

CLAIM SUMMARY / DETERMINATION

Claim Number:	E15519-0002
Claimant:	Auburn Hills Fire Department
Type of Claimant:	Local Government
Type of Claim:	Real or Personal Property
Claim Manager:	[REDACTED]
Amount Requested:	\$514.63

BACKGROUND

On June 01, 2005, local authorities discovered a sheen of oil,¹ that was approximately 8-10 feet wide, in the Clinton River, Oakland County, Michigan, a navigable waterway of the United States. Auburn Hills Fire Department (Claimant) responded to the spill with various local cooperating agencies² and began investigating the area to find the source of the spill.

The local agencies requested assistance from the U.S. Environmental Protection Agency (USEPA), Region 5, to assist with the source investigation.³ Federal On-Scene Coordinator (FOSC), Mr. [REDACTED] arrived on scene. FOSC [REDACTED] mobilized both START and ERRS. START conducted air monitoring and found no reportable readings. ERRS deployed containment and absorbent boom on the Clinton River, at Opdyke Road, to contain the spill. All of the responding entities to include, the claimant, investigated the area in an attempt to locate the source.

Auburn Hills Fire Department placed nine hydrocarbon absorbent socks at narrowing points of the Clinton River at Opdyke road and appeared to slow and contain the product from flowing.

A potential source was identified as, Metalworking Lubricants⁴ therefore, a notice of Federal Interest (NOFI) was issued to Metalworking Lubricants. EPA collected a sample of the spilled oil at the facility and took a sample of the sheen in the River for fingerprint analysis. The samples were sent to the Coast Guard Laboratory for analysis.

Further investigation and lab results determined that Metalworking Lubricants is not the source of the oil.⁵ To date a source has not been identified.

CLAIM

On July 21, 2015, Chief [REDACTED] from the Auburn Hills Fire Department submitted documentation to the National Pollution Funds Center (NPFC) requesting reimbursement for Public Services costs in the amount of \$74.25 and Real or Personal Property costs in the amount of \$440.00, which brought the total amount claimed to \$514.63.⁶ However, the NPFC combined

¹ POLREP pictures.

² POLREP 1 and 2.

³ POLREPS

⁴ Waterford Regional Fire Department and FOSC Lippert investigated the facility, they discovered a spill of gear oil in the rear bay of the building, (POLREP 2).

⁵ See 2015 07 16 email from FOSC Lippert to Claims Manager [REDACTED]

⁶ OSLTF Claim Form

both costs under the Real or Personal Property category the ultimately assigning it OPA claim number E15519-0002.

All costs that are being claimed by the Auburn Hills Fire Department are a result from the oil that was spilled in the Clinton River.

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".

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."

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.

Under 33 CFR 136.213(a) a claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.

Under 33 CFR 136.215(a) In addition to the requirements of Subparts A and B of this part, a claimant must establish—

- (1) An ownership or leasehold interest in the property;
- (2) That the property was injured or destroyed;
- (3) The cost of repair or replacement; and

- (4) The value of the property both before and after injury occurred.

Under 33 CFR 136.217(a) the amount of compensation allowable for damaged property is the lesser of –

- (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- (2) The difference between value of the property before and after the damage; or
- (3) The replacement value.

DETERMINATION OF LOSS:

NPFC Analysis

Auburn Hills Fire Department seeks compensation for personnel costs,⁷ and the cost for the replacement of the sock boom that was used on the Clinton River.⁸

Claimant provided emergency services to find the source location of the spill and mitigation of the incident. The Claimant took direction from the Federal On-Scene Coordinator, US EPA, Region 5, Mr. [REDACTED]

It is important to note that although the Auburn Hills Fire Department Overtime Activity Report provides that the personnel hours are 6.35, the Claimant is only seeking 5.5 hours of personnel time that took place on-scene. The Claimant explained that one hour of personnel time is spent inventorying the HAZMAT truck after returning to the station from being on-scene. The Claimant verified, via telephone conversation,⁹ that only 5.5 hours of personnel time on-scene.

Auburn Hills Fire Department provided an Overtime Activity Report that documents the personnel time that was spent on-scene, in the amount of \$74.25 and an on-line quote from New Pig that quotes the cost to replace the absorbent sock boom. Under 33 CFR 136.217(a) the amount of compensation allowable for damaged property is the lesser of – 1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage; 2) The difference between value of the property before and after the damage; or 3) The replacement value. In this claim, the Claimant provided the replacement value of the boom.

Denied Costs

The Claimant provided a quote for the replacement of oil absorbent sock boom that was used on the Clinton River. The NPFC denies the shipping costs in the amount of \$28.38 since the quote provided only has a handwritten note from an onernet pricing download and as such, the stated amount of shipping cannot be confirmed. The shipping costs are not inclusive of the costs to replace the sock boom. The Claimant has not provided proper documentation that supports the cost of shipping therefore the shipping costs are unsubstantiated and denied accordingly.

⁷ Auburn Hills Fire Department, Overtime Activity Report.

⁸ New Pig.com invoice quote to replace sock boom.

⁹ Telephone Log, 07/22/2015 at 1400.

Paid Costs

The NPFC will pay for the replacement of the oil absorbent sock boom and the personnel time spent on-scene. The NPFC finds it reasonable to pay the cost to replace the sock boom in the amount of \$412.00 because the boom was used to absorb oil on the Clinton River and cannot be used again. The boom was properly disposed of by USEPA.¹⁰ Also, the NPFC finds it reasonable to pay the cost of personnel time spent on-scene in the amount of \$74.25. The POLREPS are used to coordinate these activities.

Summary

The NPFC hereby determines that the OSLTF will pay **\$486.25** as full compensation for replacement boom and personnel time spent on-scene.

Claim Supervisor:

Date of Supervisor's review: 7/23/15

Supervisor Action: *Approved*

¹⁰ 2015 07 16 Email from FOSC [REDACTED] to Claims Manager [REDACTED]