

CLAIM SUMMARY / DETERMINATION

Claim Number:	921024-0001
Claimant:	Northampton County Emergency Management Services
Type of Claimant:	Municipality
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$825.00
Action Taken:	Offer in the amount of \$825.00

EXECUTIVE SUMMARY:

On May 28, 2019 at approximately 1339 local time, Northampton County Emergency Management Services (“Northampton” or “Claimant”) received notification from a 911 call that the tenant, Mr. (b) (6), residing at [REDACTED], Easton, PA was emptying a home heating fuel oil tank on the back of a flatbed trailer. The fuel tank was tipped on its side and being lifted up on a floor jack so that the oil could be pumped out. Mr. (b) (6) departed the scene at approximately 0630 and returned around 1130 to find that the tank had fallen off the jack and spilled its contents. Approximately 100-150 gallons of fuel oil ran off the driveway, down the street and entered the storm drain system. The storm system drains into an unnamed stream and leads to the Delaware Canal, which then drains directly into the Delaware River, a navigable waterway of the United States.¹

The United States Environmental Protection Agency (USEPA), Region III in its capacity as the Federal On Scene Coordinator (FOSC), determined that the actions performed by Northampton were determined to be consistent with the National Contingency Plan (NCP for the time period of May 28, 2019 and June 4, 2019 and determined that fuel oil did enter an unnamed creek that discharged directly into the Delaware River.²

In accordance with the Oil Pollution Act of 1990, the tenant of [REDACTED], Easton, PA, Mr. (b) (6), was identified as a Responsible Party (RP) for the incident and Mr. (b) (6) (b) (6), owner of the residence located at [REDACTED], Easton, PA, has also been identified as a Responsible Party (RP) for the incident.³ Northampton presented its invoices to both of the RPs.⁴ The RPs did not compensate the claimant, who then presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$825.00.⁵ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$825.00 is compensable and offers this amount as full and final compensation of this claim.⁶

¹ Northampton County EMS Incident Report # 2019-29 dated May 7, 2021.

² USEPA Region III FOSC provided coordination via a letter dated June 4, 2021.

³ Northampton County EMS Incident Report # 2019-29 dated May 7, 2021.

⁴ Northampton County EMS Incident Report # 2019-29 dated May 7, 2021 and Northampton County invoice # 19-29 dated May 30, 2019 and August 23, 2019, respectively.

⁵ 33 CFR 136.103(c).

⁶ 33 CFR 136.115.

I. INCIDENT, RESPONSIBLE PARTY, AND RECOVERY OPERATIONS:

Northampton County Emergency Management Services received notification from a 911 call that the tenant, Mr. (b) (6), residing at [REDACTED], Easton, PA was emptying a home heating fuel oil tank on the back of a flatbed trailer. The fuel tank was tipped on its side and lifted up on a floor jack so that the oil could be pumped out. Mr. (b) (6) departed the scene at approximately 0630 and returned around 1130 to find that the tank had fallen off the jack and spilled its contents. Approximately 100-150 gallons of fuel oil ran off the driveway, down the street and entered the storm drain system.

Northampton reported that prior to its arrival on scene, the township Fire Department was responding and constructed an underflow dam in the small unnamed stream in order to capture and mitigate the effects of the oil in the storm drain. The State On Scene Coordinator (SOSC) for the incident is Pennsylvania Department of Environmental Protection (PADEP). (b) (6) (b) (6) of PADEP arrived on scene and determined that there was a discharge of oil requiring on-site oil spill response.⁷

Recovery Operations

Northampton provided support, labor and equipment to get the diking completed and to absorb the puddle of oil left along the roadway. Northampton also verified that appropriate notifications were made to the SOSC, PADEP, and Pennsylvania Fish and Boat Commission.⁸

Responsible Parties

In accordance with the Oil Pollution Act of 1990, the owner of the property located at [REDACTED], Easton, PA, Mr. (b) (6), is identified as a Responsible Party (RP) for the incident and Mr. (b) (6), as the tenant of [REDACTED] and the party responsible for causing the incident.⁹ On June 22, 2021, the NPFC issued a Responsible Party Notification Letter to both Mr. (b) (6) and Mr. (b) (6).¹⁰ A Responsible Party Notification letter notifies the owners and/or operators that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

On June 28, 2021, the NPFC received an email response from Mr. (b) (6), property owner, who stated that he was determined not to be responsible for the incident by a Magistrate Judge and provided the NPFC with the email for his attorney.¹¹ On June 29, 2021, the NPFC sent an email to Mr. (b) (6) attorney firm requesting they provide a copy of any

⁷ Northampton County EMS Incident Report # 2019-29 dated May 7, 2021.

⁸ *Id.*

⁹ Northampton County EMS Incident Report # 2019-29 dated May 7, 2021 and PADEP Storage System Report Form Narrative Information provided to the NPFC from Mr. (b) (6) of PADEP via an email dated July 21, 2021 in his capacity as the SOSC.

¹⁰ NPFC RP Notification Letter sent to Mr. (b) (6) via certified mail and RP Notification Letter sent to Mr. (b) (6) via certified mail.

¹¹ June 28, 2021 Email from Mr. (b) (6) to NPFC regarding liability.

and all relevant documentation associated with Mr. (b) (6) case. To date, this response remains unanswered. On July 15, 2021, the RP Notification Letter sent to Mr. (b) (6) via certified mail was returned to the NPFC.

II. CLAIMANT and RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)¹² require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.¹³ When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.¹⁴

III. CLAIMANT AND NPFC:

Northampton presented its uncompensated costs claim to the National Pollution Funds Center (NPFC) for \$825.00.¹⁵ The costs claimed here are for Northampton personnel that responded on-scene the day of the spill; May 28, 2019. The costs are for personnel time for two people and two response truck vehicles, one of which contained response supplies.¹⁶

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁷ 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 the facts of the claim.¹⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁹ 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.²⁰ An RP's liability

¹² 33 U.S.C. § 2701 *et seq.*

¹³ 33 CFR 136.103.

¹⁴ *Id.*

¹⁵ 33 CFR 136.103(c).

¹⁶ See Northampton claim submission received June 15, 2021.

¹⁷ 33 CFR Part 136.

¹⁸ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2001 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).

¹⁹ 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).

²⁰ 33 U.S.C. § 2702(a).

is strict, joint, and several.²¹ 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.”²² 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. 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.”²³ 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.”²⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁶ 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.²⁷

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.
- (d) That the removal costs were uncompensated and reasonable.²⁸

The NPFC analyzed each of these factors and determined the costs incurred by Northampton and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined all approved costs were invoiced at the appropriate rate sheet pricing or below the listed rate sheet price and were billed in accordance with the fee schedule provided.²⁹ All approved costs were supported by adequate documentation which included the

²¹ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²² *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).

²³ 33 U.S.C. § 2701(31).

²⁴ 33 U.S.C. § 2701(30).

²⁵ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁶ 33 CFR Part 136.

²⁷ 33 CFR 136.105.

²⁸ 33 CFR 136.203; 33 CFR 136.205.

²⁹ Northampton County Joint Response Recovery Fee Schedule.

Northampton Incident Report #2019-29, Northampton invoices # 19-29 issued to each RP in this case, photographs, Northampton computer aided dispatch report, Northampton Knowledge Center Entry report, routing map, Northampton County Joint Response Recovery Fee Schedule, PADEP Storage System Report Form Narrative Information provided to the NPFC from Mr. (b) (6) of PADEP via an email dated July 21, 2021 in his capacity as the SOSC, and FOSC coordination letter from USEPA Region III, Mr. (b) (6), dated June 4, 2021.

The amount of compensable costs is \$825.00.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Northampton's request for uncompensated removal costs is approved in the amount of **825.00**.

This determination is a settlement offer,³⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³² Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6)

(b) (6)

Date of Supervisor's review: *9/17/2021*

Supervisor Action: **\$825.00 approved.**

³⁰ 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 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).

³¹ 33 CFR § 136.115(b).

³² *Id.*