

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	E11503-0001
<b>Claimant:</b>	Charter Township of Van Buren
<b>Type of Claimant:</b>	Local Municipality
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$19,277.69

### **FACTS:**

**Oil Spill Incident:** On November 28, 2010, the 63 foot, commercial river boat PRINCESS LAURA (MC7400NA) was found partially submerged, by the Belleville Police Department (BPD), at the public dock in Horizon Park located on High Street in the City of Belleville, Michigan (located within the Charter Township of Van Buren). The sinking of the vessel created an oil sheen on the water's surface approximately 200 feet long by 20 feet wide. The Federal On Scene Coordinator (FOSC) arrived and found that the Western Wayne County HAZMAT Response Team (WW-HMRT) was conducting emergency removal response actions in accordance with the National Contingency Plan (NCP).

On December 2, 2010, the vessel was up righted after a failed attempt on November 30, 2010. On December 6, 2010, demobilization of all equipment was completed. The FOSC concluded all emergency response removal activities were completed.

Belleville Lake, also known as Edison Lake, in Belleville, Michigan is a reservoir created by the damming of the Huron River. The Huron River is a tributary to Lake Erie, a navigable waterway of the United States.

**Responsible Party:** Ms. [REDACTED] the Responsible Party (RP), is the registered owner of the M/V PRINCESS LAURA at the time of the incident 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 April 11, 2013.

**Description of Removal Activities for this Claimant:** The BPD requested that the Van Buren Fire Department (VBFD) respond to the scene. After the VBFD arrived on scene and determined that their capabilities to mitigate the discharge would not be adequate a mutual aid request was placed to the Western Wayne County HAZMAT Response Team (WW-HMRT).

After the arrival of the WW-HMRT, the discharge was reported to the National Response Center (#960873) and the U.S. EPA. The spill was estimated at approximately 20 gallons and sheening had extended to an area of about 300 feet by 30 feet. The sheen was contained by first responders with boom and the product was collected utilizing absorbent pads.

VBFD hired a contractor to remove and decontaminate containment boom and dispose of all absorbent material.

**The Claim:** On April 10, 2013, Charter Township of Van Buren, thru the Law Office of Gasiorrek, Morgan, Greco & McCauley, PC, presented a removal cost claim to the National Pollution Funds Center (NDPC) for reimbursement of their alleged uncompensated removal costs in the amount of \$19,277.69<sup>1</sup>

<sup>1</sup> NPFC Standard Claim Form dated April 5, 2013.

**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 was provided by U.S. EPA Region V [REDACTED] in accordance with CFR § 136.203.
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 which of the 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.

The Claimant is requesting \$175.00 for 3.5 hours of usage for the VBFD dive trailer and boat. This apparatus does not appear on the VBFD Incident Report dated November 28, 2010. The Claimant has failed to provide adequate documentation that shows the apparatus actually responded to the scene or how it was utilized in the emergency response activities. Therefore the NPFC denies the cost of \$175.00 for the dive trailer and boat.

The Claimant is requesting labor cost of \$46.40 for Officer [REDACTED] and \$42.98 for Officer [REDACTED] (1 hour wage each). The Claimant has not provided adequate documentation that shows how these officers were utilized in the emergency response activities. Furthermore the VBFD Incident Report states that these officers “were on scene in the parking lot.” This description does not show that the officers supported the incident. Therefore the NPFC denies the costs of \$89.38 for these officers.

The Claimant is requesting labor costs of \$204.16 (\$37.12 for 5.5 hours) for Officer [REDACTED]. The VBPD Call For Service Log states that the officer was dispatched at 9:52:24am and cleared the incident at 2:14:46pm. This is a total time accumulation of 4 hours and 23 minutes. The NPFC has determined that the officer total time dedicated to the emergency response is 4.5 hours. Therefore the NPFC approves labor costs of \$167.04 and denies the remaining \$37.12.

The Claimant is requesting equipment costs of \$375.00 (\$75.00 for 5 hours) for the usage of the VBPD Marine One. The vessel was operated by Officer Stanton of VBPD to assist in setting containment boom. Since the NPFC has determined that the officer was utilized for only 4.5 hours the vessel usage time is also determined to be 4.5 hours. The Claimant has also failed to provide a rate schedule to support the hourly rate invoiced for the VBPD Marine One. The NPFC has determined that \$40.00 per hour is a reasonable rate based on the comparable costs for similar equipment by other Oil Spill Response Organizations (OSRO). Therefore the NPFC approves the equipment costs of \$180.00 and denies the remaining \$195.00.

All other costs were validated and the NPFC has determined the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$18,781.19 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 #E11503-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on November 28, 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 \$18,781.19 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E11503-0001. 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: \$18,781.19**

Claim Supervisor

Date of Supervisor's review: 7/1/13

Supervisor Action: *Approved*

Supervisor's Comments: