

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	913084-0001
<b>Claimant:</b>	Inland Waters of Ohio, Inc
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$4,074.76

### **FACTS:**

**Oil Spill Incident:** On December 20, 2010, a semi-truck was involved in a traffic accident that occurred on east bound Interstate 90 at mile marker 214 in Madison Township, Lake County, Ohio. The truck's saddle tank became compromised and discharged approximately 125 gallons of diesel fuel into a ditch adjacent to the interstate. The spill flowed down this ditch for approximately 50 feet before entering an unnamed stream and flowed through the culvert under the highway. The unnamed stream is reported to be a tributary to Arcola Creek which flows into Lake Erie, a navigable waterway of the United States.

**Responsible Party:** The Ohio Environmental Protection Agency identified Progressive Transport, Inc. as the Responsible Party (RP), who owned/operated the semi-truck at the time of the accident and is determined to be the responsible party under the Oil Pollution Act. The National Pollution Funds Center (NPFC) sent a RP Notification letter to the RP on September 4, 2013.

**Description of Removal Activities:** On December 20, 2010, Inland Waters of Ohio (IWO) was contracted by the RP to contain, recover, and dispose of diesel contaminated material associated with the spill from the semi-truck. IWO vacuumed diesel from the creek, placed booms at culvert drain pipes and along along a fence line that the creek travels through, and rebuilt a siphon dam per Ohio EPA instruction.

IWO returned to the incident site to perform maintenance on established containment material on December 21-23, 2010, January 5, February 3 and 14. On March 18, 2011, all booms were removed as the area no longer had visible sheening.

**The Claim:** On August 29, 2013, Inland Waters of Ohio Inc presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$4,074.76<sup>1</sup>

### **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".

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<sup>1</sup> USCG NPFC Optional OSLTF Claim Form dated August 23, 2013.

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 discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 to “navigable waters.”
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed costs.
4. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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.

All costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). The costs billed were billed in accordance with the published rate schedule at the time services were rendered.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$4,074.76 of uncompensated removal costs and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913084-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident beginning on December 20, 2010. 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:***

The NPFC hereby determines that the OSLTF will pay \$4,074.76 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913084-0001. 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 Claimants.

**AMOUNT: 4,074.76**

Claim Supervisor:

Date of Supervisor’s review: *10/2/13*

Supervisor Action: *Approved*

Supervisor’s Comments: