

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E13519-0001
Claimant	: Cleveland Metroparks
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$10,098.04

FACTS:

A. Oil Spill Incident: The United States Environmental Protection Agency (EPA) Region V reports¹ that on August 12, 2013, the Ohio Environmental Protection Agency (OEPA) notified it of an spill that OEPA had responded to on August 8, 2013. The location is at the intersection of Riverside Drive and Indianola Avenue in Lakewood, Ohio. Oil was seeping from the base of an approximate 50 foot cliff into a drainage channel in the Cleveland Metroparks (CMP). The seep is approximately 200 feet from the Rocky River, a navigable waterway of the US. OEPA had responded and placed booms and used sorbent material to capture as much of the free petroleum material as possible. The United States Coast Guard (MSU Cleveland, District 9) had responded with the OEPA over the weekend. US EPA inspected the site on August 13, 2013 and observed petroleum material in the drainage channel at the location described by the OEPA. OEPA requested that CMP personnel report the release to the National Response Center and on August 16, 2013, the incident was reported to the National Response Center (NRC) via report # 1057319.²

US EPA OSC [REDACTED] inspected the area on August 13, 2013 and observed petroleum material in the drainage channel. Petroleum staining was evident in soils and rocks along the drainage channel. A subsequent inspection was conducted on August 20, 2013 and additional petroleum material was visible in the drainage channel (approximately 2-3 gallons). Additional inspections indicated that petroleum material continues to seep out of the geologic formation at the base of the cliff. An inspection of the storm water drain performed on August 8, 2013 by OEPA indicated that petroleum material was not present in the storm sewer. An inspection of the storm sewer and discharge point did not indicate any petroleum staining other than at the base of the cliff face.

A Responsible Party (RP) has not been identified for this spill.

B. Description of removal actions performed:

US EPA, OEPA, USCG and the Claimant, CMP, personnel met on August 20, 2013 to determine a strategy for solving the problem. CMP agreed to regularly inspect the area in the short term while possible sources are investigated. CMP arranged for a representative from the Ohio Department of Natural Resources (ODNR) to inspect the area and determine if there is a possibility of an abandoned well. The ODNR inspector determined that the petroleum material was not natural and that the source could not be an abandoned well. Samples were collected by CMP for disposal of the oiled sorbent material and the analysis indicated that the material was most likely old heating oil.

CMP personnel installed more robust dams with sorbent material along the drainage channel in order to stop any petroleum material from reaching the Rocky River. US EPA returned to the area on September 11, 2013 and observed that petroleum material continued to seep from the area. Nearby residents informed US EPA that they had observed petroleum odors in the area over the last 5 years, they have lived in the area for over 40 years, and do not know anyone nearby that uses heating oil. US

¹ See US EPA Region V POLREP #1, dated 8/13/2013.

² See NRC Report # 1057319, opened 8/06/2013.

EPA requested a Federal Pollution Number in order to begin planning for long term solutions to the continuing release.

- C. **The Claim:** On January 9, 2014, CMP submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$10,098.04 for the services provided from August 13, 2013 through September 11, 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.

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:

"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.³
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. To date, a Responsible Party has not been identified. 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).

Both the USCG and US EPA Region V were aware of the incident and the actions CMP performed. It 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. The oversight by the Federal On-Scene Coordinator, Mr. [REDACTED] of US EPA Region V, was confirmed using the POLREP and the FOSC Coordination letter. Additionally, the work performed by CMP 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.

³ See US EPA Region V POLREP #1, dated 8/13/2013.

Based on the evidence in this claim submission and affirmation by the FOSC for the actions undertaken by CMP and its contractor, the Claims Manager hereby determines that the claimant did incur \$10,098.04 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by CMP and submitted to the NPFC under claim #E13519-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from August 13, 2013 through September 11, 2013. CMP represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount: \$10,098.04

The NPFC hereby determines that the OSLTF will pay \$10,098.04 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E13519-0001. 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:

Date of Supervisor's review: *2/24/14*

Supervisor Action: *Approved*

Supervisor's Comments: