

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 912025-0001
Claimant : Lenawee County Drain Commissioner's Office
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$115,635.66

FACTS:

1. **Oil Spill Incident:** On August 20, 2011, a spill of approximately 100 gallons of petroleum-based materials in a ditch and on the banks of Turner Drain in Adrian Township, Michigan was reported to the National Response Center via report # 986636.¹ Turner drain flows into Wolf Creek, which then flows into Lake Adrian, a navigable waterway of the United States. The Claimant, Lenawee County Drain Commissioner's Office (Lenawee County), attempted to find a responsible party (RP), but was unsuccessful. Upon further investigation, it was determined that unknown persons illegally dumped product into the ditch and in light of rain moving into the area, response actions were necessary.

While no Federal On-Scene Coordinator (FOSC) monitored this incident, the Michigan Department of Environmental Quality (MDEQ) as the State On Scene Coordinator (SOSC) did. The Michigan State Police Homeland Security and Emergency Management Division (HSEMD) was also notified and kept in the loop as response efforts continued.²

2. **Description of removal actions performed:** On August 20, 2011, Lenawee County retained M.L. Chartier, Inc. (MLC) to conduct cleanup and removal activities. Lenawee County had already placed straw (approximately 200 bales) and sand within portions of the drain to collect and minimize product movement. Under the direction of crew supervisor, Mr. [REDACTED] MLC personnel began removing the contaminated soil/water. They also mobilized roll-off boxes, a frac tank, absorbent boom and various other pieces of equipment (e.g. vacuum truck, excavator, skid steer, stake truck, etc). Additionally, absorbent boom was placed at the culverts and across the drain every 20 feet. These culverts were also cleaned via a jet vacuum truck. Oil contamination was observed extending approximately three feet up the banks.

Removal and containerization of visually impacted soils continued through August 25, 2011 (eight roll-off boxes, as well as stockpiled soils). Representatives from MDEQ were present periodically from August 21, 2011 through approximately September 23, 2011 monitoring and investigating the spill incident. Commencing on September 6, 2011 and continuing through September 19, 2011, contaminated soil was transported to Adrian Landfill for proper disposal. On August 24, 2011, MLC submitted a sample of crude oil to Paragon Laboratories, of Livonia, Michigan, for the analysis of the 8 RCRA metals and polychlorinated biphenyls (PCBs) for waste characterization and acceptance to

¹ See NRC Report # 986636, dated 8/20/2011.

² See email from Mr. [REDACTED] Lenawee County, to Mr. [REDACTED] Lenawee County, and dated 2/01/2012.

DART Disposal, of Detroit, Michigan. On October 8, 2011, upon release by the MDEQ, approximately 4,533-gallons of crude oil/water associated with the cleanup and decontamination process was transported and disposed at DART Disposal. MLC decontaminated the frac tanks and vacuum trucks under a Confined Space Entry Permit.

3. ***The Claim:*** On 19 January 2012, Lenawee County presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$115,635.66 for the services provided from approximately August 20, 2011 through September 23, 2011. A copy of the vendor rate schedule is included with this claim.

This claim consists of copies of the following: NRC Report # 986636; a cover letter, dated 1/11/2012; a Lenawee County summary of costs spreadsheet; Chartier invoices for this incident; the contract between Chartier and Lenawee County for this incident; Adrian Landfill invoices for this incident; MI DEQ SITE ID # Letter, dated 9/ 22/2011; disposal manifests for this incident; Paragon Laboratories analyses for this incident; Adrian Township Event Log for this incident; aerial map of the spill site; pictures of the spill and cleanup activities; news articles related to this incident; and internal email correspondence.

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 FOSC, 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. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the report of a discharge and substantial threat of 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)(1)
4. A Responsible Party was not determined for this incident. 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 claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the 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.

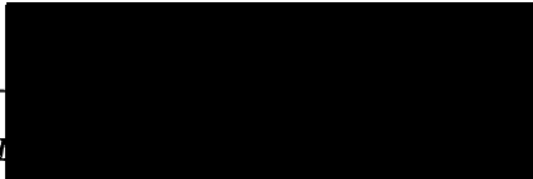
B. Analysis:

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

Upon review of the claim submission, the NPFC has determined that the costs presented and incurred were billed in accordance with the rate schedule in place at the time services were rendered. The NPFC also determined that the actions taken by the Claimant and its contractor were reasonable and necessary in order to mitigate the discharge and continuing threat of discharge to the environment. The analytical results corroborate the presence of strictly oil contamination. Proper disposal has been performed and documented.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$115,635.66 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and presented to the NPFC under claim #912025-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from approximately August 20, 2011 through September 23, 2011. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount: \$115,635.66

Claim Supervisor: 

Date of Supervisor's review: 3/02/12

Supervisor Action: *Approved*

Supervisor's Comments: