

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914021-0001
Claimant	: Crawford County Emergency Management Agency
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$7,816.70

FACTS:

A. *Oil Spill Incident:* The United States Environmental Protection Agency (EPA) Region V reports¹ that on November 17, 2012, the Ohio Environmental Protection Agency (OEPA) notified it of 275-gallon home heating oil storage tank spill located in the basement of a home in Sulphur Springs, OH. The homeowner had fuel delivered to his home, but both fuel tanks on the property—one in the basement and one in the rear of the home-- were purposely rendered useless. When the fuel was delivered, it was placed in the basement tank, as the fill pipe still remained; however, there was a hole in it. The tank intended to be filled was the outside tank, but as it was disconnected, the delivery company would not deliver to it. Thus, the fuel was delivered to the basement tank, where it subsequently released approximately 85 gallons of No. 2 oil into the basement, to the sump pump, and into Broken Sword Creek. From the creek, it traveled a distance of 2.86 miles before it was contained. Broken Sword Creek is a tributary to the Sanduky River, which discharges into Lake Erie. Both are navigable waterways in the US. This incident was reported to the NRC via report # 1030928.

The Responsible Party (RP) was notified, but did not have the ability to pay for cleanup costs. The NPFC issued an RP Notification Letter to Mr. [REDACTED] on February 24, 2014. At the time of the writing of this determination, no response from him has been received by this office.

B. *Description of removal actions performed:*

The Claimant, CCEMA, coordinated with the Liberty Township Fire and Crawford County Sheriff Office to begin cleanup and removal of the oil and contaminated soil. Soft boom was deployed at the entry point and headwell to slow the product. As oil was detected at the entry point to the river, six floating hard booms were placed along the river in three locations and oil-absorbent pads were floated in front of booms. A final set of booms were placed approximately a quarter mile from the last of the fuel sheen to catch any escaped product.

After Ohio EPA (OEPA) met with the Claimant to review measures taken by CCEMA and the Township, , it was discovered that another pocket of fuel was located behind 4750 Ridgeton Annapolis Road, the ditch line being a county roadway. More absorbent pads were placed in the ditch line and the county dug the contaminated soil out of it two days later, Monday, November 19, 2012. More floating boom was added to the creek to absorb the fuel at the collection points and behind Ridgeton Annapolis Road. All contaminated products were placed in the county landfill until disposed of on November 19, 2012.

¹ See US EPA Region V letter to the NPFC, dated 2/06/2014.

C. The Claim: On February 18, 2014, CCEMA submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$7,816.70 for the services provided from November 17 through 19, 2012. 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.

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 FOSC, 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 V.²
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 has been identified, but, to date, has not paid the claim. 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

² See US EPA Region V Letter, dated 2/06/2014.

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).

The US EPA Region V was made aware of the incident and the actions performed by both CCEMA and the OEPA. The Claimant provided dailies and invoicing of its personnel and equipment costs, which were deemed reasonable to accomplish the response objective. The contractor rate schedule in place at the time services were rendered was reviewed and all billing was determined to be appropriate. The oversight by the Federal On-Scene Coordinator, Mr. [REDACTED] of US EPA Region V, was confirmed via the FOSC Coordination letter drafted by him to the NPFC, as well as the OEPA District Office Investigation Reports provided with the claim. The work performed by CCEMA was approved by Mr. [REDACTED] in his FOSC coordination letter. Thus, the work performed has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the spill. Finally, though there was no sample analysis testing performed for this incident, the NPFC acknowledges and accepts Mr. [REDACTED] statement as the FOSC that this was indeed strictly an oil spill incident.

Based on the evidence in this claim submission and affirmation by the FOSC for the actions undertaken by CCEMA and its contractor, the Claims Manager hereby determines that the Claimant did incur \$7,816.70 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by CCEMA and submitted to the NPFC under claim #914021-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident provided from November 17 through 19, 2012. CCEMA represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount: \$7,816.70

The NPFC hereby determines that the OSLTF will pay \$7,816.70 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 914021-0001. 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: *3/5/14*

Supervisor Action: *Approved*

Supervisor's Comments: