

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/17/2011
Claim Number	: 911015-0001
Claimant	: State of Wisconsin
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$1,924.86

FACTS:

- Oil Spill Incident:** On September 21, 2009, a diesel sheen 100 yards long and 30 yards wide was detected on the Rock River near South Ann Street and East Juneau Street in Hustisford, Wisconsin per the National Response Center (NRC) Report #938540.¹ The sheen had been traced back to a storm sewer outlet in Lion's Park, where an odor of diesel fuel was detected. The Wisconsin Department of Natural Resources (WDNR) searched downstream of Rock River and discovered a light sheen, but no heavier amounts of diesel fuel. Rock River is a navigable waterway of the United States. Veolia ES Special Services, Incorporated (Veolia) was contacted by WDNR Spill Coordinator Constantine Tsois for the emergency response clean-up.
- Description of Removal Activities for this Claimant:** Veolia was hired and began their cleanup efforts that night. They deployed containment boom and absorbent boom in the Rock River. Veolia discovered a light diesel full sheen in the storm sewer manhole near the corner of West Juneau Street and South Lake Street and placed boom there, as well. They assessed several locations along South Lake Street but did not detect any diesel fuel. On September 25, 2009, Veolia returned to the incident site to ensure the boom remained secured. They returned to the incident site again on September 28, 2009 and removed all boom after no further sheen was detected. The absorbent boom was sealed in a 55 gallon steel drum for disposal. The disposal was handled at the Veolia ES Technical Solutions, LLC facility in Menomonee Falls, Wisconsin.
- The Claim:** On January 3, 2011, the Claimant presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$1,924.86. WDNR is claiming expenses of \$1,924.86 for the services provided by Veolia. The claim consists of the WDNR spill report, National Response Center (NRC) Report, area maps, Veolia invoice, dailies, a rate schedule, proof of payment, and a Federal On-Scene Coordinator memorandum. Per the Claimant, the responsible party (RP) is unknown.

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

¹ See NRC Report #938540.

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;
- (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 was provided by Ms [REDACTED] of the United States Environmental Protection Agency- Region 5 on 12/15/10.
2. The incident involved 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 within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

Based on that review, the Claims Manager hereby determines that there are discrepancies with regards to the reimbursement requested and the cost documentation provided by the Claimant regarding materials and vehicle costs.

The four absorbent boom (8”x10”) were billed on the Veolia invoice at the rate of \$65.00 each for a total of \$260.00, but their rate schedule lists absorbent boom for \$43.00 each. The Claimant will be reimbursed at the \$43.00 rate for the four billed, for a total of \$172.00. The 55 gallon metal open-top drum was billed on the invoice for \$37.00 each, but listed on the rate schedule for \$30.00 each. The Claimant will be reimbursed for the one drum at the rate of \$30.00 each for a total of \$30.00.

With regards to vehicle costs, the pick-up truck used on September 28, 2009 was billed on the invoice at the \$92.75 per day rate for a half day use, for a total of \$46.38. However, the rate schedule lists the pick-up truck rate at \$87.50 per day. Claimant will be reimbursed \$43.75 for the half-day truck use. The pick-up truck mileage was invoiced at \$.60 per mile for 67 miles for a total of \$40.20, but the rate schedule lists the mileage for the pick-up truck (non Response Manager) at the rate of \$.35 per mile. Reimbursement for the 67 miles will be \$23.45.

Based on the NPFC’s denial of \$114.38, the NPFC determines that the OSLTF will pay \$1,810.48 as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #911015-0001.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$1,810.48 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911015-0001. 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 Claimant.

AMOUNT: \$1,810.48

Claim Supervisor:



Date of Supervisor's review: *2/22/11*

Supervisor Action: *Approved*

Supervisor's Comments: