

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E13303-0001
Claimant	: Chesapeake Fire Department
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$8,961.49

**FACTS:**

**A. Oil Spill Incident:** The United States Environmental Protection Agency (EPA) Region III reports<sup>1</sup> that on January 31, 2013, an unknown amount of kerosene oil<sup>2</sup> was spilled from a line cut on a tanker, which drained into a ditch and onto surface waters in a nearby retention pond. The ditch and retention pond were in a marshy area that drained into New Mill Creek, which then flows into the Elizabeth River, a navigable waterway of the US. The incident was reported to the National Response Center (NRC) on February 1, 2013.

The Responsible Party (RP), Mr. [REDACTED], was notified by the Chesapeake Fire Department (CFD). He responded by letter on March 5, 2013 to the Fire Department stating an inability to pay.<sup>3</sup> Notification was also made to the RP by the NPFC via a letter on April 3, 2013, although, to date, no response has been received. According to the EPA report, the Fire Marshall for the CFD obtained information suggesting that the line on the tanker was deliberately cut and the oil intentionally dumped onto the property.<sup>4</sup> On February 5, 2013, the CFD contacted the EPA to assist it in its cleanup efforts.

**B. Description of removal actions performed:** The claimant, CFD, hired IMS Environmental Services, LLC (IMS) for cleanup and removal of the contaminated soil and water. Actions included placing sorbent boom to contain the spill, placing sorbent pads on top of the water to remove the oil from the water's surface and utilizing an excavator to remove the impacted soil. A total of 16,160 pounds of soil and 710 gallons of kerosene/water mix were removed from the spill site and disposed.<sup>5</sup>

**C. The Claim:** On April 3, 2013, CFD submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$8,961.49 for the services provided from January 31 through February 5, 2013. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

<sup>1</sup> See US EPA Region III POLREP #1, dated 2/05/2013.

<sup>2</sup> See IMS Environmental Services, LLC Project #383.4015 Project Summary, dated 3/11/2013, and submitted with the claim to the NPFC by the claimant on 4/03/2013.

<sup>3</sup> See Letter from Mr. [REDACTED] RP, to the Chesapeake FD, dated 3/05/2013, and submitted with the claim to the NPFC by the claimant on 4/03/2013.

<sup>4</sup> See "Operations Section: 2.1.1 Narrative" in the US EPA Region III POLREP #1, dated 2/05/2013.

<sup>5</sup> See Non-Hazardous Shipping Manifest, dated 2/04/2013, and submitted with the claim to the NPFC by the claimant on 4/03/2013.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

**APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

"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".

"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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

33 USC § 2712(f), which is entitled "Rights of Subrogation," provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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 has been established via the United States Environmental Protection Agency Region III.<sup>6</sup>
2. 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.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party was determined but, to date, has not submitted payment to the claimant. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all 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:**

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 Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

<sup>6</sup> See US EPA Region III POLREP #1, dated 2/05/2013.

CFD did inform the USCG's National Response Center (NRC) and US EPA Region III of the incident and actions performed. It provided dailies and invoicing of costs from both its own personnel, as well as its contractor, which was deemed reasonable to accomplish the response objective. Additionally, the Claimant did attempt to collect from the RP, but was unsuccessful.

Based on the contractor rate schedule in place at the time services were rendered and the oversight by the Federal On Scene Coordinator, [REDACTED] of US EPA Region 3, the vacuum services to remove free product from the water's surface and removal of petroleum contaminated soil has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the spill. The Responsible Party issued a written letter dated March 5, 2013 to the Claimant stating he is unable to pay the bill as he is very sick and has not had much work.<sup>7</sup>

Based on the evidence in this claim submission and affirmation by the FOSC for the actions undertaken by the Claimant and its contractor, the Claims Manager hereby determines that the Claimant did incur \$8,961.49 of uncompensated removal costs and that 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 #E13303-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from January 31 through February 5, 2013. 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: \$8,961.49**

The NPFC hereby determines that the OSLTF will pay \$8,961.49 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E13303-0001. 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 Claimant.

Claim Supervisor: [REDACTED]
Date of Supervisor's review: 4/22/13
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

<sup>7</sup> See RP letter dated March 5, 2013.