

## CLAIM SUMMARY / DETERMINATION FORM

|                  |                     |
|------------------|---------------------|
| Date             | : 10/15/2009        |
| Claim Number     | : 909105-001        |
| Claimant         | : City of Flat Rock |
| Type of Claimant | : Local Government  |
| Type of Claim    | : Removal Costs     |
| Claim Manager    | : ██████████        |
| Amount Requested | : \$30,970.56       |

### **FACTS:**

**1. Oil Spill Incident:** On March 30, 2008, at about 2:15 pm, the Flat Rock Fire Department (FRFD) was called on a report of a peculiar fuel- like odor. The FRFD arrived at the site and discovered diesel fuel on the surface of Smith Creek, discharging from the storm outlet to the Creek from the street drainage system. The source of the discharge was unknown. Smith Creek is a tributary of the Huron River, a navigable water of the United States. The Huron River flows into Lake Erie.

The FRFD notified the Rockwood Fire Department (Rockwood FD) of the discharge and requested their assistance due to the Rockwood community being downstream from the site. FRFD then placed compressed peat sorb, peat sorb socks and boom in Smith Creek to control and limit the spill. The FRFD Fire Chief notified the Director of the Department of Public Services, the mayor, and requested Inland Waters Pollution Control Services LLC (Inland Waters) come to the site for the clean up. The Chief also notified the State of Michigan, the Department of Environmental Quality, and the Pollution Emergency Alerting System of the incident.

**2. Description of removal actions:** On March 30, 2008, both fire departments remained at the incident site after the arrival of Inland Waters. The FRFD had eight firemen at the site, the Chief's car, an ambulance and a heavy rescue vehicle, as well as the Flat Rock Director of Public Services. The Rockwood FD had ten firefighters there, with an ambulance, and two utility vehicles. Upon their arrival, Inland Waters assessed the incident site and placed boom at the discharge site and downstream to prevent diesel fuel from reaching the Huron River and Lake Erie. Inland Waters monitored the incident site and changed boom for several days (Sunday, March 30, 2008 to Monday, March 31, 2008; Wednesday, April 2, 2008 to Thursday, April 3, 2008; and Friday, April 11, 2008) before completing the clean up and then disposal.

Throughout the clean up, Inland Waters deployed a project manager; a crew leader; four emergency response technicians; two vacuum truck operators; a tanker operator; a wet vacuum truck; a jetter vacuum truck; a tractor tanker truck; and an emergency response truck.

Disposal Manifests are included with the claim submission.

**3. The Claim:** On June 29, 2009, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement in the amount of \$30,970.56 for their uncompensated removal costs. The claim consists of the FRFD

Incident report, diagrams of the spill location, photographs of the site, a newspaper article regarding the spill, FRFD billing summary, Rockwood FD billing summary, Inland Waters billing summary and daily work logs, a mutual aid rate schedule for the fire departments, invoices of work performed and supplies used during the clean up, disposal manifest and proof of payment.

**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. Overview:**

1. Federal On-Scene Coordination was provided by [REDACTED] of the United States Environmental Protection Agency (USEPA).
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

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

The NPFC Claims Manager has reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager’s review of the provided billing documentation from Inland Waters revealed charges to the FRFD that is inconsistent with the “Inland Waters Standard Price List, Revision 6, Effective June 15, 2006,” as provided to the FRFD on October 6, 2009. The claimant will be compensated for removal costs based on the rate schedule (Standard Price List) provided with the claim submission. The claimant was contacted on October 13, 2009 and October 22, 2009 by the Claims Manager with an inquiry as to how payment was negotiated with Inland Waters. The claimant did not respond to the requests.

According to the rate schedule, the work performed by Inland Waters on Sunday, March 30, 2008 is considered double time. Sundays and holidays are double time, in which an additional \$12.00 per hour is added to all overtime rates, and \$20.00 per hour is added to

the overtime rate for heavy equipment and management personnel. Inland Waters billed at a rate of \$120.00 per hour for twelve hours for a total of \$1,440.00 for the Project Manager on the invoice. The rate schedule lists the billing rate as \$115.00 per hour (\$95.00 overtime rate plus \$20.00). The claimant will be compensated for twelve hours at the \$115.00 rate for a total of \$1,380.00.

The "wet vac & operator" was billed at \$150.00 per hour for seven hours for a total of \$1,050.00. The rate schedule lists the billing rate at \$114.00 per hour (\$102.00 overtime rate plus \$12.00). Claimant will be compensated for seven hours at the rate of \$114.00 per hour for a total of \$798.00. The "jetter vac & operator" was billed on the invoice at \$262.50 per hour for twelve hours for a total of \$3,150.00. The rate schedule lists the billing for \$201.00 per hour (\$189.00 overtime rate plus \$12.00). Claimant will be compensated for the twelve hours at \$201.00 per hour for a total of \$2,412.00. The "tractor/tanker& operator" was billed on the invoice at \$135.00 per hour for seven and one-half hours for a total of \$1,012.50. The rate schedule lists the rate at \$112.00 per hour (\$100.00 overtime rate plus \$12.00). Compensation will be given for the seven and one-half hours at the \$112.00 rate for a total of \$840.00.

The spill response van was billed for \$1,000.00 per day for one day on the invoice. The rate schedule lists the "hazmat response & command unit" at \$680.00 per day. Claimant will be compensated \$680.00 for the day. The absorbent boom 8' was billed on the invoice at \$90.00 per bag for thirteen bags, for a total of \$1,170.00. The absorbent boom 8' is listed for \$87.00 per bag on the rate schedule. Compensation will be given for the thirteen bags at the \$87.00 rate for a total of \$1,131.00. The one hour of "environmental time" billed on the invoice for \$65.00 per hour for one hour is denied. The Claims Manager requested the explanation of "environmental time" billing on October 14, 2009 and October 22, 2009. Explanation of the time was not provided. Compensation for that time is denied. Therefore, the total compensation amount denied for Sunday, March 30, 2008 is \$1,646.50.

For the work performed by Inland Waters on Monday, March 31, 2008, the "tractor/tanker & operator" was billed on the invoice at \$110.00 per hour for three hours at the standard time rate for a total of \$330.00. The rate schedule lists the rate at \$88.00 per hour. Compensation will be given for the three hours at the \$88.00 rate for a total of \$264.00. The total compensation amount denied for Monday, March 31, 2008 is \$66.00.

Inland Waters billed for their work done on Wednesday, April 2, 2008. They billed for the Project Manager at a rate of \$95.00 per hour for eight hours of standard time and billed at the rate of \$142.50 per hour for one hour at the overtime rate for a total of \$902.50. However, the rate schedule lists the billing rate as \$75.00 per hour for standard time and \$95.00 per hour for overtime. The claimant will be compensated for the eight hours of standard time at the \$75.00 per hour rate and at the \$95.00 per hour rate for one hour of overtime work for a total of \$695.00. The ER Techs billed for two and one-half of overtime hours at \$67.50 per hour for a total of \$168.75. The rate schedule lists the overtime rate for ER Techs as \$65.00 per hour. Compensation will be granted for the two and one-half hours at the \$65 per hour rate for a total of \$162.50. The "rolloff truck & operator" were billed for two standard time work hours at the rate of \$90.00 per hour for a total of \$180.00. The rate schedule lists the rate at \$85.00 per hour. Compensation for the two hours will be granted at the \$85.00 per hour rate for a total of \$170.00. The rolloff box rental was billed for \$35.00 per day on the invoice for one day, but it is listed as \$15.00 per day on the rate schedule. Therefore, \$15.00 will be the compensation for the rolloff box rental. The absorbent boom 8' was billed on the invoice at \$90.00 per bag

for six bags, for a total of \$540.00. Again, the absorbent boom 8' is listed for \$87.00 per bag on the rate schedule. Compensation will be given for the six bags at the \$87.00 rate for a total of \$522.00. The rolloff liner was billed on the invoice for \$65.00 each, for two liners for a total of \$130.00. The rate schedule lists the price for each liner at \$35.00 each. Claimant will be compensated at the \$35.00 each rate for the two liners for a total of \$70.00. The invoice shows the rolloff tarp billed at \$20.00 each for the one tarp. However, the rate schedule lists the tarp at \$11.00 each. Claimant will be compensated \$11.00 for the one tarp. The \$25.00 charge for one "consumable" on the invoice provided no other information. The \$25.00 compensation is denied. Therefore, the total compensation amount denied for Wednesday, April 2, 2008 is \$355.75.

According to the invoice, the work billed on Friday, April 11, 2008 for four hours of standard time for the Crew Leader was \$55.00 per hour for a total of \$220.00 per hour. The rate schedule lists the standard time for a Crew Leader at \$48.00 per hour. Compensation for the four hours at the \$48.00 rate will be \$192.00. The "rolloff tractor/trailer & operator" was listed on the invoice for \$95.00 per hour for four hours for a total of \$380.00. The listed rate on the rate schedule is \$85.00 per hour. Claimant will be compensated for four hours at \$85.00 per hour for a total of \$340.00. Again, the rolloff box rental was billed for \$35.00 per day on the invoice for one day, but it is listed as \$15.00 per day on the rate schedule. Therefore, \$15.00 will be the compensation for the rolloff box rental. The total compensation amount denied for Friday, April 11, 2008 is \$88.00.

Based on the NPFC's denial of \$2,156.25, the NPFC determines that the OSLTF will pay \$28,814.31 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909105-001.

**C. *Determined Amount:***

The NPFC determines that the OSLTF will pay \$28,814.31 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909105-001.

**AMOUNT: \$28,814.31**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *11/4/09*

Supervisor Action: *Approved*

Supervisor's Comments: