

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/21/2011
Claim Number	: 911014-0001
Claimant	: Vernon County Office of Emergency Management
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,442.62

FACTS:

- 1. *Oil Spill Incident:*** On October 21, 2009, an estimated 25 to 50 gallons of diesel fuel was discharged at 1056 Crest Avenue in Hillsboro Township in Vernon County, Wisconsin, at the Hillsboro City Garage. The discharge occurred after an unidentified truck that had been parked there earlier that morning spilled the fuel, causing a 30' by 50' heavy sheen on the rainwater in the parking lot. The Vernon County Office of Emergency Management Hazmat Team (Vernon County Hazmat Team) was called to the incident site as well as the Hillsboro Fire Department (HFD). A sand dam was placed near the edge of the Baraboo River, as well as several dams placed up the River for about four miles. Although some of the discharge was contained by the sand dams, some oil flowed into four catch basins that lead to the west fork of the Baraboo River, a tributary of the Wisconsin River. The Wisconsin River is a navigable waterway of the United States. At the incident site, a sheen approximately five feet wide and four inches deep was detected running down stream. Warden [REDACTED] of the Wisconsin Department of Natural Resources (WDNR) was made aware of the incident and contacted Clean Harbors Environmental Services (Clean Harbors) to handle the clean-up.
- 2. *Description of Removal Activities for this Claimant:*** Vernon County Hazmat team and HFD established a verbal Incident Action Plan, as well as a Site safety Plan. They placed sorbent boom at the graveled portion of the parking lot; and at the four storm drains as well as at the exit of the storm drain system; and they pressure washed the affected parking lot area. River boom was placed across the Baraboo River and downstream at the Smith Road Bridge. On that day, Clean Harbors was en route to the incident site when their vehicle was involved in a traffic accident, and was not able to respond until the next day, October 22, 2009. Clean Harbors response efforts consisted of removing the placed boom and absorbent materials from the affected areas and they performed disposal.
- 3. *The Claim:*** On December 6, 2010, the Claimant presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$4,442.62. The claim consists of the Vernon County Spill Report, National Response Center (NRC) Report, Vernon County Hazmat Team Report, Clean Harbors Supplemental Spill Response Narrative, area maps, photographs, Hazmat Team invoice, dailies, a rate schedule and a Federal On-Scene Coordinator memorandum. The responsible party (RP) remains unknown.

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. The FOSC coordination was provided by Ms. [REDACTED] of the United States Environmental Protection Agency- Region 5 on 10/27/10.
2. The incident involved a 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.
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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has 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 incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review, the Claims Manager hereby determines that there are discrepancies with regards to the 2009 Vernon County Hazmat Team Reimbursement Schedule costs and the cost reimbursement request made to the WDNR for Hazmat Technician labor and X-sorb bags.¹ The Claimant billed the three Hazmat Technicians at \$31.21 for four hours each for labor, for a total billing amount of \$374.52. This amount is also reflected on each technicians’ (Hanson, Bay and Turbin) daily Payroll and Expense Worksheet as “Unsuited Hours” at \$31.21 per hour. However, the Reimbursement Schedule lists the “non-Suited Hours” at \$32.21 per hour. The Claimant will be compensated \$374.52 for the labor of the technicians at the \$31.21 per hour rate.

The X-sorb bags were invoiced at \$15.34 per bag for three bags for a total of \$45.99. The Reimbursement Schedule listed the cost of each bag at \$15.33 per bag. Claimant will be reimbursed \$45.99 at the \$15.33 per bag rate for the three bags.

Therefore, the NPFC determines that the OSLTF will pay \$4,442.60 as full compensation for the reimbursable removal costs incurred by the Claimant and presented to the NPFC under claim #911014-0001.

¹ See attached spreadsheet.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$4,442.60 as full compensation for the reimbursable removal costs incurred by the Claimant and presented to the NPFC under claim # 911014-0001. 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 Claimant.

AMOUNT: \$4,442.60

Claim Supervisor: 

Date of Supervisor's review: *1/25/11*

Supervisor Action: *Approved*

Supervisor's Comments: