

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/15/2011  
Claim Number : E09529-0001  
Claimant : City of Riverview  
Type of Claimant : Local Government  
Type of Claim : Removal Costs  
Claim Manager : ██████████  
Amount Requested : \$33,220.77

**FACTS:**

***The Oil Spill Incident:*** On Monday, August 17, 2009, local residents notified the Riverview Fire Department (RFD) of a strong odor coming from the storm sewers in the area of Valade Street and Parkway Street in Riverview, Michigan. The incident was called in to the National Response Center (NRC) reporting that approximately ten gallons of unknown oil had been dumped into a storm drain by an unknown source.<sup>1</sup> When RFD responded, they detected a strong odor from several locations within the Vreeland Park area. Fire Marshal ██████████ (now RFD Fire Chief ██████████) was called to the incident site.

While en route to the site, RFD Fire Chief ██████████ requested the Downriver Emergency Response Team (DERT) to monitor locations in the Vreeland Park area, due to the flammable nature of the spill. It was determined that high volatile organic compound (VOC) readings were found in about 1500 feet of the storm drain system. The Federal On-Scene Coordinator (FOSC) ██████████ was called to the site by DERT. DERT detected the odor throughout the storm drain system, with only a slight sheen in the catch basins. DERT personnel and the FOSC investigated the open drain between Clark Street and Electric Avenue. They determined that approximately 10 to 20 gallons of waste oil was discharged into the storm drain, with most of the discharge in the adjacent Huntington Creek drain at the Arkema Brine Fields. Huntington Creek is a tributary to the Detroit River, a navigable waterway of the United States. Sheen and "pockets" of waste oil were found approximately 300 feet east of Clark Street in the open drain.<sup>2</sup>

***Description of Removal Activities for this claimant:*** RFD initially added chemical foam to flush the storm drain system to lower the high VOC readings, and later used Micro Blaze with water during the clean-up efforts. RFD and DERT deployed containment boom and absorbent boom. Multiple amounts of boom were deployed at 50-yard intervals up through the Arkema Brine Fields to Electric Avenue. The Emergency Response Group (ERG) was called by Fire Chief Bosman to provide further clean-up. ERG deployed additional boom, provided boom maintenance, built a dam with sand bags and handled the disposal after the clean-up. They completed their clean-up efforts with the disposal at Carleton Farms Landfill on Friday, August 21, 2009.

<sup>1</sup> See NRC Report # 915205.

<sup>2</sup> See Riverview Mystery Spill POLREP #1 (Initial/Final).

The responsible party (RP) remains unknown. In 2009, the Claimant filed a claim with the Michigan Municipal Risk Management Authority (MMRMA) for the \$33,220.77 but was denied on September 24, 2009 because of the existing pollution exclusion in their coverage.

***Additional Information:*** On August 18, 2009, NPFC opened a Federal Project Number (FPN) with a \$5,000.00 ceiling at the request of the FOOSC.

**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] USEPA Region 5.
2. The incident involved the discharge and substantial threat of 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 certified no suit has been filed in court for the claimed costs.
4. The claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable und OPA and 33 CFR § 136.205 as set forth below.

#### **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 incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

On that basis, the Claims Manager hereby determines that there are some discrepancies between the ERG invoice and their rate schedule for invoice billings of August 17, 2009. ERG billed for one camera at the rate of \$50.00 each. However, the camera is not listed on the rate schedule. The Claimant will not be reimbursed for the use of the camera. Claimant also requested reimbursement for the three pairs of latex gloves used on that same day. The latex gloves were invoiced by ERG at the rate of \$3.00 per pair, for a total of \$9.00. Those gloves are not listed on the rate schedule and therefore will not be reimbursed. Eight feet of PVC pipe was billed at the rate of \$5.00 per foot for a total of

\$40.20. Again, the PVC pipe was not listed on the rate schedule and will not be reimbursed.

Based on the NPFC's denial of \$99.20 in equipment and material costs, the NPFC determines that the OSLTF will pay \$33,121.57 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E09529-0001.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$33,121.57 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E09529-0001. 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 the Claimant.

**AMOUNT: \$33,121.57**

Claim Supervisor:

Date of Supervisor's review: *3/17/11*

Supervisor Action: *Approved*

Supervisor's Comments: