

CLAIM SUMMARY / DETERMINATION

Claim Number: 913079-0001
Claimant: Charter Township of Plymouth
Type of Claimant: Corporate (U.S.)
Type of Claim: Removal Cost
Claim Manager: [REDACTED]
Amount Requested: \$55,918.04 [REDACTED]

FACTS:

Incident:

On 20 August 2011, the homeowner at 46730 Ann Arbor, Plymouth Michigan notified the authorities about an odor coming from the Wilson Creek Pond. The Pond drains into Tyler Creek, which flows to Willow Creek, which ultimately leads to the Rouge River, a navigable waterway of the United States. The site is located along a drainage system originating from a residential neighborhood to the north and northwest of the location of the discharge. This discharge posed a substantial threat of a discharge into a navigable waterway of the United States.

The Wayne County Fire Department (F.D.) and Western Wayne Hazardous Materials Response Team (WWHMRT or Team) responded to the spill location. They noticed a sheen of an unknown product on top of the pond water and flowing downstream.

A meeting was held with the FD, the WWHMRT and the property owner. The Team contacted Terra Contracting (Terra) to respond to the discharge and perform clean-up and removal actions in response to this discharge.

The incident was reported to the NRC, Case Number 986-636. The Michigan Department of Environmental Quality (MDEQ) responded and created a report, number 3451. The Federal On Scene Coordinator (FOSC) for this incident is the United States Environmental Protection Agency (USEPA), [REDACTED]. He responded to the spill site.

The FOSC issued a POLREP, See *POLREP One & Final*. This POLREP was created to document the facts and actions taken in response to this incident.

The Claim & Claimant:

The Claimant is the Township of Plymouth, Michigan. They have submitted their claim for uncompensated removal costs to the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC) in the amount of \$55,918.04 on 23 August 2013.

At the time of the incident, the WWHMRT contacted the OSRO, Terra Contracting, LLC to respond to the incident and perform clean-up and removal activities. The Plymouth County Fire Department (PCFD) also responded to the incident and incurred costs. No Responsible Party (RP) was identified in this incident. The Claimant now submits their claim to the NPFC for consideration.

Removal Actions:

Upon arrival at the scene, all parties met to discuss how to best mitigate the effects of this discharge and to develop an Incident Action Plan (IAP) to locate the source, locate the product downstream, to identify the product, and to contain the spill in the pond as needed with absorbent boom. Absorbent boom was placed at five (5) locations.

According to the submission, the Claimant provided proof of payment to both Terra Contracting, LLC in the amount of \$37,283.30 and Western Wayne County Mutual Aid Association in the amount of \$16,406.50. There were also costs incurred by the Plymouth County Fire Department (PCFD) in the amount of \$2,228.24. These costs total the amount claimed of \$55,918.04.

According to the narrative provided by Terra, the assessment of the situation revealed that the product field tested has a high probability of a hydrocarbon based product in the kerosene family. All parties met to discuss the plan of action: to verify the extent of downstream affected while continuing to investigate upstream to determine the source.

The farthest upstream location was identified as a catch basin at the south of the subdivision that was northwest of the address site. The boom was placed diagonally near the weir from the southeast and proceeding away from the weir to the northwest. The boom was placed diagonally near the weir from the southeast and proceeding away from the weir to the northwest. The southeast portion provided for a collection point. The bulk of the boom was deployed at the Pond to prevent further contamination downstream.

On 21 August 2011, the Project Manager (Terra) met with US EPA, [REDACTED] who was the FOOSC, for this incident and [REDACTED] from the MDEQ to develop a The POA (Plan of Action). This plan was modified to remove the boom from the mouth of the pond and upstream to allow the product to flow unrestricted to the pond for collection. Absorbent pads were to be deployed along the shoreline to address the sheen noted there.

On 22 August 2011, one crew was deployed to wash the WWHMRT curtain boom. Another crew provided for the removal and replacement of contaminated boom in addition to the placement of the boom at various locations.

On 23 August 2011, the crew provided for the removal and replacement of the absorbent boom as needed. The clean curtain boom was returned to the WWHMRT. The crew provided for the replacement of absorbent boom to the various municipalities that provide mutual aid to PCFD.

On 26 August 2011, the crew provided for the removal and replacement of absorbent boom as needed.

On 29 August 2011, there was a discussion with the MDEQ and PCFD regarding the complete removal of all the absorbent and containment boom. The crew provided for the removal of the boom and the consolidation of all the previously generated waste into a roll-off container for ease of disposal. Additionally, a sample of the absorbent media was sent in for analytical for waste disposal consideration.

WWHMRT narrative

According to this narrative, on 22 August 2011, they received a call from Plymouth County Fire Department (PCFD) who contacted WWHMRT for assistance. He informed that the the PCFD was on scene with an unknown release into a retention pond which feeds to a creek. The released product had a heavy sheen of either diesel fuel or paint thinner along with a pungent odor in the area. The WWHMRT was activated and sent to the location.

Later the same day, the Team observed the PCFD placing booming material in the water near the overflow dam. There was a meeting with the property owner and ISC [REDACTED] (PCFD) gave an overview of the scene and actions taken by him and the FD.

The site is located along a drainage system originated in a residential neighborhood to the north and northwest of said location. The storm water drains into Tyler Creek which flows into Willow Creek, which empties into the Rouge River. At 2015, the team assembled and an Incident Action Plan (IAP) was developed along with a site safety plan. The IAP consisted of locating the source, location product downstream, identifying the product, placing containment boom around the area. The safety plan consisted of having all members near the water to wear personal flotation devices or tied off by rope.

Members of the Team were assigned to perform air monitoring, search for a source in the neighborhood to the north/northwest of said location. In the search for a source, they found hits for the product on Barwood Court (north of said location), in two manholes. Late in the incident, members of the USAR team were assigned to assist then in the search. A source was never located.

Team members were assigned to research, sample and to notify. A spillfighter confirmed the presence of petroleum product at the spill site.

There was air monitoring around the location in attempts to locate the product downstream. Numerous boom operations were deployed at various locations, by a variety of members, departments and teams.

Boom operations No.1: was the retention pond @ 46739 Ann Arbor Road. Boom was placed in the creek, west of the Pond. Boom was also placed in the pond

Boom operations No. 2: on McClumpha north of Joy Road.

Boom operations No.3: Behind Salem High School new Phase III

Boom operations No, 4: Absorbent boom was placed in the creek, southeast of the intersection of Warren @ Sheldon Road

Boom operations No. 5 Absorbent boom was placed in the creek on Hanford Road west of Morton Taylor

On 21 August 2011, a meeting was held with the PCFD, MDEQ, U.S. EPA, representative from Terra Contracting, WWHMT and the property owner. The purpose of the meeting was to review each of the booming locations, search for a source in the neighborhood, and to formulate a clean-up procedure and time line.

The Plymouth County Fire Department (FD) created a report in its response to this incident that contained the following information: On 20 August 2011 the FD received a report of an odor and what looked like a petroleum based product in the pond at 46730 Ann Arbor Road. They responded. They began looking upstream for the source of the discharge. The hazmat team was called and responded. They called Terra Contracting to clean up the discharge.

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].

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. There is sufficient evidence that the actions taken by the Claimant were done in coordination with the Federal On Scene Coordinator (FOSC), United States EPA, [REDACTED] and that actions taken were reasonable and needed to mitigate the effects of the spill, and in line with the provisions of the National Contingency Plan (NCP). See, POLEP 1 and Final. 33 CFR 136.203 © & 33 CFR 136.205
2. The Claimant has demonstrated that the incident involved the report of a discharge and substantial threat of a discharge of oil into "navigable waters" as defined in OPA 90, 33 U.S.C. 2701.
3. The claim was submitted within the (6) six year statute of limitations. 33 U.S.C. 2712 (h)(2)
4. No Responsible Party was determined for this incident. 33 U.S.C. 2701 (32)
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and has determined that the majority of removal costs presented were for actions associated with a discharge of oil into "navigable waters" as defined by OPA 90, they were in accordance with the National Contingency Plan (NCP), and the costs and actions were reasonable and allowable under OPA and 33 CFR 136.205

B. Analysis

The NPFC CA reviewed the documentation submitted in support of the Claimant's submission for reimbursement of uncompensated removal costs to the OSLTF. The review focused on (1) whether the incident involved a discharge or substantial discharge of oil into "navigable waters"; (2) 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); (3) whether the cos were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC; and (5) whether the cost were adequately documented and reasonable.


The NPFC reviewed all the documentation submitted and has determined that a total of \$1,275.43 should be denied as not compensable. Although the Claimant submitted these costs for reimbursement, the documentation to support the reimbursement was not provided and as such, these costs are denied.

The NPFC confirmed that all other costs presented are supported by the record, billed in accordance with the appropriate pricing schedule and were paid and incurred. The FOSC has determined the actions undertaken to be reasonable and necessary and consistent with the National Contingency Plan (NCP).

AMOUNT: \$54,642.61

DETERMINED AMOUNT:

The NPFC determines that the OSLTF will pay \$54,642.61 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 913079-0001. 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 Claimant.

Claim Supervisor: 

Date of Supervisor's review: *9/11/13*

Supervisor Action: *Approved*

Supervisor's Comments: