

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E09402-0001  
Claimant : United States Environmental Services, LLC  
Type of Claimant : OSRO  
Type of Claim : Removal Costs  
Claim Manager : ██████████  
Amount Requested : \$22,723.33

### FACTS:

1. **Oil Spill Incident:** On September 15, 2008, the Alabama Department of Environmental Management (ADEM) reported to the National Response Center (NRC) that petroleum products were migrating from the Bessemer Petroleum facility and entering a near-by storm drain in Bessemer, Alabama.<sup>1</sup> The storm drain flows into Valley Creek, a tributary of the Warrior River. The Warrior River is a navigable waterway of the United States.

ADEM requested that a Federal On-Scene Coordinator (FOSC) come to the incident site for an assessment of the incident and for assistance, as the facility is an inactive, abandoned bulk distribution storage facility that was being used for temporary storage of commercial grade oils. At the time of the incident, the facility had between 6 to 8 non-operating above ground storage tanks ranging from 100 to 500 gallons in size (ASTs) and more than 6 underground storage tanks (USTs). It was determined that 100 gallons of diesel fuel had discharged into Valley Creek. FOSC ██████████ met with ADEM to gather information regarding the incident, and then constructed a temporary containment system in the city of Bessemer to stop the discharge. EPA contractors arrived on September 16, 2008 to assist the FOSC in mitigating the substantial threat of discharge of oil. The contractors constructed a trench to divert the discharge from the storm drain. At the time of the incident, ██████████ the responsible party (RP), could not be reached. However, the FOSC directed the RP to clean and secure the facility. Mr. ██████████ hired the Claimant, United States Environmental Services, LLC (USES), to carry out the Scope of Work (SOW) directed by the FOSC.

2. **Description of Removal Activities for this Claim:** USES carried out the SOW from November 10, 2008 to January 20, 2009. The SOW included the removal and disposal of discharged liquids; removal and disposal of all drums, and their contents; as well as the removal and disposal of sludge and liquids at the northeast section of the Bessemer Petroleum facility. The Claimant handled the removal aspect of the SOW. Per the Claimant, the RP took responsibility for the disposal of all liquid and solid waste. Throughout the clean-up, USES deployed a foreman, a vacuum truck operator, and at least one recovery technician; a pick-up truck; a vacuum truck; petroleum and fire hoses; a pressure washer; and a skid steer loader.
3. **The Claim:** On February 8, 2011, the Claimant submitted a removal cost claim in the amount of \$22,723.33 to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs for the services provided to Bessemer Petroleum.

<sup>1</sup> See NRC Report #883962.

On February 24, 2011, USES submitted the claim to Twin States Petroleum Product LLC via Bobinger Law Firm PLLC in Jackson, Mississippi. This claim is for removal costs based on the Claimant's rate schedule in place at the time services were provided. A copy of that rate schedule is in the claim file. The claim consists of the Claimant's incident billing summary, invoice, dailies, Claimant's correspondence with Bessemer Petroleum and with the FOSC, and photographs taken by the Claimant.

A Federal Project Number (FPN E09402) was issued on October 24, 2008.

**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;
- (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 [REDACTED] of the United States Environmental Protection Agency Region-IV.
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 statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that some 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 as set forth below.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as "Compensation Allowable" under 33 CFR§ 136.205.

#### **B. Analysis:**

The NPFC Claims Manager has reviewed the actual cost documents 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.

Upon review, the Claims Manager hereby determines that there are discrepancies with regards to the Claimant's invoice and the rate schedule provided. Claimant billed the PVC-coated tyvek suit at the rate of \$20.00 each on Thursday, January 15, 2009, Friday, January 16, 2009, Monday, January 19, 2009 and again on Tuesday, January 20, 2009. However, the rate schedule lists the rate for each suit as \$16.00. For those same dates, Claimant billed the gloves described as "PVC, Nitrile, Neoprene with inner gloves" at the

rate of \$12.00 per pair, but the gloves are listed at the rate of \$8.00 per pair on their rate schedule.

For January 15, 2009, Claimant billed for 3 tyvek suits at \$20.00 each, for a total \$60.00. The Claimant will be reimbursed at the \$16.00 rate for a total of \$48.00. The 3 pairs of gloves were billed at \$12.00 per pair, for a total of \$36.00. Reimbursement for the gloves will be at the rate of \$8.00 per pair, for a total of \$24.00. The denied amount of \$12.00 for the tyvek suit and the denied amount of \$12.00 for gloves yields a total denied amount of \$24.00 dollars for the materials used on January 15, 2009.

The same materials noted above were also used on January 16, 2009 and billed in the exact same manner. Also, as noted above, the Claimant will be reimbursed at the \$16.00 rate for a total of \$48.00 for the tyvek suits. Reimbursement for the gloves will be at the rate of \$8.00 per pair, for a total of \$24.00. The denied amount of \$12.00 for the tyvek suit and the denied amount of \$12.00 for gloves totals a denied amount of \$24.00 dollars for the materials used on January 16, 2009.

For their materials used on January 19, 2009, Claimant billed for 6 tyvek suits at the rate of \$20.00 each, for a total \$120.00. The Claimant will be reimbursed at the \$16.00 rate for a total of \$96.00. The 6 pairs of gloves were billed at \$12.00 per pair, for a total of \$72.00. Reimbursement for the gloves will be at the rate of \$8.00 per pair, for a total of \$48.00. The denied amount of \$24.00 for the tyvek suits and the denied amount of \$24.00 for gloves totals a denied amount of \$48.00 dollars for the materials used on January 19, 2009.

For the January 20, 2009 materials used, Claimant billed for 2 tyvek suits at the rate of \$20.00 each, for a total \$40.00. The Claimant will be reimbursed at the \$16.00 rate for a total of \$32.00. The 2 pairs of gloves were billed at \$12.00 per pair, for a total of \$24.00. Reimbursement for the gloves will be at the rate of \$8.00 per pair, for a total of \$16.00. The denied amount of \$8.00 for the tyvek suits and the denied amount of \$8.00 for gloves is a total denied amount of \$16.00 dollars for the materials used on January 20, 2009.

Based on the NPFC's denial of \$112.00, the NPFC determines that the OSLTF will pay \$22,611.33 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number E09402-0001.

**C. Determined Amount:**

The NPFC determines that the OSLTF will pay \$22,611.33 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number E09402-0001 for removal costs.

**AMOUNT: \$22,611.33**

Claim Supervisor: 

Date of Supervisor's review: *11/15/11*

Supervisor Action: *Approved*