

CLAIM SUMMARY / DETERMINATION

Claim Number:	916042-0001
Claimant:	Klawock Volunteer Fire Department
Type of Claimant:	Private (US)
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$6,300.00

FACTS:

Oil Spill Incident: On February 16, 2016, the USCG National Response Center (NRC) was alerted to the illegal dumping of oil into an unnamed stream adjacent to private property located in the city of Klawock, Alaska. The unnamed stream is a tributary to the Klawock River, a navigable waterway of the United States.¹ The Alaska Department of Environmental Conservation (ADEC) investigated the spill site and determined that a group of individuals destroyed transformers present near the property for the purpose of stealing copper wire. Each transformer contained approximately one pint of oil, which was disposed of into the stream. In total, 13 transformers had their contents drained, totaling approximately 34 gallons of oil. The owner of the transformers, Alaska Power and Telephone (APT), was notified of the spill and subsequently provided analytical test results on the contents of the transformers. The results concluded that only two transformers had oil containing polychlorinated biphenyls above non-detect.² The ADEC further notified the United States Coast Guard (USCG) in its capacity as the Federal On-Scene Coordinator (FOSC).³

Description of removal actions performed: Under the direction of the ADEC, three firefighters from the Klawock Volunteer Fire Department (KVFD) responded to the oil spill site on February 17, 2016. The responding firefighters immediately began collecting the damaged transformer parts and placed them into waterproof containers. Also, from February 17 through February 22, per the ADEC's request, the KVFD assisted in the placement of absorbent materials.⁴ Unfortunately, the KVFD responders did not possess appropriate personal protective equipment (PPE), to include hazmat suits, resulting in the contamination of three full sets of firefighting turnout gear and boots.⁵

CLAIM AND CLAIMANT:

This claim for uncompensated removal costs was presented to the National Pollution Funds Center (NPFC) on March 16, 2016, by the Klawock Volunteer Fire Department. The Claimant is seeking uncompensated removal costs of the damaged firefighting

¹ See notes from telephone conference between Ms. [REDACTED], Alaska Department of Environmental Conservation, and Mr. [REDACTED], NPFC, dated March 22, 2016.

² See SGS North America Inc. Laboratory Report of Analysis dated March 14, 2016.

³ See Alaska Department of Environmental Conservation Situation Report dated February 29, 2016.

⁴ See letter from Mr. [REDACTED] Fire Chief, Klawock Volunteer Fire Department dated March 1, 2016.

⁵ See letter from Mr. [REDACTED], Fire Chief, Klawock Volunteer Fire Department dated April 5, 2016.

equipment in the amount of \$6,300.00 that resputled while performing response to the incident.⁶

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

⁶ See Klawock Volunteer Fire Department claim dated March 16, 2016.

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. MSD Ketchikan, as the Federal On-Scene Coordinator (FOSC) for this incident, determined that the actions undertaken by the Klawock Volunteer Fire Department were consistent with the NCP. 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 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 the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

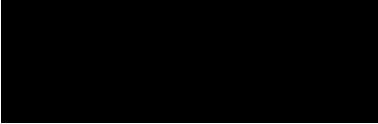
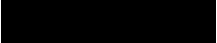
NPFC CA reviewed the actual cost invoices to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of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

The NPFC confirmed that the actions undertaken were reasonable and necessary and that the costs claimed are reasonable and appropriate as substantiated by the replacement cost

documentation provided demonstrating replacement cost for the items damaged during response. The Claimant did not request reimbursement of personnel time associated with the response to this incident since the firefighters are volunteers. During the adjudication of the claim, the NPFC spoke at length with the Fire Chief and the Federal On Scene Corrdinator's Representative, MSTC [REDACTED], regarding the actions performed and she confirmed direct oversight of the services provided were performed by the State On Scene Coordinator (SOSC), ADEC. Disposal of the damaged and contaminated turnout gear and boots will be performed by the final response contractor that is hired by the State to dispose of all petroleum contaminated debris and soil.

Based on the foregoing, the Claims Manager hereby determines that the Claimant did in fact incur \$6,300.00 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #916042-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on February 17, 2014. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: \$6,300.00


Claim Supervisor: 
Date of Supervisor's review: <i>4/8/16</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: