

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/21/2009
Claim Number	: 909083-001
Claimant	: Calvert Township Fire Department
Type of Claimant	: Local Government
Type of Claim	: Real or Personal Property
Claim Manager	: ██████████
Amount Requested	: \$3,065.00

### **FACTS:**

***Oil Spill Incident:*** On January 28, 2009 at 7:17 am, a Macro Oil Company Incorporated (Macro Oil) tanker truck, carrying 500 gallons of gasoline and 1,000 gallons of diesel fuel, overturned and burst into flames. The incident occurred on 13000 Highway 167 South Sheridan, Arkansas, resulting in the runoff going into the Saline River relief waters. Both fire and fuel spread into the waterway.

The Calvert Township Fire Department (CTFD) responded to the motor vehicle accident involving the Macro Oil tanker truck and a PT Cruiser. The PT Cruiser had wrecked on the icy bridge at 13000 Highway 167 South Sheridan, resulting in a fatality. The tanker truck struck the PT Cruiser, causing the fire and an oil spill from the bridge.

***The Claim:*** The CTFD submitted a personal property claim to the NPFC, for reimbursement of their public service, used items, and damaged items in the amount of \$3, 065.00 for their firefighting response. The public service consisted of their initial response to the motor vehicle accident with two trucks, staffed with four men crews; three trucks for one hour; 2 trucks for two hours; and 1 truck for 3 hours. The CTFD used foam during the fire. One set of structural firefighter turnout gear was destroyed by the excessive heat from the fire. Two pairs of firefighter gloves were contaminated with diesel fuel.

***Additional Information:*** Correspondence received from ██████████, on behalf of Macro Oil, dated February 20, 2009 confirms that the claimant received a check for \$500.00 drawn on the account of XL Insurance. The XL Insurance check number 362987 noted that the \$500.00 was in payment of “full and final settlement [o]f all bills.” The Claimant deposited the check on March 18, 2009.

### **APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party’s liability will include “removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.” 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean “oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.”

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. 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.”

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (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 determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

## **DETERMINATION OF LOSS:**

### ***A. Findings:***

1. The incident involved the discharge of "Oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
2. In accordance with 33 CFR§ 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated costs.
3. The claim was submitted on time.
4. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim to determine if the costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR§ 136.205 as set forth below.

### ***B. Analysis***

The claimant seeks reimbursement of its uncompensated public services and personal property costs for services it provided in response to a fire caused by a motor vehicle accident on a bridge involving an automobile and a tanker truck that was carrying gasoline and diesel fuel. Based on the information provided in the claim submission and in the claimant's May 18, 2009 e-mail response providing additional information to the NPFC, the claimant's primary response was for response to the motor vehicle accident and no oil spill response. The property used and damaged resulted from the excessive heat while extinguishing the fuel fire therefore this claim is denied as the costs associated with this claim are not OPA compensable costs as they were for services unrelated to the oil spill incident.

Additionally, it is important to note that the claimant accepted a \$500.00 payment from the Responsible Party's (RP) insurance company. The RP insurer noted on the check that the \$500.00 was in payment of "full and final settlement [o]f all bills." The claimant deposited the check on March 18, 2009 which constitutes payment in full as noted by the insurer.

In summary, the total amount claimed for public services and personal property is \$3,065.00. The NPFC hereby determines that the claim is denied for the following reasons:

- (1) The Claimant has been paid in full per check from RP insurer
- (2) The Claimant's costs are not compensable under OPA.

**AMOUNT: \$0.00**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/26/09*

Supervisor Action: *Denial approved*

Supervisor's Comments: