

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E13505-0001
Claimant	: EnviroScience, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested:	\$159,082.37

FACTS:

A. Oil Spill Incident:

On January 31, 2013, approximately 20,000 gallons of crude oil, drilling mud, and brine were discharged from D&L Energy, Inc. portable storage tanks into a storm sewer, which emptied into an unnamed tributary and into the Mahoning River, a navigable water of the United States. The discharge coated the banks, vegetation, overbanks and sediment in the unnamed tributary and created pools of oil on the Mahoning River. D & L Energy, Inc. is the responsible party for this incident. The state Ohio Environmental Protection Agency (OEPA) was notified of the discharge and they investigated the report and further notified the United States Environmental Protection Agency (USEPA) in its capacity as the Federal On-Scene Coordinator (FOSC).¹

B. Description of removal actions performed:

Under an Order by Consent for Compliance under Section 311 of the Clean Water Act issued by the EPA FOSC,² D & L Energy, Inc. assumed responsibility for the oil spill and hired SUNPRO Environmental Services to conduct pollution removal activities and EnviroScience, Inc. to provide consultation and oversight of the response. Removal activities involved dividing the unnamed tributary into sections and included the power washing of substrates, the excavation of oil contaminated soil ranging from 1'- 4' in depth from one section of the unnamed tributary and the removal of oil from an oil-contaminated stream bed and bank from a different section of the unnamed tributary.³

In addition, residual oil was removed from the storm sewer by pressure washers and vacuums trucks. The storm drain was inspected with a GoPro video camera and video, which was provided to both the EPA FOSC and OEPA for final inspection and approval. Sorbent material was routinely monitored and replaced from the mouth of the storm drain, the unnamed tributary and the Mahoning River. Overflow and underflow dams were installed as temporary containment in the unnamed tributary and a turbidity curtain and 2 sections of hard boom were placed in the Mahoning River to suspend any liquid material being discharged from the sewer drain or unnamed tributary.⁴

¹ See D & L Energy, Inc. Emergency Response Activities Final Report dated August 16, 2013.

² See Order by Consent for Compliance under Section 311 of the Clean Water Act issued by the EPA FOSC dated February 26, 2013.

³ See D & L Energy, Inc. Emergency Response Activities Final Report dated August 16, 2013.

⁴ Id.

On March 13, 2013, the EPA FOSC was notified that Sunpro Environmental Services had pulled out of the job due to administrative issues it was having with D & L Energy, Inc. EnviroScience, Inc. agreed to stay on the job until cleanup was determined complete by the EPA FOSC.⁵

Overall, the cleanup of the sewer drain, unnamed tributary and the Mahoning River, involved the collection and disposal of approximately 5,000 gallons of oil, 195,000 gallons of oily water mix, 629 cubic tons of oil contaminated soil, and 110 cubic tons of oily sediment, all of which were disposed of properly. The cleanup was deemed complete by the EPA FOSC on March 21, 2013.⁶

EnviroScience, Inc. incurred additional removal costs associated with the preparation and submission of the D & L Energy, Inc Emergency Response Activities Final Report dated August 16, 2013 to the US EPA and OEPA. This report, outlined in the Order by Consent for Compliance under Section 311 of the Clean Water Act issued by the EPA FOSC, was required by the EPA FOSC.⁷ The extensive report thoroughly described the removal actions conducted and completed, the scope of work and evidence that the removal actions were coordinated with the EPA FOSC and were consistent with the NCP.

THE CLAIMANT AND THE CLAIM:

On March 6, 2015, EnviroScience, Inc. submitted a removal cost claim associated with the cleanup of the D & L Energy, Inc oil spill to the Oil Spill Liability Trust Fund (OSLTF or the Fund), asserting that D & L Energy, Inc. failed to pay them for a portion of their removal costs.

Specifically, EnviroScience, Inc. billed D & L Energy, Inc for all of the costs associated with their removal actions, totaling \$334,109.64 over twelve (12) invoices. D & L Energy, Inc. paid EnviroScience, Inc for eight (8) of those invoices totaling \$199,528.95 before refusing to pay the remaining invoices. D&L Energy, Inc. filed Chapter 11 bankruptcy on April 16, 2013 in the Bankruptcy Court, Northern District of Ohio (Case No. 13-40813). On October 11, 2013 Claimant filed a proof of claim in the bankruptcy proceeding in the amount of \$134,580.69. The four (4) EnviroScience, Inc. invoices that remain unpaid, total \$134,580.69, represent a portion of claim E13505 submitted to the NPFC on March 6, 2015.

EnviroScience, Inc. also claimed legal fees in the amount of \$24,501.68 incurred to protect their interests in the bankruptcy claim, which are included in the sum certain with this claim.⁸ The claimed costs total \$159,082.69. On June 18, 2015, the NPFC issued its initial offer to pay the Claimant \$87,834.46. The NPFC denied \$71,248.23 in costs that were unsupported by proper documentation, were duplicate receipts for charges claimed, or not OPA-compensable removal costs.

REQUEST FOR RECONSIDERATION:

On August 6, 2015, the NPFC received the Claimant's reconsideration request. In support of this request, the Claimant provided a spreadsheet that itemized the expenditures denied by the NPFC

⁵ See OH EPA Emergency Response Section Investigative Report dated March 13, 2013.

⁶ See EPA POLREP VI (Final) dated December 12, 2013.

⁷ See email from Mr. [REDACTED] EnviroScience, Inc to Mr. [REDACTED] NPFC dated June 4, 2014.

⁸ See Optional OSLTF Claim Form from EnviroScience, Inc dated March 6, 2015.

with a brief explanation of their validity. In addition, they provided a copy of the EnviroScience field log book maintained by EnviroScience field personnel dated February 6, 2013 – March 15, 2013. They also provided a brief explanation of personnel job descriptions for those EnviroScience personnel billed but not on-scene during the spill response. Lastly, they provided an accounting of EnviroScience personnel who were at the spill site but hadn't been properly recorded as being onsite in the EnviroScience field log book.⁹

NPFC Determination on Reconsideration

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. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim.

Upon receipt of the Claimant's request for reconsideration, the NPFC performed a *de novo* review of the entire claim submission.

This review sought to determine whether or not the Claimant provided evidence on reconsideration sufficient to prove that their removal costs were reasonable, properly documented and OPA compensable pollution removal costs.

In their request for reconsideration, the Claimant argues that all billed EnviroScience personnel were involved in oil recovery activities and were justified in seeking reimbursement from the Fund for all pollution removal costs incurred by EnviroScience personnel.

The NPFC reviewed EnviroScience's detailed explanation of personnel on-scene during the response and agree that labor costs for 41 EnviroScience personnel previously denied were reasonable, properly documented and OPA compensable pollution removal costs.

The Claimant argues that [REDACTED] GIS Analyst completed extensive oil spill mapping functions necessary for the coordination with regulatory agencies such as the USEPA, OEPA and USACE and her costs should be eligible for reimbursement.

The NPFC agrees that [REDACTED] oil spill mapping functions performed under the direction of the USEPA were OPA compensable pollution removal activities and therefore the costs associated with these activities are reasonable for reimbursement as the mapping permitted identification of response areas.

The Claimant argues that [REDACTED] and [REDACTED] restoration biologists were involved in the conceptual restoration critical to the oil recovery design and implementation. Specifically, the USEPA, OEPA and USACE required EnviroScience to conceptualize the restoration of the site so that oil recovery activities did not cause further impact to the natural resources that would outweigh the benefit of recovery.

The NPFC agrees that site restoration is OPA compensable as a removal cost when returning the spill site back to its original condition while ensuring that no further damage is caused by

⁹ See email from Mr. [REDACTED] EnviroScience, Inc to Mr. [REDACTED] NPFC dated August 6, 2015.

ongoing cleanup operations and is therefore reasonable for reimbursement as an allowable OPA compensable pollution removal cost.

Lastly, the Claimant argues that there were times when [REDACTED], Project Manager and [REDACTED] Field Manager were on-scene during oil recovery activities but not captured as being onsite in the EnviroScience daily field logs. The Claimant admits to human error but states that they do not conduct onsite activity without a manager to oversee oil recovery operations and should therefore be eligible for reimbursement of those managerial oversight costs in the amount of \$12,510.00.

After careful review, the NPFC determines that Claimant has not provided sufficient documentation or verification that these costs were allowable OPA compensable pollution removal costs and therefore remains denied.

In the NPFC's determination dated June 18, 2015, the NPFC denied a total of \$71,247.91 of removal costs submitted for reimbursement as noted in the original Settlement Offer. Upon reconsideration, the NPFC denies \$41,378.99 removal costs submitted for reimbursement. These denied costs include \$24,501.68 in legal fees and interests incurred by EnviroScience, Inc associated with the D & L Energy, Inc. bankruptcy proceedings, \$12,510.00 for costs incurred by [REDACTED] and [REDACTED], and \$4,367.31 for costs incurred by other EnviroScience, Inc. personnel not properly documented or verified on-scene involved in allowable OPA pollution removal activities and missing or duplicate receipts.

Based on the NPFC's denial of \$41,378.99 for reimbursement of the invoiced items submitted on Reconsideration, the NPFC hereby determines that the OSLTF will offer \$117,703.38 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E13505-0001. If Claimant accepts this offer it must provide proof to the NPFC that it withdrew its proof of claim in the D & L bankruptcy proceedings prior to the NPFC authorizing payment of this claim.

A. Determined Amount: \$117,703.38

Claim Supervisor

Date of Supervisor's Review: *Aug 27, 2015*

Supervisor Action: *Reconsideration Approved*

Supervisor's Comments: