

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGPE22307-URC001
<b>Claimant:</b>	County of Somerset
<b>Type of Claimant:</b>	Local Government
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$4,899.00
<b>Action Taken:</b>	Offer in the amount of \$4,899.00

### **EXECUTIVE SUMMARY:**

On February 18, 2022 at approximately 9:07 am local time, the National Response Center (NRC) was notified by the United States Environmental Protection Agency (USEPA) of a mystery sheen from an unknown source in the Quemahoning Creek, a navigable waterway of the United States.<sup>2</sup> After a multi-agency search along the spill area where the red dye heating oil was found exiting from a drainage pipe, officials observed pooling and flowing to a drain in the basement of a residence. The source was identified as a faulty filter unit between the storage tanks and furnace. No sampling was conducted to definitively link the residence as the source of the spill. USEPA, in its capacity as the Federal On Scene Coordinator (FOSC) for the incident that no responsible party was identified.<sup>3</sup>

The County of Somerset Hazmat Team (“Somerset” or “Claimant”) placed a portable underflow dam in the Quemahoning Creek . A temporary hard rail was constructed to access the river’s edge and multiple absorbent pads and booms were placed around the dam and the outflow where the oil was entering the creek.<sup>4</sup>

Somerset presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$4,899.00 on May 4, 2022. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,899.00 of the requested \$4,899.00 is compensable and offers this amount as full and final compensation of this claim.

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

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<sup>1</sup> This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant’s rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant’s rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

<sup>2</sup> National Response Center Incident Report #1329189 dated February 9, 2022.

<sup>3</sup> USEPA POLREP, 2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs) and email from USEPA OSC to NPFC Re Additional Information dated May 5, 2022.

<sup>4</sup> Somerset County Field Report Form NFIRS -7, Section L Remarks.

## ***Incident***

On February 18, 2022, the National Response Center (NRC) was notified by the USEPA of a mystery sheen from an unknown source into the Quemahoning Creek, a navigable waterway of the United States.<sup>5</sup> Pennsylvania Department of Environmental Protection (PADEP) Emergency Response responded to a complaint regarding home heating oil discharging into the Quemahoning Creek from a discharge pipe in a field.<sup>6</sup>

After many attempts to find the source of the spill, the source was identified as a faulty filter unit between the storage tanks and furnace. The resident, (b) (6), stated she had two 275 gallon tanks filled a month ago. The receipt showed 412 gallons were delivered on January 28, 2022 and the tanks were registering near empty.<sup>7</sup>

## ***Responsible Parties***

Multiple efforts to identify the source did not definitively determine a source. Investigation consisted of CCTV piping of the discharge line, excavating test pits of known underground storage tanks, dye tracing the discharge line and door to door community outreach, identified a residence on February 26, 2022 that had a malfunctioning filter in the furnace unit which caused it to leak oil into the basement drain.<sup>8</sup> No sampling was conducted to definitively link the residence and no additional discharges were discovered from the outfall in the following days.

## ***Recovery Operations***

USEPA was the FOSC for the incident and oversaw the response and removal operations.<sup>9</sup> USEPA FOSC, (b) (6), was deployed to the scene to evaluate the release of the heating oil into the Quemahoning Creek as requested by the Somerset County Emergency Management Agency. On February 20, 2022, the Volunteer Fire Department and the USEPA environmental contractor, Environmental Restoration LLC, had been placing hard boom and absorbents in the creek to mitigate the spill.<sup>10</sup> As part of the remedial actions, the Somerset Hazmat Team placed a portable underflow dam in the creek and a temporary hard rail was constructed in order to access the river's edge. Multiple absorbent pads and booms were placed around the dam and the outflow where the oil was entering the creek. The Somerset Hazmat Team cleared the scene without incident and released the scene to the Fire Chief and the FOSC.<sup>11</sup>

The faulty filter unit was replaced and no additional discharges were discovered from the outfall in the days following and flushing of the basement drain was performed. The FOSC stated that his intent was to maintain control of the spill by using absorbents in Quemahoning Creek for the following days to verify the release was resolved.<sup>12</sup>

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<sup>5</sup> National Response Center Incident Report #1329189.

<sup>6</sup> PADEP – Emergency Response Incident Report dated February 26, 2022, Observations and Remarks.

<sup>7</sup> PADEP – Emergency Response Incident Report dated February 26, 2022

<sup>8</sup> Original Claim Submission received May 4, 2022, USEPA POLREP, 2.1.2 Response Actions to Date.

<sup>9</sup> USEPA POLREP, 1.1.2.2 Description of Threat

<sup>10</sup> Somerset County Field Report Form NFIRS -7, Section L Remarks.

<sup>11</sup> Somerset County Field Report Form NFIRS -7, Section L Remarks.

<sup>12</sup> Somerset County Field Report Form NFIRS -7, Section L Remarks.

## **II. CLAIMANT AND NPFC:**

On May 4, 2022 the NPFC received a claim for uncompensated removal costs from County of Somerset dated April 25, 2022. The claim included the Optional OSLTF Claim form, letter from insurance company, Somerset Hazmat invoice sent to the potential responsible party, copy of the NRC report, USEPA Final POLREP Region III, and a news article referencing the spill. The NPFC requested additional information on May 17, 2022 and the Claimant provided Somerset County's Field Report Form NFIRS -7, and the County's Resolution on Fees in support of its rates charged. June 3, 2022, the NPFC requested clarification of the personnel costs and the Claimant provided an amended Invoice, a corrected NFIRS -1 form, and on June 15, 2022, the Claimant provided HalenHardy Invoice #6771 (Supplies invoice) along with proof of payment for the supplies used in the response.

## **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>13</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>14</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>15</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.

## **IV. DISCUSSION:**

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>16</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>17</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>18</sup>

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<sup>13</sup> 33 CFR Part 136.

<sup>14</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>15</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>16</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>17</sup> 33 CFR Part 136.

<sup>18</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>19</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>20</sup>

The NPFC analyzed each of these factors and determined that all costs incurred and submitted by Somerset County herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate Somerset County Office of Commissioners published rates and all approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>21</sup>

#### **V. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Somerset County's request for uncompensated removal costs is approved in the amount of **\$4,899.00**.

This determination is a settlement offer,<sup>22</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>23</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>24</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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<sup>19</sup> Email from USEPA OSC to NPFC Re Additional Information dated May 18, 2022 acknowledging the actions taken by the County of Somerset were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

<sup>20</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>21</sup> Somerset County's claim submission dated April 25, 2022 and additional information requested by NPFC on multiple dates and an email from USEPA OSC to NPFC Re Additional Information dated May 18, 2022 acknowledging the actions taken by the County of Somerset were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan..

<sup>22</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>23</sup> 33 CFR 136.115(b).

<sup>24</sup> *Id.*

(b) (6)

Claim Supervisor:

(b) (6)

Date of Supervisor's review: *6/29/2022*

Supervisor Action: *Offer Approved*