

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	UCGP921024-URC002
<b>Claimant:</b>	Williams Township
<b>Type of Claimant:</b>	Local Government
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$11,649.21
<b>Action Taken:</b>	Offer in the amount of \$11,416.58

### EXECUTIVE SUMMARY:

On May 28, 2019 at approximately 1339 local time, Northampton County Emergency Management Services (“Northampton”) received notification from a 911 call that the tenant, Mr. (b) (6), residing at (b) (6), 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 drain system dumps into an unnamed stream and leads to the Delaware Canal, which then dumps directly into the Delaware River, a navigable waterway of the United States.<sup>1</sup> Williams Township (“Claimant”) responded with labor, equipment, sand and PVC pipe, and hired a JMT Environmental Technologies to mitigate the spill and remove the oil.

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 Williams Township are determined to be consistent with the National Contingency Plan (NCP) and has determined that oil that entered an unnamed creek threatened to discharge into the Delaware River.<sup>2</sup>

In accordance with the Oil Pollution Act of 1990, the tenant of (b) (6), Easton, PA, Mr. (b) (6), was identified as a Responsible Party (RP) for the incident.<sup>3</sup> Williams Township presented its claim to the Mr. (b) (6) on November 22, 2021.<sup>4</sup> Mr. (b) (6) whereabouts are unknown and the National Pollution Funds Center (NPFC) does not have a valid address for him. The NPFC attempted to notify Mr. (b) (6) of the claim from Williams Township, but NPFC’s notification letter was returned undelivered. Thus, NPFC notified the claimant that NPFC would accept the claim (i.e. NPFC advertised for the claim through direct notification). The claimant presented its uncompensated removal costs claim to the NPFC for \$11,649.21. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$11,416.58 is compensable and offers this amount as full and final compensation of this claim.<sup>5</sup>

<sup>1</sup> Northampton County EMS Incident Report # 2019-29 dated May 7, 2021. Verified by USEPA Region III FOSC via letter dated September 20, 2021.

<sup>2</sup> USEPA Region III FOSC provided coordination via a letter dated September 20, 2021.

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

<sup>4</sup> Williams Township letter to Mr. (b) (6) dated November 22, 2021

<sup>5</sup> 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 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.

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 to capture and mitigate the effects of the oil in the storm drain. Williams Township personnel also responded with heavy equipment, personnel, and supplies; and they hired a contractor to remove the oil. The State On Scene Coordinator (SOSC) for the incident is Pennsylvania Department of Environmental Protection (PADEP). (b) (6) of PADEP arrived on scene and determined that there was a substantial threat of discharge of oil requiring on-site oil spill response.<sup>6</sup> The USEPA Region III FOSC provided verification that Williams Township's actions and costs were in accordance with the National Contingency Plan via a letter dated September 20, 2021.

### ***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.<sup>7</sup> Williams Township also responded and provided labor, equipment, sand and PVC pipe, along with hiring JMT Environmental to mitigate the spill and remove the oil.

### ***Responsible Parties***

In accordance with the Oil Pollution Act of 1990, the owner of the property located at [REDACTED], Easton, PA, Mr. (b) (6) (b) (6)<sup>8</sup>, was initially identified as a potential Responsible Party (RP) for the incident and Mr. (b) (6), as the tenant of [REDACTED] as the party responsible for causing the incident.<sup>9</sup> On October 15, 2021, the NPFC issued a Responsible Party Notification Letter to Mr. (b) (6) and on October 19, 2021, the NPFC issued a Responsible Party Notification Letter to Mr. (b) (6)<sup>10</sup> 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

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<sup>6</sup> Northampton County EMS Incident Report # 2019-29 dated May 7, 2021.

<sup>7</sup> *Id.*

<sup>8</sup> Mr. (b) (6) was absolved of liability in court and the NPFC has determined that he has no connection to the source of the discharge as it was owned and within Mr. (b) (6) control.

<sup>9</sup> Northampton County EMS Incident Report # 2019-29 dated May 7, 2021 and PADEP Storage System Report Form Narrative Information from Mr. (b) (6) of PADEP provided in the claim submission to the NPFC.

<sup>10</sup> NPFC RP Notification Letter sent to Mr. (b) (6) via email and RP Notification Letter sent to Mr. (b) (6) (b) (6) via certified mail.

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 November 23, 2021, the RP Notification Letter sent to Mr. (b) (6) via certified mail was returned to the NPFC undelivered.

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

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>11</sup> require all claims for removal costs or damages be presented to the RP before seeking compensation from the NPFC.<sup>12</sup> 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.<sup>13</sup> Williams Township attempted to present its claim to the RP on November 22, 2021, but NPFC has determined that the address for Mr. (b) (6) is invalid and his whereabouts unknown.

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

After Williams Township's attempt to present their claim to Mr. (b) (6) and the NPFC's letter to Mr. (b) (6) being returned undelivered, the NPFC determined that Mr. (b) (6) was not reachable. NPFC notified Williams Township that the claim presented to the National Pollution Funds Center (NPFC) for \$11,649.21 was properly presented and accepted for adjudication.<sup>14 15</sup>

## **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>16</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 the facts of the claim.<sup>17</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>18</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.

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<sup>11</sup> 33 U.S.C. § 2701 *et seq.*

<sup>12</sup> 33 CFR 136.103.

<sup>13</sup> *Id.*

<sup>14</sup> Email from NPFC to Williams Township dated November 29, 2021.

<sup>15</sup> 33 U.S.C. §2713(b)(1)(A) and §2714(c)

<sup>16</sup> 33 CFR Part 136.

<sup>17</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>18</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).

## 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>19</sup> An RP's liability is strict, joint, and several.<sup>20</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>21</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. 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>22</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>23</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>24</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>25</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>26</sup>

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>27</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>28</sup>

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<sup>19</sup> 33 U.S.C. § 2702(a).

<sup>20</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>21</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>22</sup> 33 U.S.C. § 2701(31).

<sup>23</sup> 33 U.S.C. § 2701(30).

<sup>24</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>25</sup> 33 CFR Part 136.

<sup>26</sup> 33 CFR 136.105.

<sup>27</sup> Verified by USEPA Region III FOSC via a letter dated September 20, 2021.

<sup>28</sup> 33 CFR 136.203; 33 CFR 136.205.

The claimant satisfied these requirements, generally, and NPFC finds the actions to be compensable. However, certain costs must be reduced. The reductions are explained below.

1. NPFC reduced the JMT cost for a senior environmental specialist. JMT invoiced his time at five hours of overtime (OT) or \$757.50, but the daily work report shows he only worked 3:30pm to 7:20pm which is just under four hours on May 28, 2019. The JMT rate schedule only allows OT after 4:00pm; and the rate schedule provides for a four-hour minimum in accordance with the JMT rate schedule. Thus, one half hour was attributable to straight time and 3.5 hours to overtime. Therefore, NPFC allowed \$580.75 and denies the overbilled amount of \$176.75.
2. NPFC reduced the JMT fuel surcharge costs for three days. The invoiced rates were not supported by the rate schedule or charged in accordance with the method suggested by JMT in its letter to Williams Township in reply to NPFC's query.<sup>29</sup> NPFC could not locate the fuel surcharge basis referenced by JMT, so NPFC used USDOE rates. JMT charged 20% for equipment used on May 29, 2019, May 31, 2019 and June 6, 2019. NPFC found that the relevant rates were 19% for May 29 and 31, and 18% for June 6, 2019. This resulted in three reductions of \$0.70, \$1.96 and \$1.68 respectively.
3. The claimed Williams Township equipment cost for a dump truck at a rate of \$60.77/hr was adjusted down to the FEMA hourly rate of \$35.00/hr<sup>30</sup> as referenced by the claimant. Claimant stated that the FEMA rates were used, but charged the higher rate. This resulted in NPFC reducing the allowed rate to the suggested FEMA rate and denial of \$51.54 of the dump truck cost.

The NPFC thus denies a total of \$232.63 of the claimed amount.

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Williams Township's request for uncompensated removal costs is approved in the amount of **\$11,416.58**.

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<sup>29</sup> JMT stated that the fuel surcharge rate is based on the U.S. Energy Information Administration pricing for the New England region. See letter from JMT to Williams Township dated November 22, 2021 attached to email from Williams Township to NPFC dated November 22, 2021.

<sup>30</sup> 2019 FEMA rate schedule

This determination is a settlement offer,<sup>31</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>32</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>33</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: *12/13/2021*

Supervisor Action: *Offer Approved*

Supervisor's Comments:

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<sup>31</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>32</sup> 33 CFR § 136.115(b).

<sup>33</sup> 33 CFR § 136.115(b).