

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E15522-0002
Claimant	: Mercer County Local Emergency Planning Committee
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$3,310.94

**FACTS:**

***Oil Spill Incident:*** The United States Environmental Protection Agency (US EPA) Region V<sup>1</sup> reports that on July 24, 2015, an above ground storage tank located at [REDACTED] in Brookfield, Trumbull County, Ohio, failed and caused a release of 1700 gallons of a brine/crude oil mixture into Big Run Creek, a tributary to the Shenango River. Both Big Run Creek and the Shenango River are navigable waterways of the US. The release threatened a drinking water intake at a water treatment plant operated by Aqua Pennsylvania for the City of Sharon, Pennsylvania. The plant is located on the Shenango River, approximately three miles from the release location.

The Responsible Party (RP), Big Sky Energy, Inc., was issued a verbal Notice of Federal Interest and Notice of Federal Assumption by the US EPA Region V Federal In Scene Coordinator (FOSC) on July 24, 2015.<sup>2</sup> The notice was given verbally as the RP refused to sign a written notice issued by the FOSC. Presentment of costs were made to the RP by both the Claimant and this office but, to date, has not paid and/or responded. This incident was reported to the National Response Center (NRC) via Report # 1123722.

***Description of removal actions performed:*** The Claimant, Mercer County Local Emergency Planning Committee (Mercer County), was notified of the petroleum release into the creek. The Hermitage Fire Department requested its assistance in containing the spill. Both Mercer County and the City of Hermitage deployed personnel and equipment to assist with this incident. The Claimant along with the Hermitage Fire Department utilized absorbent booms and pads in Big Run Creek to try and contain the spill in hopes of preventing it from reaching the water intake for Aqua Water, which supplies drinking water to the Shenango Valley, as well as parts of Lawrence County and Ohio.

The USEPA Region V, the state of Ohio Environmental Protection Agency (OEPA) and the Ohio Department of Natural Resources (ODNR) observed all response actions performed. Containment boom was removed from the Shenango River; however, deflection boom and containment boom were left in place in front of the drinking water plant intake at the request of Aqua Pennsylvania and the state of Pennsylvania Department of Environmental Protection (PADEP).

<sup>1</sup> See US EPA Region V POLREP 1, dated 7/25/2015, as well as the email from Mr. [REDACTED], US EPA Region V FOSC, to [REDACTED], NPFC, dated 1/16/2016.

<sup>2</sup> See email from Mr. [REDACTED], US EPA Region V FOSC, to [REDACTED], NPFC, dated 1/16/2016.

***The Claim:*** On January 21, 2016, Mercer County presented a removal cost claim to the National Pollution Funds Center (NPFC), seeking reimbursement of its uncompensated removal costs in the amount of \$3,310.94 for the services provided on July 24, 2015.

Mercer County is claiming for the cost of materials used on scene to contain the spill until a cleanup contractor (Myers Well Service, Inc.) arrived. Its original claim totaled \$7,952.99; however, it backed out the costs that the City of Hermitage incurred, reducing the claim total since they did not pay those costs and are not uncompensated costs for them. As such, the City of Hermitage has submitted a separate claim for its costs in the amount of \$4,642.05 and identified as NPFC claim # E15522-0003.

**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 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. FOSC Coordination has been established via US EPA Region V.<sup>3</sup> 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
4. A Responsible Party has been determined. 33 U.S.C. § 2701(32).
5. 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.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if 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

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<sup>3</sup> See US EPA Region V POLREP 1, dated 7/25/2015, as well as the email sent by Mr. [REDACTED] US EPA Region V FOSC, dated 1/16/2016.

incurred as a result of these actions; (3) whether the actions taken were determined by the FOOSC, to be consistent with the NCP or directed by the FOOSC, 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 Claimant, Mercer County, provided a well-documented claim to demonstrate that the actions it performed were for OPA-related response costs and that the work performed mitigated the effects of the oil that was released into Big Run Creek, and thus potentially the Shenango River. The FOOSC, USEPA Region V, confirmed that the actions performed by the Claimant for this incident were determined to reasonable, necessary and consistent with the NCP. Upon adjudication of the claim, the NPFC confirmed that the rates charged were billed in accordance with the published rate schedule that was in place at the time services were rendered and the NPFC confirmed that the response actions performed were under the direction and oversight of the FOOSC and as such, the NPFC has determined that the amount invoiced and paid was in fact reasonable and necessary.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$3,310.94 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 #E15522-0002. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on July 24, 2015.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$3,310.94 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E15522-0002. 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.

**AMOUNT: \$3,310.94**

Claim Supervisor:



Date of Supervisor's review: *2/17/16*

Supervisor Action: *Approved*

Supervisor's Comments: