

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	920003-0001
<b>Claimant:</b>	Mount Clemens Fire Department
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$4,911.03
<b>Action Taken:</b>	Offer in the amount of \$4,556.03

### **EXECUTIVE SUMMARY:**

On April 30, 2018, a light sheen was discovered on the waters of the Clinton River, in Mount Clemens, Michigan. Coast Guard (CG) Sector Detroit Incident Management Division (IMD) was dispatched to serve as Federal On Scene Coordinator (FOSC), and cites that Clinton River empties into Lake St. Clair, a navigable waterway of the United States.<sup>1</sup> Attempts to locate the spill source were unsuccessful, and no responsible party (RP) as defined by the Oil Pollution Act of 1990, could be identified.<sup>2</sup> The Macomb County Hazardous Materials Team was dispatched to assist with all cleanup of the oil spill into the Clinton River.<sup>3</sup> The Mount Clemens Fire Department presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$4,911.03.<sup>4</sup> On December 11, 2019, the NPFC received a signed document from the Macomb County Hazardous Materials Team, granting authorization to the Mount Clemens Fire Department to present all removal costs, as submitted to the NPFC.<sup>5</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,556.03 of the requested amount is compensable and offers this amount as full and final compensation of this claim.

### **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

#### ***Incident***

On April 30, 2018, the Macomb County Sheriff's Department (Sheriff's Department) was notified of an oil spill in the Clinton River, near Mount Clemons, Michigan. The Sheriff's Department contacted the Macomb County Hazardous Materials Team (Macomb HazMat); a team comprised of members from Macomb County Fire Department, Sterling Heights Fire Department, Shelby Township Fire Department, Warren Fire Department and Roseville Fire Department. Macomb HazMat contacted the Mount Clemens Fire Department (MCFD) to assist with assessment and possible cleanup of the oil spill.<sup>6</sup> MCFD contacted the National Response Center (NRC), who notified CG Sector Detroit as the FOSC for the incident.<sup>7</sup>

<sup>1</sup> Email from FOSC to Claims Manager, dated December 4, 2019 and Screenshot 5.

<sup>2</sup> 33 U.S.C. § 2701(32).

<sup>3</sup> Mount Clemens Fire Department Incident Report 2018-00001111, dated April 30, 2018.

<sup>4</sup> Mount Clemens Fire Department claim submission, dated November 8, 2019.

<sup>5</sup> Macomb County Hazardous Materials Team designation of authority, dated December 5, 2019.

<sup>6</sup> Mount Clemens Fire Department Incident Report 2018-00001111, dated April 30, 2018.

<sup>7</sup> NRC Report #12-10707 dated April 30, 2018.

CG Sector Detroit arrived on-scene, meeting with the MCFD, and overseeing the work of Macomb HazMat to assess the specificity of the product, determine the source of the spill, and perform any necessary cleanup activities. The sheen was light grey, with a slight diesel smell. It was discovered along an estimated 30 to 40 foot portion of the seawall.<sup>8</sup>

### ***Responsible Party***

CG Sector Detroit worked with the MCFD and Macomb HazMat, attempting to locate the source of the spill, and working to identify a responsible party (RP). All attempts at locating a source were unsuccessful, and a RP could not be identified.<sup>9</sup> As such, the oil spill was determined to be a mystery sheen.

### ***Recovery Operations***

On April 30, 2018, at approximately 0743 hours, Macomb HazMat arrived on scene with 8 team members and the Sterling Heights Fire support trailer; which had sampling, monitoring and spill equipment. The MCFD arrived along with a pumper, if needed, for gross decontamination.<sup>10</sup> Clinton Township's rescue boat entered the water downstream to assist with controlling boat traffic and to standby, as needed. Macomb HazMat cited that the spill did not seem to be moving downstream, but was ready to place a boom, if necessary. Macomb HazMat then attempted to obtain and run a sample of the spill, but report that not enough spill sample was obtained in order to get a result due to the product having low viscosity.<sup>11</sup>

Upon arrival of CG Sector Detroit in its capacity as the FOSC, state that the spill was no longer a continuous sheen, as much of the product had naturally dissipated, leaving small patches of sheen throughout the immediate area of the Clinton River.<sup>12</sup> The FOSC notes that the spilled product created a light grey sheen on the Clinton River, and produced a smell not unlike a fuel oil, such as diesel. The FOSC provided its opinion that the product that was in the Clinton River on April 30, 2018 was most likely a fuel oil due to the similar properties it shared with other incidents that involved discharged fuel oils to which the FOSC had previously responded.<sup>13</sup>

A shoreline search was conducted by both MCFD and CG Sector Detroit in an attempt to locate a spill source, but both parties were unable to locate a source, or responsible party. It was decided to let the spill evaporate, as there were several factors recorded that proliferate evaporation; including, the sheen was light, there was no rain forecasted and outside temperatures were forecasted to reach 80 degrees Fahrenheit. The sheen dissipated naturally and was deemed unrecoverable.<sup>14</sup> Macomb Hazmat, MCFD and CG Sector Detroit left the scene of the spill together at approximately 1048 hours.

## **II. CLAIMANT AND RP:**

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<sup>8</sup> MISLE Case Report 1124146.

<sup>9</sup> SITREP, dated April 30, 2018.

<sup>10</sup> Mount Clemens Fire Department Incident Report 2018-00001111, dated April 30, 2018.

<sup>11</sup> Mount Clemens Fire Department Incident Report 2018-00001111, dated April 30, 2018.

<sup>12</sup> MISLE Case Report 1124146.

<sup>13</sup> Email from FOSC to Claims Manager, dated December 4, 2019.

<sup>14</sup> MISLE Case Report 1124146.

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>15</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>16</sup> As a responsible party could not be identified, Claimant was incapable of submitting costs to the responsible party.

### **III. CLAIMANT AND NPFC:**

On November 20, 2019 the NPFC received a claim for \$4,911.03 from the Mount Clemens Fire Department, dated November 8, 2019. The costs were presented to the NPFC, identifying Public Services as the specific claim type category under OPA for all costs presented.<sup>17</sup>

Upon initial review of the claim, the NPFC determined the Claimant's costs as being for immediate response to mitigate the effects of the oil spill. On November 25, 2019, the NPFC requested Claimant acknowledge whether they would agree or disagree to change the specific claim type from Public Services to Removal Costs.<sup>18</sup> On December 4, 2019, Claimant responded to the NPFC's request and agreed with changing the claim type from Public Services to Removal Costs.<sup>19</sup>

On December 4, 2019, the NPFC requested Claimant submit additional information for the purpose of continuing adjudication of the claim, including verification from Macomb HazMat asserting that MCFD was authorized to present all costs on behalf of Macomb HazMat, and to provide a rate schedule/pricing sheet to validate the costs paid for services documented in the claim.<sup>20</sup> On December 9, 2019, Claimant responded to the NPFC's request for a rate schedule with a summary for all personnel, supply and equipment rates of pay for the services presented in the claim.<sup>21</sup>

On December 11, 2019, MCFD provided a letter from Macomb HazMat asserting designation of authority for MCFD to present all costs on behalf of Macomb HazMat; relative to the Clinton River oil spill event that took place on April 30, 2018.<sup>22</sup>

### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>23</sup> As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining

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<sup>15</sup> 33 U.S.C. § 2701 et seq

<sup>16</sup> 33 CFR 136.103

<sup>17</sup> Mount Clemens Fire Department claim submission, dated November 8, 2019.

<sup>18</sup> Email from Claims Manager to Mount Clemens Fire Department, dated November 25, 2019.

<sup>19</sup> Email reply from Mount Clemens Fire Department to the NPFC, dated December 4, 2019.

<sup>20</sup> Email from Claims Manager to Claimant, dated December 4, 2019.

<sup>21</sup> MCHT Mount Clemens 2018 Cost Recovery Spreadsheet.

<sup>22</sup> Letter from Macomb County Hazardous Materials Team to Claims Manager, dated December, 5, 2019.

<sup>23</sup> 33 CFR Part 136.

the facts of the claim.<sup>24</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>25</sup> If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

## **V. DISCUSSION:**

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.<sup>26</sup> An RP's liability is strict, joint, and several.<sup>27</sup> When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."<sup>28</sup> OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so or where no responsible party has been identified. 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."<sup>29</sup> The term "remove" or "removal" means "containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches."<sup>30</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>31</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>32</sup> The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.<sup>33</sup>

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<sup>24</sup> See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

<sup>25</sup> See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

<sup>26</sup> 33 U.S.C. § 2702(a).

<sup>27</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>28</sup> *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

<sup>29</sup> 33 U.S.C. § 2701(31).

<sup>30</sup> 33 U.S.C. § 2701(30).

<sup>31</sup> See generally, 33 U.S.C. § (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>32</sup> 33 CFR Part 136.

<sup>33</sup> 33 CFR 136.105.

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.<sup>34</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>35</sup>

The NPFC analyzed each of these factors and determined that the majority of the costs incurred by Macomb HazMat and submitted by MCFD herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing, and all approved costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

The amount of compensable costs is \$4,556.03, while \$355.00 was deemed non-compensable for the following reasons:

1. City of Mount Clemens Invoice AR190926 seeks to recover personnel compensation totaling \$2,217.50.<sup>36</sup> Upon careful review of the Incident Report provided with the claim submission, the NPFC found that the hours cited on the cost recovery spreadsheet provided by Mount Clemens Fire Department to support the personnel hours and costs submitted,<sup>37</sup> did not match the hours of work relating to the April 30, 2018 oil spill incident as transcribed on the Incident Report.<sup>38</sup> Specifically, 5 hours of work for costs totaling \$355.00 could not be verified. As such, these costs were denied.<sup>39</sup>

**Overall Denied Costs: \$355.00**

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Mount Clemens Fire Department's request for uncompensated removal costs is approved in the amount of \$4,556.03.

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<sup>34</sup> Email from FOSC to Claims Manager, dated December 4, 2019.

<sup>35</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>36</sup> City of Mount Clemens Invoice AR190926, dated October 25, 2019.

<sup>37</sup> MCHT Mount Clemens 2018 Cost Recovery Spreadsheet.

<sup>38</sup> Mount Clemens Fire Department Incident Report 2018-00001111, dated April 30, 2018.

<sup>39</sup> Claim 920003-0001 Summary of Costs Spreadsheet.

This determination is a settlement offer,<sup>40</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>41</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>42</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)  
Claim Supervisor: (b) (6)

Date of Supervisor's review: *12/30/19*

Supervisor Action: *Offer Approved*

Supervisor's Comments:

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<sup>40</sup> Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

<sup>41</sup> 33 CFR § 136.115(b).

<sup>42</sup> 33 CFR § 136.115(b).