

CLAIM SUMMARY / DETERMINATION

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| Claim Number: | 916056-0001 |
| Claimant: | Moran Environmental Recovery, LLC |
| Type of Claimant: | OSRO |
| Type of Claim: | Removal Costs |
| Claim Manager: | [REDACTED] |
| Amount Requested: | \$38,679.63 |

FACTS:

Oil Spill Incident: On February 19, 2016, the South Carolina Department of Health and Environmental Control (SCDHEC) was notified of a motor vehicle accident on interstate 26 west bound at mile marker 196 in South Carolina. The accident involved saddle tanks being torn from a truck, resulting in several hundred gallons of diesel fuel leaking onto the surrounding area and into a storm drainage ditch.¹

Description of Removal Activities for this Claimant: Moran Environmental Recovery, LLC (Moran) responded to the spill incident site on four (4) consecutive days from February 21 through February 24, 2016. Pollution removal activities included deploying absorbent boom, vacuuming oiled waste and fuel from the drainage ditch, excavating the drainage ditch, removing damaged trees, and providing traffic control.² With regard to disposal, the non-hazardous waste water was disposed of properly by US Water Recovery, Goose Creek, South Carolina.³ The excavated diesel fuel impacted soil and debris were disposed of properly at Waste Management's Oakridge Landfill, Dorchester, South Carolina.⁴

Responsible Party: Marda Transport LLC (Marda) is the owner of the vehicle involved in the claimed oil spill incident. On February 21, 2016, Marda's insurance provider, Midway International Insurance, hired Moran to begin pollution removal activities.⁵ Moran made presentment of costs associated with this claim to Midway Insurance on February 25, 2016.⁶ By email dated June 3, 2016, the NPFC issued Marda an RP notification letter, notifying it of our pending claim with Moran.⁷ [REDACTED], a representative of Marda, subsequently responded by email dated June 6, 2016. [REDACTED] states that she has received the RP notification letter and has "forwarded it to INS to find out what is the status of this claim. They are already forwarding it now to Insurance broker."⁸ The NPFC has received no additional correspondence from the RP.

¹ See SC DHEC Environmental Quality Control Incident Report dated May 18, 2016.

² See Moran Environmental Recovery, LLC Work Order/Worksheets dated February 21, 2016, to February 24, 2016.

³ See US Water Recovery Non-Hazardous Manifest dated February 22, 2016.

⁴ See Waste Management Special Waste Manifest #608461SC dated March 2, 2016

⁵ See Optional OSLTF Claim Form dated May 20, 2016.

⁶ See Moran Environmental Recovery Invoices billed to Midway International Insurance dated February 25, 2016.

⁷ See RP notification letter dated June 3, 2016.

⁸ See email from [REDACTED], Marda Transport LLC to [REDACTED] [REDACTED] NPFC dated June 6, 2016.

The Claim: On June 2, 2016, Moran presented a removal cost claim to the Coast Guard's National Pollution Funds Center (NPFC) for reimbursement of their uncompensated personnel, equipment, and disposal costs in the total amount of \$38,679.63.⁹

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].

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;

⁹ See Optional OSLTF Claim Form dated May 20, 2016.

(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].

NPFC 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 FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of the claim submission, the NPFC contacted Moran for additional information in support of their request for reimbursement. Specifically, the NPFC determined there to be no mention in Moran’s claim of the Federal On-Scene Coordinator (FOSC) (either CG or EPA) being notified of the discharge or that the FOSC determined that pollution removal activities were conducted in accordance with the National Contingency Plan (NCP). By email dated June 9, 2016, Moran was asked to submit evidence demonstrating that the actions taken were directed by an FOSC and conducted in accordance with the NCP.¹⁰

Moran was given 14 days to respond to the NPFC’s official request for additional information, which it failed to do. The NPFC is therefore unable to determine whether the actions taken by Moran personnel were directed by an FOSC and conducted in accordance with the NCP. As such, this claim is denied. Should the Claimant decide to exercise its right to a reconsideration request, it MUST provide FOSC coordination in accordance with the governing claims regulations found at 33 CFR §136.203 and 205.

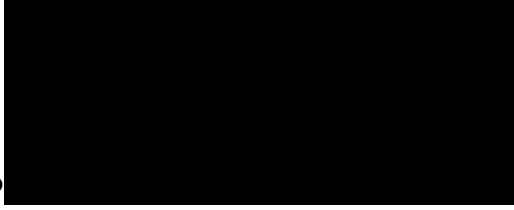
SUMMARY

Based on the foregoing, the NPFC has determined that this incident and the actions undertaken by the Claimant are not OPA compensable because the Claimant has both failed to demonstrate that the actions undertaken were directed by the FOSC and that the actions undertaken were determined by the FOSC to be conducted in accordance with the National Contingency Plan (NCP). See 33 CFR §136.203 and 205.

AMOUNT: \$0.00

¹⁰ See email from [REDACTED] NPFC to [REDACTED] Moran Environmental Recovery, LLC dated June 9, 2016.

Claim Supervisor



Date of Supervisor's review: *7/6/16*

Supervisor Action: *Denial Approved*