

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	917028-0001
<b>Claimant:</b>	Chesterfield Fire Marshal's Office
<b>Type of Claimant:</b>	Local Government
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$8,674.83

### FACTS:

**Oil Spill Incident:** On April 09, 2017, Chesterfield Fire Marshal's Office notified the National Response Center (NRC) of a mystery sheen on the James River, a navigable waterway of the United States.<sup>1</sup> The Fire Marshall's Office reported that the discharge was approximately 50 gallons of oil from an abandoned oil drum that rolled down the bank of the river. The source of the spill is unknown.<sup>2</sup> First Call Environmental was hired by the Fire Marshal's office to conduct removal and remediation of the site.<sup>3</sup>

**Description of Removal Activities for this claimant:** First Call Environmental personnel responded and conducted removal actions on April 09, April 25, and May 08, 2017. The bulk of the response concentrated on removing contaminated soil and restoration of the river bank. The removal actions were conducted using personnel, protective equipment, back hoe, dump truck, backfill dirt, and response trailer.<sup>4</sup> Sampling of the soil was conducted by Air, Water and Soil Laboratories and was consistent with OPA 90 regulated oil.<sup>5</sup>

**The Claim:** On June 05, 2017, the NPFC received a removal cost claim from Chesterfield Fire Marshal's office for reimbursement of their uncompensated removal costs in the amount of \$8,647.83.<sup>6</sup> The claim is based on invoice #1004031 from First Call Environmental in the amount of \$8,647.83.<sup>7</sup>

### 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".

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

<sup>1</sup> See, NRC Report # 1175259.

<sup>2</sup> See, NRC Report # 1175259 dated April 9, 2017.

<sup>3</sup> See, Claimant's OSLTF Claim Form, question 11, received by the NPFC on June 5, 2017..

<sup>4</sup> See, Chesterfield Fire Marshal's Office Claim Package received June 05, 2017.

<sup>5</sup> See, email from ██████████, USCG to ██████████ dated June 07, 2017.

<sup>6</sup> See, Claimant's OSLTF Claim Form received June 5, 2017..

<sup>7</sup> See, First Call Environmental invoice 1004031 dated May 16, 2017.

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. [REDACTED], USEPA, was the Federal On-Scene Coordinator (FOSC) for this incident and he determined that the actions undertaken by NRCES were consistent with the NCP<sup>8</sup> for the payment of uncompensated removal costs 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);<sup>9</sup>
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), 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 uncompensated removal costs;
4. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the 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.

In reviewing the claim, the NPFC considered the Claimant’s evidence which consisted of proof of payment, First Call Environmental invoice, rate schedule of prices for First Call Environmental, third-party receipts, lab analysis, photos, and disposal manifests. The NPFC requested additional information and explanation of costs and actions throughout the adjudication process.

Based on its review, the NPFC has determined that the costs incurred by Claimant are compensable under the OPA. The costs were reasonable and necessary to mitigate the effects of the incident and were determined by the FOSC to be consistent with the NCP. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the cost of materials used at the time the services were rendered and were determined by the NPFC to be consistent with the NCP. Disposal of spoiled materials was conducted in accordance with all applicable laws and regulations.

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<sup>8</sup> See, email from [REDACTED], USEPA to Claimant dated April 10, 2017. Attached Action Report supports coordination of response actions.

<sup>9</sup> See, Chesterfield Fire Marshal’s Office Claim Package received June 05, 2017.

The NPFC hereby determines that the OSLTF will pay \$8,674.83 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 917028-0001. All costs claimed are for charges incurred 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.

**AMOUNT: \$8,674.83**

Claim Supervisor:

Date of Supervisor's review: *4/25/17*

Supervisor Action: *Approved*