

CLAIM SUMMARY / DETERMINATION

Claim Number:	913063-0001
Claimant:	Inland Waters of Ohio
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$6,638.00

INCIDENT FACTS:

On November 14, 2011, a tractor-trailer operated by Global Express was involved in an accident on I-80 in Austintown, Ohio. The truck's saddle tanks leaked diesel onto the road and into a storm sewer that led to the Mahoning River, a navigable water of the U.S. The Ohio EPA responded and directed the response.

CLAIMANT AND CLAIM:

Inland Waters of Ohio (Claimant or Inland) was hired by the RP to respond to the incident and clean up the spill. Inland provided boom, absorbents and worked to prevent the oil from reaching the river. Claimant submitted its claim to the RP via mail on December 31, 2011, and has not been paid to date. Inland seeks reimbursement of the costs for providing oil pollution removal services that remain unpaid by the RP.

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:

A. Overview:

1. 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 a 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 Claimants have 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 which removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

The Claims Manager reviewed the invoices and associated other documentation and the Claimants' rate sheets in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether the actions taken were compensable "removal actions" under OPA and its 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; and (3) whether the costs were adequately documented and reasonable.

The NPFC finds most of Claimant's costs necessary and reasonable for this response. The attached spreadsheet details the NPFC's adjudication of the invoice and individual costs within it. The claimed and properly documented costs for oil spill response that fall within the Claimant's published rates were approved. Those costs that were not supported by documentation or the rate schedule were either reduced in accordance with the rate schedule or denied, see the attached spreadsheet for an itemization of reduced and/or denied costs.

As detailed in the spreadsheet adjudication, the total amount denied by the NPFC is \$325.48. The denied amount reflects reductions to invoice items so they correspond with the Claimant's rate schedule. The Claims Manager hereby determines that the OSLTF should pay the amount of \$6,312.52 as full compensation for the uncompensated removal costs incurred by the Claimants and submitted to the NPFC. The approved costs were incurred by the Claimants for removal actions taken, as defined under OPA and payable by the OSLTF as compensable removal costs.

AMOUNT: \$6,312.52

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/31/13*

Supervisor Action: *Approved*

Supervisor's Comments: