

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912085-0001
Claimant	: Hull & Associates, Inc.
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$56,899.57

### **FACTS:**

***Oil Spill Incident:*** On August 11, 2011 the City of Oregon, OH Engineering Department discovered an oil discharge into the city's storm sewer system. The Oregon Fire Department (OFD) was requested to respond to the spill in order to provide assistance in locating the source and provide containment. The spill was traced to a private residence owned by a Mr. [REDACTED], responsible party (RP), located at 610 North Stadium Street, Oregon, Ohio. At that location a strong petroleum odor was found and light red fuel was found in the residence basement sump. Based on the recommendations from OFD, Hull & Associates Inc. was called by the RP to provide professional engineering services to address the situation.<sup>1</sup>

The source of the oil was found to be from an abandoned underground heating oil tank located on the property that had become compromised. The heating oil had migrated from the tank through the ground and accumulated in the basement's sump where it was being discharged directly into the catch basin in front of the residence and then into the city's storm sewer system.

Additionally, the State of Ohio Environmental Protection Agency (OH EPA) and USCG Marine Safety Unit (MSU) Toledo, OH responded to the incident. The OH EPA maintained contact with Hull & Associates Inc. through the emergency phase of the response, which ended on August 19, 2011. MSU provided an initial response to the incident. The USCG determined the spill to be outside the jurisdiction of the USCG because the incident did not impact or threaten a navigable waterway<sup>2</sup>.

***Description of Removal Activities for this Claimant:*** Hull & Associates Inc. and its subcontractor's activities included the removal of oil and oily water mixtures, removal of the tank, removal of contaminated soil, and the flushing and cleaning of the storm sewer lines. An oil-water separator was temporarily installed in-line of the basement sump to prevent future discharges of oil into the storm sewer system.

During the site remediation, approximately 150 gallons of oil<sup>3</sup>, 2,850 gallons of oily water<sup>4</sup>, and 64 cubic yards of fuel oil impacted soil<sup>5</sup> had been removed. All contaminated waste was disposed of. The compromised oil tank was emptied, cleaned, excavated, and disposed of as scrap.

<sup>1</sup> Hull & Associates Cover Letter to NPFC dated August 14, 2012.

<sup>2</sup> Email from MST1 [REDACTED], USCG, to [REDACTED] dated May 31, 2012.

<sup>3</sup> Hull & Associates 30 Day Report, Section 3.0, dated October 3, 2011.

<sup>4</sup> Hull & Associates 30 Day Report, Section 3.0, dated October 3, 2011.

<sup>5</sup> Environmental Management Specialists Invoice #499 dated August 30, 2011.

It is noted that the OFD provided initial spill containment by placing absorbent booms and pads in the sewer catch basin in front of the RP home, absorbent pads in the catch basin across the street, and absorbent boom in the main sewer outflow approximately 1400 feet north of the spill source. OFD also placed a temporary plug in the RP's discharge pipe in the catch basin in front of the home.<sup>6</sup>

***The Claim:*** On August 15, 2012, Hull & Associates Inc. presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$56,899.57.

#### **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

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<sup>6</sup> Hull & Associates Cover Letter to NPFC dated August 14, 2012.

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. No FOSC coordination has been established. 33 USC §1321(d)(2)(K).
2. The Claimant has failed to demonstrate how the spill posed a substantial threat of discharge to a navigable waterway.
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 for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were not for actions in accordance with the NCP and that the costs for these actions were not 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 Claimant has provided documentation that shows there was oil within the storm sewer system piping in the immediate area of the residence but has failed to demonstrate how this incident posed a substantial threat to a navigable waterway. There is no documentation of any oil found in any waterway or tributary. The USCG MSU reported to the NPFC that there was no impact to a navigable waterway<sup>7</sup>. The OH EPA Investigation Report stated there had been no impact to the downstream tributary and an additional information inquiry<sup>8</sup> to them, from NPFC, stated that fuel did not reach the open tributary. Hull & Associates Environmental Impact analysis

<sup>7</sup> Email from MST1 [REDACTED] USCG, to NPFC dated August 30, 2012.

<sup>8</sup> Email from Mr. [REDACTED], OH EPA, dated September 6, 2012.

within their 30 Day Report states that no navigable waterway was affected and the spill was contained within the property boundaries.

The Claimant did not obtain FOSC coordination for this incident and as such, the Claimant has failed to meet their burden pursuant to the governing claims regulations found at 33 CFR 136.203 and 136.205 to demonstrate that any actions undertaken by them were determined by the FOSC to be reasonable, necessary and consistent with the National Contingency Plan (NCP).

***C. Determined Amount:***

Based upon the foregoing, the NPFC denies this claim because the Claimant has failed to demonstrate that the spill posed a substantial threat of discharge into or upon a navigable waterway and that no FOSC coordination was obtained from the Federal on Scene Coordinator (FOSC) to ensure the response was conducted in accordance with the National Contingency Plan.

**AMOUNT: \$0.00**

Claim Supervisor

Date of Supervisor's Review: *10/3/12*

Supervisor Action: *Denial approved*

Supervisor's Comments: