

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	915086-0002
<b>Claimant:</b>	McKinney Wrecker Service
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$21,700.28

### FACTS:

#### Oil Spill Incident

On December 04, 2014, McKinney Wrecker Service (Claimant or McKinney) received notification from CDG Engineers & Associates, Inc. that a tanker truck, that was fully loaded<sup>1</sup> with a mixture of gasoline and diesel had overturned on Interstate 59, near Reece City, Alabama. The tanker truck spilled its product into a drainage ditch on the side of the road that leads into Little Wills Creek, a tributary to the Coosa River, which is a navigable waterway of the United States.

McKinney Wrecker Service arrived on scene at 0630 on December 05, 2014. Federal On-Scene Coordination was made with the United States Environmental Protection Agency, (US EPA), Mr. ██████████ Region 4. Local Hazmat, State, and Emergency Management Personnel for Etowah County were all on-scene.

The Responsible Party (RP) is identified as Petroleum South Transport (RP or PST).<sup>2</sup>

#### Description of Removal Activities for this Claimant

CDG Engineers & Associates, Inc. (CDG)<sup>3</sup> responded to the spill and removed product and oily water from the marshy area and the drainage ditch that leads to the Little Wills Creek. CDG also off loaded the remaining product from the wrecked tanker truck to a responding tanker. However, residual petroleum remained in the tanker, making the wrecked tanker a potential threat to the Little Wills Creek and the Coosa River, the navigable waterways..

The RP hired McKinney to remove the tanker from the median to mitigate the continuing threat<sup>4</sup> and to restore the median of the roadway to its natural state. The Claimant removed approximately 100 cubic yards of trees and shrubs that were transported to Alabama Department of Transportation (AL DOT) property where they were disposed of.<sup>5</sup> Approximately 70 yards of petroleum contaminated soil was removed. The contaminated soil was placed in bags and taken

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<sup>1</sup> The tanker truck was a 9,000 gallon capacity and was believed to be hauling approximately 8,000 gallons of diesel and gasoline at the time of the accident.

<sup>2</sup> Mr. ██████████ is the General Manager for Petroleum South Transportation.

<sup>3</sup> CDG is a prior Claimant that submitted costs to the Fund for reimbursement of their costs pertaining to this incident and can be found at claim # 915086-0001

<sup>4</sup> At approximately 1230 on December 05, 2014, the tanker truck was removed from the median.

<sup>5</sup> The trees had to be removed before the contaminated soil could be excavated.

to AL DOT for disposal,<sup>6</sup> and in addition, composite soil samples were collected and analyzed for Total Petroleum Hydrocarbons (TPH). Per the request of the Department of Transportation, (DOT), clean soil was placed back into the excavated areas and covered with grass seed and hay. Finally, the Claimant swept the interstate using a street sweeper, also requested by DOT.

AL DOT, US EPA, and EMA representatives were satisfied with all of the abatement activities that were conducted and over-seen by US EPA.

### The Claim

On July 22, 2015, McKinney submitted a removal cost claim to the NPFC for reimbursement of their uncompensated removal costs in the amount of \$21,700.28.

The Claimant made presentment of their invoices in the amount of \$21,700.28 to the RP for the emergency response. To date, McKinney has not received payment from PST. Claimant also provided an Affidavit Regarding Nonpayment for invoice # 41098. The invoice was signed and dated on April 24, 2015.<sup>7</sup>

### 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].

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<sup>6</sup> Claimant is not asking for reimbursement of costs for disposal.

<sup>7</sup> Notary Public, [REDACTED], State of Alabama, Bibb County.

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. EPA, Region 4 provided FOSC coordination 33 U.S.C. § 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the 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 within the six year period of limitations for claims. 33 U.S.C. §2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that 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:***



The NPFC reviewed the actual cost invoice to confirm that the claimant had obtained all rights, claims, and causes of actions for the costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR Part 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 NPFC determined that the approved costs incurred by the Claimant were reasonable and necessary in order to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC determined that the approved costs, that were billed, were billed in accordance with the rate schedules that were in place at the time the services were rendered.

The NPFC has confirmed that the rates charged by the Claimant are in accordance with the published rates at the time services were rendered and were coordinated with US EPA and determined to be consistent with the NCP. It is important to note that the NPFC spoke directly with the EPA FOSC in order to confirm that the actions were necessary and that a threat still existed despite the bulk removal of fuels by CDG in a previous claim. The EPA FOSC did verbally confirm removal of the truck was necessary to completely mitigate the threat.

The NPFC hereby determines that the OSLTF will pay, **\$21,700.28** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915086-0002. All the costs deemed approved by the Fund have been 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: \$21,700.28**

 Claim Supervisor: 
Date of Supervisor's review: <i>7/27/15</i>
Supervisor Action: <i>Approved</i>