

CLAIM SUMMARY / DETERMINATION

Claim Number: UCGP921029-UR001
Claimant: Harbor Beach Area Fire Department
Type of Claimant: Local Government
Type of Claim: Removal Costs
Claim Manager: (b) (6)
Amount Requested: \$33,075.00
Action Taken: Offer in the amount of \$33,020.00

EXECUTIVE SUMMARY:

On July 25, 2021, a seasonal boater discovered diesel oil in the water at the Caseville Harbor Marina and notified the harbormaster.¹ Upon the arrival, the harbormaster smelled a strong diesel odor and discovered that approximately 90% of an oil slick was sitting at the east end of the harbor.² The Harbor Beach Area Fire Department (Claimant or fire department) was called to the Caseville Harbor Marina in response to a spill.³ The fire department arrived and discovered that the entire marina was covered in an oily sheen.⁴ The Fire Chief (Chief (b) (6)) reported the oil spill incident to Michigan Environment, Great Lakes and Energy (“Michigan EGLE”),⁵ who is the State On Scene Coordinator (SOSC) for the incident.⁶

On July 26, 2021, Michigan EGLE reported the incident to the United States Coast Guard’s (USCG) National Response Center (NRC).⁷ USCG Sector Detroit, in its capacity as the Federal on Scene Coordinator (FOSC), received notification of a sheen from an unknown source at the Caseville Marina via NRC report # 1311787.⁸ USCG Duty Pollution Responders (PR) arrived on scene and observed a scattered silver sheen throughout the marina. The USCG PR conducted bilge checks of multiple boats in the marina to try and locate the source of the sheen and conducted a harbor inspection while aboard the fire department’s response boat and was unable to locate a responsible party (RP). The FOSC determined that the sheen remaining on the water on July 26, 2021 was unrecoverable and would dissipate naturally.⁹ The FOSC issued the marina chairman, Mr. (b) (6), a Notice of Federal Interest (NOFI)¹⁰ however the USCG investigation revealed no source could be found.¹¹

¹ Email from the harbormaster to NPFC dated October 6, 2021.

² Email from the harbormaster to NPFC dated October 1, 2021.

³ Harbor Beach Area Fire Department, Incident Report # 202109 dated July 27, 2021.

⁴ *Id.*

⁵ Michigan EGLE is also referred to as Michigan Department of Environmental Quality (DEQ) at the time of the incident.

⁶ Michigan EGLE PEAS Incident report # 27137 dated July 25, 2021.

⁷ NRC Report # 1311787 dated July 26, 2021.

⁸ USCG Sector Detroit MISLE Case ID: 1270742, Situation Report dated July 26, 2021.

⁹ *Id.*

¹⁰ USCG Notice of Federal Interest (NOFI) was issued to Mr. (b) (6) (b) (6) (b) (6) dated July 26, 2021.

¹¹ USCG Sector Detroit MISLE Case ID: 1270742, Situation Report (SITREP) dated July 26, 2021, section 2 entitled Affected Area.

Harbor Beach Area Fire Department submitted its uncompensated removal costs to the National Pollution Funds Center (NPFC) for \$33,075.00.¹² The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$33,020.00 is compensable and offers this amount as full compensation of this claim.¹³

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On July 25, 2021, the Caseville Harbor Marina harbormaster, Mr. (b) (6) (b) (6), was notified about diesel oil in the water at Caseville Harbor Marina. The harbormaster called Harbor Beach Area Fire Department who reported the incident to Michigan Environment, Great Lakes and Energy (“Michigan EGLE”)¹⁴ On July 26, 2021, Michigan EGLE reported the oil spill incident to the NRC via report # 27137 which then notified USCG Sector Detroit as the FOSC for the incident spill into Saginaw Bay, a navigable waterway of the United States.

Responsible Party

Personnel from USCG Sector Detroit conducted an investigation into suspected vessels/operators but was unable to determine a viable source, and as such, no responsible party was identified.

Recovery Operations

On July 25, 2021, the fire department arrived on scene with personnel, a fire engine, absorbent boom, two response boats and trucks.¹⁶ The fire department launched the response boats to deploy the absorbent boom and to investigate the area for a potential source. The firefighters pulled up dock boards from the shore to the fuel dock and pressurized the marina’s fuel system in search of a leak. Fire Chief [REDACTED] sent one of the response boats up Pigeon River to look for the source of the spill and to surrounding marinas in search of an RP.¹⁷

On July 26, 2021, USCG Duty Pollution Responders arrived on scene and conducted bilge checks of multiple boats in the marina and conducted a harbor inspection with negative results in identifying a source of the spill.¹⁸ The FOSC determined that the sheen remaining in the water on July 26th was unrecoverable and would dissipate naturally.¹⁹

¹² 33 CFR 136.103(c)(2); Fire Department’s claim submission received on September 28, 2021.

¹³ 33 CFR 136.115.

¹⁴ Michigan EGLE is also referred to as Michigan Department of Environmental Quality (DEQ).

¹⁵ Michigan EGLE PEAS Incident Report # 27137 dated July 25, 2021.

¹⁶ Harbor Beach Area Fire Department Incident Report 2021097 dated July 25, 2021

¹⁷ Harbor Beach Area Fire Department Time Line.

¹⁸ USCG Sector Detroit MISLE Case ID: 1270742, Situation Report dated July 26, 2021.

¹⁹ *Id.*

USCG Sector Detroit agrees that the actions taken by the Harbor Beach Area Fire Department were necessary to prevent, minimize or mitigate the effects of the incident and the actions taken were consistent with the National Contingency Plan (NCP).²⁰

II. CLAIMANT AND NPFC:

On September 28, 2021, the NPFC received a claim for uncompensated removal costs from Harbor Beach Area Fire Department. The claim included an OSLTF Claim Form, Michigan EGLE PEAS Incident Report, NRC Report # 1311787, Harbor Beach Area Fire Department Incident Information, USCG NOFI, and the Harbor Beach Area Fire Department invoice # 026 dated September 28, 2021 in the amount of \$33,075.00.²¹

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²² 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.²³ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁴ 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:

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.”²⁵ 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

²⁰ Email from LTJG (b) (6) to the NPFC providing FOSC Coordination dated October 7, 2021.

²¹ Harbor Beach Area Fire Department claim submission received on September 28, 2021.

²² 33 CFR Part 136.

²³ 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)).

²⁴ 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).

²⁵ *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).

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.”²⁶ 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.”²⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁹ 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.³⁰

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.³¹

As part of its claim submission, the claimant submitted the USCG’s NOFI which identified Mr. (b) (6) as a potential RP.³² The NPFC sent the fire department an email and an acknowledgement letter confirming receipt of the claim submission and to advise the claimant that they must make proper presentment of costs to the RP, Mr. (b) (6), before submitting their claim to the NPFC.³³ On September 30, 2021, the NPFC called the Caseville Harbor Marina to inquire about the RP status as it pertained to the marina being identified as the potential RP. The harbormaster, Mr. (b) (6), explained that Mr. (b) (6) is the marina chairman and that an RP had not been identified.³⁴ Upon the NPFC’s further investigation into the potential RP status, the USCG Situation Report (SITREP) states that the cause of the incident is unknown.³⁵ The NPFC called USCG Sector Detroit, and spoke with the FOSC regarding the potential RP status of Mr. (b) (6). The FOSC stated that an RP had not

²⁶ 33 U.S.C. § 2701(31).

²⁷ 33 U.S.C. § 2701(30).

²⁸ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁹ 33 CFR Part 136.

³⁰ 33 CFR 136.105.

³¹ 33 CFR 136.203; 33 CFR 136.205.

³² USCG Notice of Federal Interest (NOFI) was issued to Mr. (b) (6) (b) (6) (b) (6) dated July 26, 2021.

³³ September 29, 2021 email to Chief (b) (6) with NPFC Acknowledgment Letter advising they must submit their claim to the RP before the submission will be deemed a valid claim.

³⁴ September 30, 2021 Phone summary email between Mr. (b) (6) and NPFC.

³⁵ USCG Sector Detroit MISLE Case ID: 1270742, Situation Report dated July 26, 2021

been identified.³⁶ On October 7, 2021, the NPFC notified the claimant that it had confirmed there was no RP and would move forward with the adjudication of the claim.³⁷

During review and adjudication of the claim submission, the NPFC made several requests for additional information summarized and broken down as follows:

- Information request to the claimant between October 5, 2021 and October 25, 2021:
 - (a) Photos taken or available;
 - (b) Pay scale for the fire department costs;
 - (c) Proof of disposal;
 - (d) Field Notes associated with onsite response;
 - (e) Rate sheet/pricing schedule for fire department costs;
 - (f) Cost of boom claimed;
 - (g) Clarifying information on the number of boats used; and
 - (h) Clarifying information on fire department's budget.

- Information request to the SOSC / Michigan EGLE on October 5, 2021:
 - (a) Requested a copy of the full EGLE PEAS Incident Report # 27137; and
 - (b) Requested a copy of the Area Contingency Plan (ACP).

- Information request to the FOSC between October 21, 2021 and October 28, 2021:
 - (a) Requested FOSC coordination for the fire department's actions performed; and
 - (b) Requested clarifying coordination of the number of fire department boats used on the response.

- Information request to the Caseville Harbor Marina on September 30, 2021:
 - (a) Requested any photos available; and
 - (b) Requested clarification of the RP status as it pertained to the USCG NOFI issued to Mr. (b) (6), the marina chairman.

In support of the claim submission, the NPFC received the following information resulting from its requests for additional information:

- Information provided by the claimant between October 5, 2021 and October 25, 2021:
 - (a) Photos available;
 - (b) Proof of Disposal;
 - (c) Rate sheet/ pricing schedule for the fire department costs;
 - (d) Field Notes;
 - (e) Pay scale for fire department costs;
 - (f) Boom costs verification;
 - (g) Explanation of the fire department budget and process; and
 - (h) Explanation and clarifying information on the boats used during the response.

- Information provided by the SOSC / Michigan EGLE on October 5, 2021:

³⁶ September 30, 2021 email phone summary recap to FOSC.

³⁷ October 7, 2021 email and letter to Harbor Beach Area Fire Department .

- (a) A copy of the EGLE PEAS Incident Report # 27137;
 - (b) Statement regarding the ACP and lack of information on this document; and
 - (c) Clarification on SOSC presence at the scene.
- Information provided by the FOSC between October 21, 2021 and October 28, 2021:
- (a) FOSC coordination statement for the response actions performed by the fire department; and
 - (b) FOSC coordination statement for the fire department's use of two boats during the incident response.
- Information provided by the Caseville Harbor Marina on October 1, 2021:
- (a) Clarification was provided regarding the USCG NOFI and the result of the RP investigation results.

In support of the claimed costs and the response activities performed on July 25, 2021 and July 26, 2021 the NPFC relied heavily on all of the additional support documentation that was provided by the claimant, the Caseville Harbormaster, the SOSC, and the FOSC. The additional support documentation that was received by the NPFC and outlined in the determination substantiates that pollution mitigation and response actions were reasonable, necessary and have been coordinated with the FOSC and determined to be consistent with the National Contingency Plan (NCP). Items approved and denied are delineated in the NPFC's Summary of Costs spreadsheet with comments identifying the source of the information used and the NPFC's decision to pay or deny each item listed.³⁸

Upon completion of its adjudication, the NPFC has determined that the majority of the removal costs incurred by Harbor Beach Area Fire Department, and submitted herein are compensable removal costs based on the supporting documentation provided by various entities and that the actions taken were properly coordinated with the FOSC and that the actions taken were determined to be reasonable, necessary and consistent with the NCP.

The NPFC has denied \$55.00 in claimed removal costs because those costs are unidentified within the Fire Department's cost documentation.³⁹

The amount of compensable costs is **\$33,020.00**.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Harbor Beach Area Fire Department's request for uncompensated removal costs is approved in the amount of **\$33,020.00**.

³⁸ NPFC Summary of Costs spreadsheet.

³⁹ *Id.*

This determination is a settlement offer,⁴⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴² 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: *12/15/2021*

Supervisor Action: *Offer Approved*

⁴⁰ 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).

⁴¹ 33 CFR § 136.115(b).

⁴² 33 CFR § 136.115(b).