

CLAIM SUMMARY / DETERMINATION

Claim Number:	E15519-0004
Claimant:	Rochester Hills Fire Department
Type of Claimant:	Local Government
Type of Claim:	Public Services
Claim Manager:	[REDACTED]
Amount Requested:	\$2,495.35

BACKGROUND

On June 01, 2015, 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. Rochester 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 (US EPA), Region 5 to assist with the source investigation. 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 which includes the Claimant, investigated the area in an attempt to locate the source.

A potential source was identified as, Metalworking Lubricants (Metalworking). During the investigation, a spill of gear oil was found in the rear of Metalworking's property.³ A Notice of Federal Interest (NOFI) was issued to the facility. 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 was not in fact the source of the oil.⁴ To date a source has not been identified and the incident remains a mystery.

Description of Removal Activities for this Claimant

The Claimant responded to the scene to assist in the investigation of the mystery oil spill. The Claimant was one of the first agencies to arrive on-scene and deploy several hydrophobic absorbent boom to multiple locations along the Clinton River to absorb spilled product.

¹ POLREP pictures

² POLREP 1 and 2

³ *id*

⁴ POLREP 2

The Claim

On July 29, 2015, Chief [REDACTED] from the Rochester Hills Fire Department submitted a Public Services claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated response costs, which included, Fire Department Personnel and Equipment costs in the total amount of \$2,495.35.

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. 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. US EPA, Region 5 provided FOSC coordination 33 U.S.C. § 2702(b)(1)(B) and 2712(a)(4);
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 within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the Fire Department’s response costs that are presented to the Fund were for actions indeed reasonable and allowable.

B. Analysis:

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

In consideration of the FOSC documentation associated with this incident, the NPFC was able to satisfy itself that the services provided by the Claimant were under the direct oversight of the FOSC, were necessary to mitigate the effects of the spill and determined to be consistent with the NCP.

Rochester Hills Fire Department presented their costs for Emergency Personnel and Equipment in the amount of \$2,495.35. The NPFC determined that the costs presented for emergency services are payable by the OSLTF bringing the total payable by the OSLTF for the Rochester Hills Fire Department emergency services to **\$2,495.35**.

C. Determined Amount:

The NPFC determines that the OSLTF will pay **\$2,495.35** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number E15519-0004 for increased public services.

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.205, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan.

AMOUNT: \$2,495.35

Claim Supervisor:

Date of Supervisor's review: *8/4/15*

Supervisor Action: *Approved*