

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E13519-0002
Claimant	: Cleveland Metroparks
Type of Claimant	: Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$3,003.52

### **FACTS:**

**A. Oil Spill Incident:** On April 28, 2014, Cleveland Metroparks (CMP) responded to the discharge of home heating oil that had originally been reported as seeping from the base of a cliff into a drainage channel in Cleveland Metroparks in Lakewood, Ohio. The oil flows from the base of the cliff into a drainage channel that empties into the Rocky River, a navigable waterway of the US.<sup>1</sup>

**B. Background:** The incident dates back to August 12, 2013, when the Ohio Environmental Protection Agency (OEPA) investigated the discharge of oil into a drainage channel in Cleveland Metroparks. OEPA reported the incident to the US Environmental Protection Agency (USEPA).<sup>2</sup> OEPA investigators determined that the source of the oil was from an underground plume of home heating oil that had mixed with groundwater. The source of the home heating oil could not be determined. OEPA has determined that the plume would continue to discharge from the cliff until all the oil emptied from the groundwater.

The Federal On-Scene Coordinator (FOSC), is [REDACTED] of the USEPA. As the FOSC, Mr. [REDACTED] said that he had observed petroleum discharging into the drainage channel and subsequent inspections indicated that petroleum material continues to seep out of the base of the cliff. Because of the continuing nature of the incident, the FOSC reached an agreement with CMP to have its personnel continuously monitor the seep and drainage channel and maintain sorbent boom and materials to prevent the oil from reaching the Rocky River. Removal actions involve CMP personnel exchanging contaminated absorbent boom and materials with clean absorbent boom and materials. The FOSC decided that periodic submission of removal costs to the NPFC would best way to proceed with removal actions in the future and requested that the NPFC set up a Federal Project Number for this on-going incident.

No Responsible Party (RP) has been identified for this spill.

**C. Description of removal actions performed:** CMP personnel placed absorbent boom and material across the drainage channel to prevent petroleum product from reaching the Rocky River. From April 28, 2014 through November 10, 2014, CMP exchanged contaminated absorbent boom from the drainage channel. CMP personnel replaced contaminated absorbents with fresh absorbents as needed and CMP personnel arranged for the disposal of contaminated absorbent at a qualified disposal facility.

**D. The Claim:** CMP submitted removal costs for its labor, equipment and materials used to maintain the exchange of contaminated absorbent boom and materials for this ongoing incident. On January 5, 2015, the National Pollution Funds Center (NPFC) received CMP's Optional OSLTF Claim Form which included a copy of a letter from the FOSC dated October 23, 2013 that explains the nature of

<sup>1</sup> See USEPA letter dated October 23, 2013 to NPFC.

<sup>2</sup> See USEPA Region V POLREP #1, dated 8/13/2013.

the incident. It is important to note that this is CMP's second claim submission for response actions associated with this incident and covers activities during 2014. CMP seeks reimbursement of its uncompensated removal costs totaling \$3,003.52 for its services from April 28, 2014 through November 10, 2014. CMP confirmed that its current 2014 rates are the same as its 2013 rates.<sup>3</sup> A copy of the CMP 2013 rate schedule is in the claim file.

#### **APPLICABLE LAW:**

"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".

"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". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. § 2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

33 USC § 2712(f), which is entitled "Rights of Subrogation," provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages, shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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 136.203, the claimant bears the burden to prove the removal costs 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 –

---

<sup>3</sup> See 2013 CMP rate schedule and email from [REDACTED] dated January 22, 2015

- (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. FOSC Coordination has been established via the United States Environmental Protection Agency Region V.<sup>4</sup>
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 removal costs.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. To date, no Responsible Party has been identified. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all removal 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.

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

NPFC CA 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, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The Claims Manager confirmed with the FOSC [REDACTED] of the US EPA Region V, that he was aware of the removal actions undertaken by CMP personnel and that he determined that they are consistent with the NCP.

The Claims Manager reviewed the invoices and requested that the Claimant submit legible copies of the Bill of Lading and proof of payment to EnviroServe, J.V that transported the contaminated material to Valicor Environmental Services. CMP provided proof of payment and confirmed its labor and equipment rates were the same as the rates that in effect during 2013 and presented in NPFC Claim # E13519-0001. The Claims Manager also requested that CMP provide a balance sheet of its dates of service that correspond with the CMP dailies. CMP provided the additional information in an email January 22, 2015. The Claims Manager reviewed and compared the dailies to the invoice provided by CMP. The Claims Manager finds that the actions undertaken by CMP were reasonable and necessary and were in accordance with the NCP in order to mitigate the effects of the spill.

<sup>4</sup> See US EPA Region V POLREP #1, dated 8/13/2013.

Based on the evidence in this claim submission and confirmation by the FOSC for the actions undertaken by CMP and its associated contractors, the Claims Manager hereby determines that the Claimant incurred \$3,003.52 in uncompensated removal costs and that that this amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by CMP and submitted to the NPFC under claim #E13519-0002. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from April 28, 2014 through November 10, 2014. CMP represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant.

**C. Determined Amount: \$3,003.52**

The NPFC hereby determines that the OSLTF will pay \$3,003.52 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E13519-0002. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Claim Supervisor

Date of Supervisor's review: *1/28/15*

Supervisor Action: *Approved*

Supervisor's Comments: