

CLAIM SUMMARY / DETERMINATION FORM

Date : 1/06/2010  
Claim Number : 910043-001  
Claimant : Wisconsin Department of Natural Resources  
Type of Claimant : State  
Type of Claim : Removal Costs  
Claim Manager : ██████████  
Amount Requested : \$9,881.50

**FACTS:**

- Oil Spill Incident:*** The United States Coast Guard Sector Lake Michigan Case # 458546,<sup>1</sup> reports that on June 19, 2009, approximately 10 gallons of diesel fuel were discovered in Prairie Harbor, a navigable waterway of the US in Kenosha, WI, and along the rock shore line and boat dock area of the Prairie Harbor Yacht Club.<sup>2</sup> The sheen source is unknown.

The incident was reported to the National Response Center (NRC) on June 19, 2009 at approximately 10:00 p.m. CST via report # 909366.<sup>3</sup> After receiving this report on June 22, 2009, Sector Lake Michigan personnel conducted an investigation of the spill site. While this investigation was conducted, the Prairie Harbor Yacht Club began initial cleanup of the scene. Mr. ██████████ of the Wisconsin Department of Natural Resources (WDNR), also responded on-scene, along with ██████████ ██████████. Both spoke with the harbormaster and assistant harbormaster regarding this spill, as well as mechanics who worked on a boat that may have been responsible for the spill. Because the WDNR was not informed of the spill until approximately 2.5 days later, some of the diesel had already begun to dissolve and dissipate.<sup>4</sup>

Oil samples were taken and sent to the Marine Safety Lab for testing. Results returned inconclusive results regarding a Responsible Party and, therefore, it was determined to be a mystery spill. The WDNR hired out Veolia Environmental Services (VES) for spill cleanup and removal activities in the affected area.

***Description of removal actions performed:*** The claimant, WDNR, hired out VES to clean and decontaminate the areas affected by the diesel fuel spill. VES arrived on-site on June 23, 2009. VES personnel placed absorbent boom around the dock area to contain and collect any fuel in the area. VES personnel also used a power washer to clean fuel off of the dock and the boat slips. VES put an additional 200 feet of containment boom to stop the fuel from spreading further out into the adjacent wetlands. Sections of absorbent boom were used to absorb fuel along the first 50 feet of shoreline. VES removed contaminated boom and decontaminate the Harbor's boat, which had residual fuel, as well. The USCG was satisfied with the booms in place and the storage of the waste drums.<sup>5</sup>

<sup>1</sup> See Sector Lake Michigan's Coast Guard Case # 458546 opened 6/24/2009

<sup>2</sup> See, Veolia Environmental Services Incident Response Report, submitted by the claimant on 12/31/2009

<sup>3</sup> See, NRC Report # 909366, opened 6/20/2009

<sup>4</sup> See, WDNR SERTS, submitted with the claim on 12/31/2009

<sup>5</sup> See, Veolia Environmental Services Incident Response Report, submitted by the claimant on 12/31/2009

VES returned on June 25, 2009 to remove the absorbent boom, per the request of WDNR. They also inspected the boat slips and disconnected the containment boom, placing the loose end along the shoreline. The absorbent boom was later collected and placed into 55-gallon drums for disposal. A total of 5 drums were generated. On June 29, 2009, the five drums were transported to Menomonee Falls, WI for disposal.<sup>6</sup> VES invoiced the WDNR on July 24, 2009, and was paid on August 11, 2009.<sup>7</sup>

- The Claim:*** On December 31, 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 \$9,881.50 for the services provided from June 22 through June 30, 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, contracted rate schedule, a copy of MISLE Case # 458546, NRC report #909366, copies of Notice of Federal Interest (NOFI) as issued by the USCG, a copy of Veolia Environmental Services Incident Response Report, copies of the Non-Hazardous Waste Manifests, internal email correspondence, and copies of maps and pictures.

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

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<sup>6</sup> See, Veolia Environmental Services Incident Response Report, submitted by the claimant on 12/31/2009

<sup>7</sup> See, Invoice from VES to WDNR, dated 7/24/2009, submitted with the claim on 12/31/2009

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 USCG Case # 458546, along with a memorandum written by LCDR ██████████, USCG Sector Lake Michigan.<sup>8</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.

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<sup>8</sup> See Sector Lake Michigan’s Coast Guard Case # 458546 opened 6/24/2009 and USCG Sector Lake Michigan Memorandum, submitted with the claim on 12/31/2009

5. A Responsible Party could not be determined.
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 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 confirmed that the claimant did in fact perform a joint site assessment with the USCG on June 20, 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).

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$9,881.50 of uncompensated removal costs 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 #910043-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of June 20 through June 30, 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 \$9,881.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #910043-001. 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.

**AMOUNT: \$9,881.50**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review:

Supervisor Action:

Supervisor’s Comments: