

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/2/2010
Claim Number	: 910027-002
Claimant	: Knowlton Township Fire & Rescue Co.
Type of Claimant	: Local Government
Type of Claim	: Real or Personal Property
Claim Manager	: [REDACTED]
Amount Requested	: \$4,559.00

**FACTS:**

- 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. 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. This incident was reported to the National Response Center by NJ DEP BER representative [REDACTED] on March 8, 2009.<sup>1</sup>

Mr. [REDACTED] and Mr. [REDACTED] responded to the scene of the fire, along with the Warren and Knowlton 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) to be Mr. [REDACTED] and Ms. [REDACTED], of Adria Trucking Company, Inc. (ATCI). During the initial investigation, Mr. [REDACTED] portrayed himself as an ATCI owner, though he had transferred ownership over to his fiancé, Ms. [REDACTED]. At the outset, ATCI filed a claim with its insurer, Canal Insurance Company (Canal), but Canal refused to pay out the policy proceeds due to non-cooperation on the part of ATCI. Additionally, Canal denied responsibility to Knowlton Township when presented with a claim. Canal did so by stating that the insurance policy did not cover fire losses in all circumstances and by pointing out the fact that it's insured, ATCI had failed to cooperate in its investigation when trying to determine whether or not the loss was covered which caused Canal to discontinue coverage.<sup>2</sup>

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] and Ms. [REDACTED] departed the country in June/July, 2009. The investigation, however, is still open and the NJSP are attempting to charge these two individuals.<sup>3</sup>

<sup>1</sup> Claimant's Attachment F; NJ DEP BER Investigation Report # 09-03-08-0502-55.

<sup>2</sup> *Ibid.* Canal Insurance Co.'s ltr to [REDACTED] of March 1, 2010.

<sup>3</sup> Email from Det. [REDACTED] (NJ State Police) to [REDACTED] (NPFC) dtd 11/06/2009.

2. **Description of removal actions performed:** Claimant participated in putting out the fire and in containing the oil spill by building a sorbent clay dam and deploying sorbent material within the storm drain system.<sup>4</sup> In addition, the Knowlton Fire Department did a massive flush of the storm drains affected, and a vacuum truck used by Environmental Products and Services of Linden, NJ (EPS) collected 3200 gallons of oil-contaminated water.
3. **The Claim:** On May 25<sup>th</sup>, 2010, Knowlton Township Fire & Rescue submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of \$4,559.00 in damages to personal property it experienced while responding to the March 8, 2009 incident. The damages it experienced were a direct result of actions it took to contain the spilled diesel oil and prevent it from reaching the Delaware River.

This claim is to recover the costs associated with:

- Replacing damaged fire hose                      400 feet
- Replacing Fire Suppressing Foam -              3 each
- Cleaning & repairing of gear                      Multiple items
- Replacing Damaged Bunker Pants                1 pair

The costs claimed are based on a quote from a supplier of the items and services, which claimant provided.<sup>5</sup>

The review of the claimed costs 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

<sup>4</sup> Claimant’s Attachment F.

<sup>5</sup> Claimant’s Attachment D.

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.<sup>6</sup>
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.

<sup>6</sup> Claimant’s Attachment F; NJ DEP BER Investigation Report # 09-03-08-0502-55

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 some 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. Section B below elaborates on the specifics.

**B. Analysis:**

The NPFC reviewed the following costs claimed:

Item #	Item Description	Quantity	Unit Cost	Extended Cost
1	1 ¾" Hose (50' Section)	8 ea.	\$337.00	\$2,696.00
2	Fire Suppressing Foam (5 Gal Pail)	3ea.	\$99.00	\$297.00
3	Foam Freight	1 Lot	\$89.00	\$89.00
4	Protective Gear Cleaning (Pant/Coat)	6 ea.	\$29.00	\$174.00
5	Hazmat Gear Cleaning (Pant/Coat)	6 ea.	\$24.00	\$144.00
6	Hazmat Boots Cleaning	3 pair	\$8.00	\$24.00
7	Repair (3x3) Patch	6 ea.	\$14.50	\$87.00
8	Velcro Repair/Replace	2 ea.	\$4.00	\$8.00
9	Snap Repair/Replace	2 ea.	\$3.50	\$7.00
10	Fire Dex Pant – Replacement	1 pair	\$1,033.00	\$1,033.00
Total Claimed				\$4,559.00

Based on the information provided by claimant, the NPFC adjudicates the items as follows:

- Item #1; Fire Hose is compensable as it was used to flush the storm drains of oil and was damaged when it came in contact with oil.
- Items #2 & #3; Fire Suppressing Foam is not compensable as it is for extinguishing a fire and not to remove oil.
- Items #4 thru #6; are compensable as this is to clean gear that was stained by oil while claimant engaged in removal actions.
- Items #7 thru #9; are compensable as this is to repair gear that was damaged in the process of conducting removal actions.
- Item #10 is compensable as this is to replace a pair of pants that was damaged by the removal actions and rendered unusable after it could not be repaired.

The review of the items 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 on site as documented by NJ DEP BER OSC on March 8, 2009. The Claims Manager validated the compensable removal 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 costs of \$4,559.00, these costs, as noted above, included firefighting costs (\$297.00 + \$89.00 = \$386.00) that are not compensable. Given this, \$4,173.00 is properly payable by the OSLTF as full compensation for the damages claimed that were a result of conducting removal actions by the claimant and submitted to the NPFC under claim #910027-002. The claimant states that all costs claimed are for uncompensated damages experienced by the claimant for this incident on March 8. The claimant represents that all costs are payable by the OSLTF as presented by the claimant.

***C. Determined Amount:***

The NPFC hereby determines that the OSLTF will pay \$4,173.00 as full compensation for the uncompensated damages incurred as a result of removal actions by the Claimant and submitted to the NPFC under claim 910027-002. All costs claimed and deemed compensable are for damages suffered by Claimant during the conduct of removal actions as that term is defined in OPA and are therefore compensable removal costs, payable by the OSLTF as presented by the Claimant.

**DETERMINED AMOUNT: \$4,173.00**

<p>Claim Supervisor: <span style="background-color: black; color: black;">[REDACTED]</span></p> <p>Date of Supervisor's Review:</p> <p>Supervisor Action:</p> <p>Supervisor's Comments:</p>
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