerical personnel are being denied because the claimant could not provide justification for the personnel and the hours are not listed on the daily field log by the contractor. Cost of \$2.50 for a heavy duty drum liner on July 4, 2008 is being denied because the item is not listed on the daily field log by the contractor. \$2,197.22 of costs claimed on Schroeder invoice #108432 dated August 21, 2008 is denied. Finally, the NPFC denied costs claimed for disposal where claimant billed at a rate of \$0.32 each, where the rate billed on the subcontractor invoice was \$0.26. It appears the contractor applied a 20% markup of the individual pricing on disposal as opposed to applying 20% to the overall final cost of the invoicing which resulted in overcharging of markup. The total denied for improper disposal markup is \$109.60.

The Claims Manager hereby determines that the claimant did in fact incur \$21,135.90 of uncompensated removal costs in order to remove and further mitigate the substantial threat of discharge and that that amount 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 #909112-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on 4 July 2008. 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 \$21,135.90 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 909112-001. All of these 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.

**AMOUNT: \$21,135.90**

Claim Supervisor: [REDACTED]

Date of Supervisor’s Review:

Supervisor Action:

Supervisor’s Comments: