

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
9/08/2011

Sent Via Email: [REDACTED]@lfdmail.com

Western Wayne County Hazardous Materials Response Team
Attn: Chief Shadd Whitehead
33365 Raphael Rd.
Farmington Hills, MI 48152

Re: Claim Number E11519-0002

Dear Chief Whitehead:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$13,820.00 is full compensation for OPA claim number E11519-0002.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.ccr.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6883.

Sincerely,

A large black rectangular redaction box covering the signature of the sender.

Alyssa Lombardi
Claims Manager
United States Coast Guard

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of
Homeland Security

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Claim Number: E11519-0002	Claimant Name: Western Wayne County Hazardous Materials Response Team Attn: Chief Shadd Whitehead 33365 Raphael Rd. Farmington Hills, MI 48152
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I, the undersigned, ACCEPT the determination of \$13,820.00 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E11519-0002
Claimant : Western Wayne County Hazardous Materials Response Team
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : Alyssa Lombardi
Amount Requested : \$13,820.00

FACTS:

1. ***Oil Spill Incident:*** The United States Environmental Protection Agency (USEPA) Region V reports¹ that, on April 28, 2011, at approximately 1900 hours local time, a caller reported a sheen on the Upper River Rouge to the Farmington Fire Department. The spill was discovered in a drainage retention pond near the intersection of Grand River and Orchard Lake Road in Farmington, MI. The drainage retention pond overflowed into the Upper Rouge River, a branch and tributary of the Rouge River, a navigable waterway of the US. Both the source of the sheen and Responsible Party (RP) are unknown.

2. ***Description of removal actions performed:*** On April 28, 2011, the Claimant, Western Wayne County Hazardous Response Materials Team (WWC HMRT), arrived on-scene. Both an Incident Action Plan (IAP) and a safety plan were developed. The IAP consisted of placing containment boom on both sides of the bridge on the Wayne County side (200 feet), with 170 feet of 8" absorbent boom on the inside (upstream). The safety plan consisted of having all members near the water to wear personal flotation devices (PFD) or be tied off by rope. 200 feet of containment boom and 170 feet of absorbent boom were placed in the creek to contain any migrating fuel released from the Farmington location.

At 2345 hours, the Claimant and others involved within the Unified Command (UC) assessed the scene and made recommendations to reinforce booms placed by Oakland County Hazmat team (OCH). Safety was performed by OCH, with WWC HMRT placing containment boom on both sides of the bridge under Nine Mile Rd. 100 feet of containment boom was placed in the creek and 120 feet of 5" absorbent boom (from OCH) was placed in the creek on the east side of 9 Mile Rd., south of Grand River.

At 0200 hours, Western Wayne County HMRT departed the scene.

3. ***The Claim:*** On July 27, 2011, Western Wayne County Hazardous Materials Response Team (WWC HMRT) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$13,820.00 for the services provided from April 28 through April 29, 2011. This claim is for removal costs based on the rate schedule in place at the time services were provided.

¹ See US EPA POLREP # 1 for this incident, dated 4/29/2011.

This claim consists of copies of:

1. OSLTF Claim Form;
2. Farmington Department of Public Safety Report # 11-2192;
3. WWC HMRT Incident Report # 42811;
4. WWC HMRT Invoice # 339;
5. Letter from EPA Region V OSC Lori Muller;
6. US EPA Region V Oil Spill Analysis Report for FPN E11519;
7. US EPA POLREP # 1;
8. US EPA Extended Spill Summary for NRC Report # 974350;
9. WW HMRT Cost Recovery Sheet.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

APPLICABLE LAW:

"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. FOSC coordination has been established via a memo from Ms. Lori Muller, US EPA Region V, to the NPFC, dated June 13, 2011.² 33 U.S.C. § 2712(a)(4).
2. The incident involved the report of a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
4. No RP could be determined. 33 U.S.C. § 2701(32).
5. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the costs claimed.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. 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 National Contingency Plan (NCP) or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager hereby determines that the Claimant did in fact incur \$13,820.00 of uncompensated removal costs and that that amount is payable by the OSLTF as full

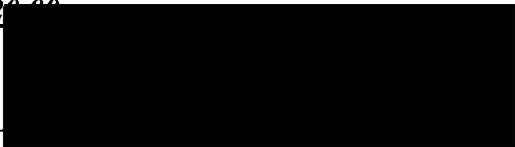
² See Memorandum from Ms. Lori Muller, US EPA FOSC, to the NPFC, dated 6/13/2011.

compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E11519-0002. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from April 28 through April 29, 2011.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$13,820.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E11519-0002. 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 the Claimant.

AMOUNT: \$13,820.00

Claim Supervisor: 

Date of Supervisor's review: *9/8/11*

Supervisor Action: *Determination approved*

Supervisor's Comments: