

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/2/2011
Claim Number	: 911019-0001
Claimant	: Township of Grosse Ile
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: Dawn Unglesbee
Amount Requested	: \$32,316.58

Facts:

During a routine inspection of the oil fuel separator at the Grosse Ile Airport on Wednesday, February 15, 2006, oil was discovered on a fiber boom in the oil fuel separator. Claimant was notified and immediately contacted Doetsch Industrial Services to pump out the oil fuel separator.

On Thursday, February 16, 2006 the airport maintenance department checked the oil fuel separator's discharge pipe that empties into Frenchman's Creek. Red colored fluid was in the waters and ice areas of Frenchman's Creek near the discharge pipe. Frenchman's Creek is a nexus to the Detroit River then to Lake Erie, a navigable waterway of the United States.

FOSC coordination was made with the United States Environmental Protection Agency (USEPA), Region 5¹ as well as the United States Coast Guard Sector Detroit. Sector Detroit issued a Notice of Federal Interest (NOFI) for an Oil Pollution Incident to the Grosse Ile Municipal Airport². After further investigation, it was found that the source of the leak was tracked back to a construction company, L.D. Agostini & Sons, Inc., whom leased a parcel of land on the Grosse Ile Municipal Airport Commerce Park property. The fuel was stored in a tank that was on the airport grounds while L.D. Agostini & Sons, Inc. was doing work for the township. The tank had no spill containment provision.

Responsible Party

Claimant made presentment to L.D. Agostini via a letter dated July 18, 2006³. On February 7, 2011, NPFC Claims Manager sent a Responsible Party Notification letter to L.D.' Agostini & Sons, Inc.⁴ and on February 15, 2011 the NPFC Claims Manager presented the claim submission via email to Mr. Keith McLean, Staff Counsel, for L.D. Agostini & Sons⁵. On February 28, 2011, Mr. Mc Lean stated in an email to the Claims Manager that L.D. Agostini & Sons, Inc. is preparing a response to the NPFC's RP Notification Letter dated February 7, 2011⁶.

¹ USEPA Coordination letter.

² NOFI, dated February 16, 2006.

³ See letter from Claimant to RP, dated July 18, 2006.

⁴ RP Notification letter dated February 7, 2011

⁵ Email dated February 28, 2011

⁶ *id*

The Removal Actions

February 17, 2006, Doetsch Industrial Services and airport personnel installed oil spill containment booms around the area in order to contain the oil-spill. Doetsch Industrial Services used their sewer trucks to suck up the remaining oil.

Doetsch Industrial Services removed oily water from the manholes from the spill site to the oil fuel separator.

February 21, 2006, Doetsch Industrial Services flushed out the storm water drain lines. They also pumped out and cleaned the oil fuel separator unit.

Monitoring and clean-up activities continued by Doetsch Industrial Services and airport personnel until March 10, 2006.

The oily debris, water, and sorbents were taken for disposal to Advanced Resource Recovery in Inkster, Michigan⁷

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

⁷ Analytical Report prepared by Paragon Laboratories, Inc.

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. The removal actions were coordinated with the USCG and USEPA.
2. The incident involved the discharge and continuing substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701 (23), to navigable waters.
3. In accordance with 22 CFR § 136.105(e)(12), the claimant certified that it has filed no suit in court for the claimed uncompensated removal costs.
4. The claim was submitted within six years after the date of completion of all removal actions for this incident as determined by the Federal on Scene Coordinator (FOSC).
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that the majority of all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA 33 CFR § 136.205.

B. Analysis

The NPFC finds that the evidence presented by the Claimant demonstrated that the Claimant is not the Responsible party but did assumed the responsibility of immediate action to mitigate the oil from discharging into the navigable waterways.

Township of Grosse Ile stated in its claim, that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of February 15, 2006-March 10, 2006. The

Claimant represented that all costs paid are compensable removal costs,⁸ payable by the OSLTF as presented by the Claimant.

The NPFC Claims Manager reviewed the Claimant's actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed, that the costs were uncompensated, and that the costs were adequately documented and reasonable.

The Claims Manager also confirmed that the removal costs were (1) compensable "removal actions" under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) incurred as a result of these actions; (3) incurred for removal actions that were determined by the FOSC to be consistent with NCP or directed by the FOSC.

Determined Amount:

The NPFC Claims Manager hereby determines that the Claimant incurred \$32,316.58 of uncompensated OPA compensable removal costs that are supported by the evidence. This amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and adjudicated by the NPFC under claim #911019-0001.

AMOUNT: \$32,316.58

Claim Supervisor:  *Donna Heiberg*

Date of Supervisor's review: *3/4/11*

Supervisor Action: *Approved*

Supervisor's Comments:

⁸ Proof of payment, check #017848 dated March 30, 2006, check # 017842 dated March 24, 2006, and check # 017843 dated 3/24/06.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
3/7/2011

SENT VIA EMAIL: [REDACTED]@grosseile.com
[REDACTED]@grosseile.com

Township of Grosse Ile
ATTN: Mr. Barry Sedlock
9601 Groh Road
P.O. Box 300
Grosse Ile, MI 48138

Re: Claim Number 911019-0001

Dear Mr. Sedlock:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$32,316.58 is full compensation for OPA claim number 911019-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.ccr.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6843.

Sincerely,

[REDACTED]
Dawn Unglesbee
Claims Manager
United States Coast Guard

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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Claim Number: 911019-0001	Claimant Name: Township of Grosse Ile ATTN: Barry Sedlock 9601 Groh Road P.O. Box 300 Grosse Ile, MI 48138
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I, the undersigned, ACCEPT the determination of \$32,316.58 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred by Claimant for services provided by the claimant under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with 911019-0001. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number