U.S. Department of Homeland Security
United States Coast Guard

Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
Fax: 703-872-6113
Email: ARL-PF-NPFCCLAIMSINFO@uscg.mil

5890
August 20, 2015

Sent VIA E-Mail:
[redacted]

Oakland County Fire Department Mutual Aid Associat
[redacted]
33356 Raphael Road
Farmington Hills, MI 48336

RE: E15519-0005

Dear Ms[redacted]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that it will offer $8,053.75 as full compensation for OPA claim number E15519-0005.

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.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

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

If we do not receive the signed original Acceptance / Release Agreement 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 Contractor Registration record prior to payment. If you do not, you may register free of charge at www.**SAM**.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,

[redacted]

Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement
NPFC Cost Summary

CLAIM SUMMARY / DETERMINATION

Claim Number: E15519-0005
Claimant: Oakland County Fire Department Mutual Aid Associat
Type of Claimant: Public Services
Type of Claim: Removal Costs
Claim Manager: [redacted]
Amount Requested: $8,940.63

BACKGROUND

On June 01, 2015, local authorities discovered sheen of oil,[1] that was approximately 8 – 10 feet wide, on the Clinton River, Oakland County, Michigan, a navigable waterway of the United States. Oakland County Fire Department (OCHMRT, Claimant) responded to the spill with various local cooperating agencies[2] and began investigating the area to find the source of the spill.

The local agencies requested assistance from the U.S. Environmental Protection Agency (US EPA), Region 5 to assist with the source investigation. Federal On-Scene Coordinator (FOSC), Mr. [redacted] arrived on scene. FOSC [redacted] mobilized both START and ERRS. START conducted air monitoring and found no reportable readings. ERRS deployed containment and absorbent boom on the Clinton River, at Opdyke Road, to contain the spill. All of the responding entities, which include the Claimant, investigated the area in an attempt to locate the source.

A potential source was identified as, Metalworking Lubricants (Metalworking). During the investigation, a spill of gear oil was found in the rear of Metalworking's property.[3] A Notice of Federal Interest (NOFI) was issued to the facility. EPA collected a sample of the spilled oil at the facility and took a sample of the sheen in the River for fingerprint analysis. The samples were sent to the Coast Guard Laboratory for analysis.

Further investigation and lab results determined that Metalworking Lubricants was not in fact the source of the oil.[4] To date a source has not been identified and the incident remains a mystery.

Description of Removal Activities for this Claimant

The Claimant responded to the scene to assist in the investigation of the mystery oil spill. The Claimant was the one of the first agencies to arrive on-scene and deploy several hydrophobic absorbent boom to multiple locations along the Clinton River to absorb spilled product at Opdyke Road.

OCHMRT personnel and various local cooperating agencies continued to provide assessment and assistance in reinforcing the established boom operations at the various locations.

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[1] POLREP pictures
[2] POLREP 1 and 2
[3] *id*
[4] POLREP 2

OCHMRT personnel obtained dip samples of the product. At the time of the sample readings, all were within normal expected limits. Claimant tested for radioactivity, and the results provided no significant indication on a Spilfyter strip.

The Claim

On August 18, 2015, Oakland County Fire Department Mutual Aid Association submitted a claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated response costs, which included Fire Department Personnel, Equipment, and Supplies, in the amount of $8,940.63.[5] Initially, the Claimant submitted this claim under Public Services in the amount of, $3,028.13 and Real or Personal Property, in the amount of $5,912.50. However, the NPFC has classified this claim as a Removal Costs claim which is how this claim was adjudicated.

The NPFC Claims Manager reviewed the actual cost invoices, rates, and rate schedule, as well as the POLREPS, to confirm that the Claimant had incurred all costs claimed and that all costs were supported by the record. 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 the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) directed by the FOSC, and (4) whether the costs were adequately documented and reasonable[6].

The Claimant's sum certain for this claim is $8,940.63. The Claims Manager determined that $886.88 for 15% Admin Fee is not compensable from the OSLTF because the Admin Fee was not provided in the rate schedule that the Claimant submitted with its claim. Therefore, the NPFC will offer **$8,053.75** to the Claimant.

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

[5] See Claimants Invoices

[6] See Enclosure (1) for the itemization and summary spreadsheet of Personnel and Equipment and the associated invoices that support this claim.

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. US EPA, Region 5 provided FOSC coordination, 33 U.S.C. § 2702(b)(1)(B) and 2712(a)(4);

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 period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the Fire Department's response costs that are presented to the Fund were for actions indeed reasonable and allowable.

B. Analysis:

Claimant provided emergency services to find the source location of the spill and to assist in the mitigation of the incident. The claimant took direction from the Federal On-Scene Coordinator, US EPA, Region 5, Mr. [redacted].

In consideration of the FOSC documentation associated with this incident, the NPFC was able to satisfy itself that the services provided by the Claimant were under the direct oversight of the FOSC, were necessary to mitigate the effects of the spill and determined to be consistent with the NCP.

Oakland County Fire Department presented their costs for Emergency Personnel and Equipment in the amount of $8,940.63. The NPFC determined that $8,053.75 is payable by the OSLTF. The NPFC determines that the NPFC approved costs incurred by the Claimant were reasonable and necessary in order to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC hereby determines that the approved costs were billed in accordance with the rate schedules in place at the time the services were rendered, unless otherwise indicated below and were determined to be consistent with the National Contingency Plan (NCP).

The Administrative Fee in the amount of $886.88 is denied because this cost was not listed on the rate schedule.

AMOUNT: **$8,053.75**

Claim Supervisor: [redacted]

Date of Supervisor's review: 8/20/15

Supervisor Action: ***Approved***