

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	916025-0001
<b>Claimant:</b>	City of Charlotte
<b>Type of Claimant:</b>	Local Government
<b>Type of Claim:</b>	Removal Cost
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$4,078.29

### FACTS:

**Oil Spill Incident:** On June 15, 2015, flash flooding occurred in Charlotte, Iowa which deposited a 55 gallon oil drum near the confluence of Deep Creek and Honey Creek, which are navigable waterways of the United States.<sup>1</sup> The drum was found at an RV park in Charlotte, IA and to date, a Responsible Party (RP) has not been determined.

City of Charlotte personnel responded and coordinated with the United States Environmental Protection Agency (USEPA) in its capacity as the Federal On Scene Coordinator (FOSC) to ensure that the cleanup was determined to be consistent with the National Contingency Plan.<sup>2</sup> Bodine Environmental Services was contracted by the City to remove, test, and dispose of the drum.

**Description of Removal Activities for this Claimant:** Bodine Environmental Services (Bodine) arrived on scene with service trucks, personnel, a 55-gallon drum, and a poly over-pack drum.<sup>3</sup> Contractors removed the drum and the contaminated soil around the drum. The oil was disposed of at Advanced Waste in Cedar Rapids, IA<sup>4</sup> and the petroleum contaminated soil from the cleanup was disposed of at Scott County Landfill.<sup>5</sup> A lab analysis was provided by Test America. Claimant submitted the analytical report with its claim submission.<sup>6</sup>

**The Claim:** On February 09, 2016, City of Charlotte submitted a removal costs claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs for personnel and equipment costs in the total amount of \$4,078.29. This claim was submitted to the Fund after the Claimant's insurance company denied its claim for reimbursement of their removal costs that it incurred.<sup>7</sup>

### 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".

<sup>1</sup> Deep Creek flows to the Maquoketa River, near Spragueville, IA and Maquoketa flows to Mississippi River near Green Island, IA - Mr. ██████████ U.S. EPA, FOSC 2016 01 22 Email to Mr. ██████████

<sup>2</sup> 2016 01 22 U.S. EPA Coordination email to Claimant.

<sup>3</sup> See Bodine Invoice # C12510

<sup>4</sup> Non-Hazardous Waste Manifest – C9853-15

<sup>5</sup> See Non-Hazardous Waste Manifest tracking number O15.

<sup>6</sup> See Test America Analytical Report, Job # 310-58304-1

<sup>7</sup> See 2015 12 16 EMC Insurance denial letter to Claimant.

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. U.S. EPA Region 7 provided FOOSC 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 statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs claimed were associated with OPA compensable removal actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

### **B. Analysis:**

The NPFC CA Division reviewed the actual cost invoice 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 136.203 (1) the actions taken were 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 FOOSC, to be consistent with the National Contingency Plan or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC reviewed Bodine’s rate schedule that was in place at the time the services were provided; the NPFC based its adjudication of these costs on the rate schedule, the Bodine invoice, disposal manifests, and third party invoicing<sup>8</sup>.

The Claimant did not provide the disposal company’s invoices nor did it provide proof of payment in its claim submission. Therefore, the NPFC called Bodine directly to confirm that full payment of Bodine invoice # C12510 had been made. On February 12, 2016, Bodine confirmed that the invoice had been paid in full on December 03, 2015 via check # 6627.<sup>9</sup> Bodine stated that it credited \$6.84 back to the Claimant, which is the amount of the tax.

Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule in place at the time the services were rendered, unless otherwise indicated below, and were determined by the FOOSC to be consistent with the National Contingency Plan (NCP).

The NPFC denied a total of \$11.84 in requested costs. Descriptions of the denied costs are as follows:

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<sup>8</sup> See Test America Invoice and Disposal invoice.

<sup>9</sup> See Phone Log in CPSII.

1. *Materials* – Total denied - \$5.00

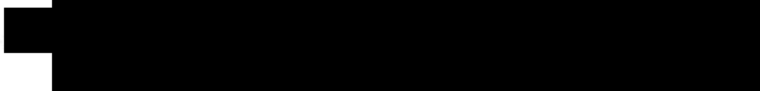

The Claimant presented costs for a 55-gallon drum in the amount of \$80.00 however, according to the Bodine rate schedule, the cost for a 55-gallon drum, closed top, is \$75.00. Therefore, the NPFC denies \$5.00, based on the Bodine rate schedule.

2. *Tax* – Total denied - \$6.84

The tax is denied based on a phone conversation that the claims manager had with Bodine regarding the claimant's invoice C12510. Bodine confirmed that the invoice had been paid in the amount of \$4,078.29, via check # 6627 however, Bodine credited \$6.84 back to the claimant, which is the amount of the tax.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer \$4,066.45 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # 916025-0001. All reimbursable costs are for charges paid 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.

***Determined Amount: \$4,066.45***


Claim Supervisor: 
Date of Supervisor's review: <i>2/17/16</i>
Supervisor Action: <i>Approved</i>