

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E10522-0001
Claimant	: City of Toledo
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$5,798.71

FACTS:

A. Oil Spill Incident: The City of Toledo ("City"), reports that on May 5, 2010, while excavating at Secor Road near Sylvania Avenue in Toledo, Ohio, city workers encountered puddles of weathered diesel and gasoline. The fuel was actively seeping into the excavation, as well as a catch basin that leads to the Ottawa River, a navigable waterway of the US.¹ The National Response Center (NRC) was contacted and notified on May 6, 2010 via Report # 939467; the Ohio Environmental Protection Agency (OEPA) was also notified May 6, 2010 via Spill ID # 1005-48-2012.

This fuel contamination was traced back to an abandoned gas station located at 3945 Secor Road, Toledo, OH. The owner of this property, and Responsible Party (RP), Mr. [REDACTED] claimed that he did not know the land was contaminated when he purchased the property.

B. Description of removal actions performed: On May 5, 2010, the City of Toledo Division of Environmental Services responded to the scene. After assessing the spill, it was determined to be beyond its capabilities, and the OEPA and US EPA Region V were brought in to manage the response. Prior to the incident being federalized, the City placed absorbent boom in the storm catch basins to mitigate further contamination. Additionally, monitoring wells, ditches and creeks in the vicinity were checked and samples were taken to ensure that oil contamination had not occurred.

C. The Claim: On May 29, 2012, City of Toledo submitted a removal cost claim to the National Pollution Funds Center (NPFCC), for reimbursement of removal costs in the amount of \$5,798.71 for the services provided May 5 through May 20, 2010. A copy of the vendor rate schedule was included with the claim.

This claim consists of copies of: NRC Report # 939467; EPA Region V POLEREPS # 1-3 for FPN E10522; OEPA Report # 1005-48-2012; City of Toledo Division of Environmental Services Report # 150-10; City of Toledo Division of Environmental Services Water Analysis Report # 1594; Disposal Manifests for this incident; Invoices of costs and payroll verification for this incident; Correspondence with the RP for this incident; and maps, photographs 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

¹ See EPA OSC website for this incident, found on 6/19/2012 at: http://epaos.org/site/site_profile.aspx?site_id=6060.

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

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. FOSC Coordination has been established via US EPA Region V.²
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. A Responsible Party was determined but, to date, has not submitted payment to the claimant. 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 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 NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The city presented a well-documented claim, providing the Claims Manager sufficient means to determine whether or not the City incurred the costs and, of the costs incurred, what were considered compensable. After a review of the file, it was determined, through the preponderance of the evidence, that the Claimant did in fact incur \$5,798.71 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #E10522-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from May 5 through May 20, 2010.

² See EPA Region V POLREPS # 1-3 for FPN E10522.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$5,798.71 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E10522-0001. 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.

AMOUNT: \$5,798.71

Claim Supervisor: 

Date of Supervisor's review: *6/25/12*

Supervisor Action: *Approved*

Supervisor's Comments: