

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/13/2011
Claim Number	: 911010-0001
Claimant	: County of Dauphin Emergency Management Agency
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: Donna Hellberg
Amount Requested	: \$16,496.17

### **FACTS:**

On October 19, 2010, the Dauphin County Emergency Management Agency (DCEMA) received a call concerning a mystery oil spill in the Susquehanna River, located in Dauphin County, Pennsylvania, a navigable waterway of the US. Dauphin County Emergency Management Agency notified the NRC while conducting initial response. Harrisburg Fire Department (HFD) requested a DCEMA representative to command the response. The area was searched but the source of the spill could not be found.

Pennsylvania Department of Environmental Protection (PADEP) was the State On Scene Coordinator (SOSC) for this incident and Mr. Benjamin P. Thonus provided guidance to the Harrisburg Fire Department as they performed response actions deploying boom in order to mitigate any effects from the incident. PADEP's inspection report comments dated October 19, 2010, stated a sheen was seen on the river at several locations by Dauphin County Hazmat patrol boats. PADEP further reported that at the southernmost location, a petroleum sheen was noticed and the area of McClay and Front Streets had an odor of heating oil/diesel fuel. The odor was reported to be intermittently strong and weak. The patrol boat did not notice any petroleum contamination along the river bank north of the intersection of Emerald and Front Streets. Contamination was only noticed on the Eastern Shore of the Susquehanna River.

Dauphin County Hazmat Teams deployed booms at three locations: (1) The intersection of McClay and Front Street; (2) Beneath the Market Street Bridge; and (3) Beneath the PA Turnpike Bridge.

### **THE CLAIM:**

On November 15, 2010, the County of Dauphin Emergency Management Agency presented a removal cost claim to the National Pollution Funds Center (NPFC) for their uncompensated removal costs associated with this incident in the amount of \$16,496.17.

The claim consisted of the National Response Center (NRC) report, chronology report from the claimant, itemization of costs, PADEP Inspection Report Comments, media reports, pricing schedule for services billed, and PADEP's Emergency Response Form ICS 201-2. It is important to note that the Claimant was advised by PADEP once the response was concluded, that the boom could be discarded as residual waste.

### **REQUEST FOR RECONSIDERATION:**

On December 7, 2010, the NPFC issued its initial determination for this claim. The NPFC denied the claim on the premise that the Claimant failed to perform proper disposal (by way of manifest) and was therefore a violation of the National Contingency

Plan (NCP). On January 25, 2011, the Claimant made an official request for reconsideration via email to Donna Hellberg, NPFC. The Claimant provided a detailed request for reconsideration along with a letter dated January 24, 2011, from the Federal On Scene Coordinator (FOSC), Mr. Gregory Ham of the United States Environmental Protection Agency (USEPA) Region III. The FOSC confirmed that the response actions were appropriate and consistent with the NCP as well as the disposal was performed in accordance with state regulations since the NCP, ACP, and RCP do not specifically describe disposal requirements, therefore the FOSC affirms that the disposal was in fact in accordance with 25 PA Code § 299 which requires the person or municipality that generates residual waste as a result of a spill or emergency to notify the Pennsylvania Department of Environmental Protection (PADEP) prior to the disposal of residual waste. The Claimant did notify PADEP and PADEP did approve emergency storage of the residual waste at the dumpster located at the Harrisburg Fire Department Station 2. The FOSC further stated that the dumpster was transported to the Harrisburg Incinerator and the contents incinerated. In this type of situation, PADEP does not require the manifestation of residual wastes from the generator to the storage and/or disposal facility therefore the FOSC concluded that the response actions, including the storage and disposal of the residual wastes generated from this cleanup, were in accordance with the state regulations and policies of the PADEP and therefore in accordance with the NCP.

### **DETERMINATION OF LOSS:**

#### ***A. Overview:***

1. FOSC coordination has been provided for this claim (after the fact) via a letter from Mr. Gregory Ham, USEPA FOSC, dated January 24, 2011.
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.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and the applicable law and governing regulations.

#### ***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 NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the costs incurred were reasonable and necessary in order to mitigate the affects of the incident. The costs were billed in accordance with the rate schedule in place at the time the services were rendered and upon reconsideration, the NPFC has determined the disposal was performed in accordance with state regulations and PADEP policy therefore consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay **\$16,496.17** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911010-0001. 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 the Claimant.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's Review: *2/14/11*

Supervisor Action: *Offer on reconsideration approved*

Supervisor's Comments:

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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Arlington, VA 20598-7100  
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5890  
2/14/2011

VIA EMAIL: cfisher@dauphinc.org

County of Dauphin Emergency Management Agency  
ATTN: Mr. Christopher Fisher  
911 Gibson Boulevard  
Steelton, PA 17113

Re: Claim Number 911010-0001

Dear Mr. Christopher Fisher:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$16,496.17 is compensable for OPA claim number 911010-0001.

This reconsideration determination is based on an analysis of information submitted.

Disposition of this reconsideration constitutes final agency action.

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

Director (ca)  
U.S. Coast Guard  
National Pollution Funds Center  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 20598-7100

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, your payment will be mailed within 30 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 202-493-6839.

Sincerely,

Thomas S. Morrison  
Chief, Claims Adjudication Division  
United States Coast Guard

ENCL: Claim Summary / Determination Form  
Acceptance/Release Form



Claim Number: 911010-0001	Claimant Name: County of Dauphin Emergency Management Agency ATTN: Christopher Fisher 911 Gibson Boulevard Steelton, PA 17113
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I, the undersigned, ACCEPT the determination of \$16,496.17 as full compensation for all 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), arising from the oil pollution incident. 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
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