

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/30/2011
Claim Number	: E10814-0001
Claimant	: Duchesne County Utah
Type of Claimant	: Local Government
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$85,735.27

### FACTS:

- 1. Oil Spill Incident:** The United States Environmental Protection Agency (US EPA) Region VIII reports that, sometime during the evening of September 23, 2010 or early morning of September 24, 2010, an unknown party discharged up to 40 barrels of crude oil from a truck at the Duchesne County Fairgrounds in Duchesne City, UT, and into the Strawberry River (a navigable waterway of the US). The incident was first reported to Duchesne County officials on the afternoon of Friday, Sept 24th, 2010. Duchesne County Fire and Rescue/HAZMAT arrived on-scene and ordered oil spill response contractors. Cleanup crews arrived on Saturday, September 25, 2010 and began deploying containment boom and cleaning up the crude oil along the banks of Strawberry River.

The incident was reported to the National Response Center (NRC) on September 27, 2010 at approximately 11:31 local time via report #955263 by Ms. [REDACTED] of the Tri-County Health Department, Roosevelt, UT.

The Responsible Party (RP) remains unknown.

- 2. Description of removal actions performed:** On September 24, 2010, the Claimant, Duchesne County ("county"), immediately launched a criminal investigation into the illegal dumping. County officials immediately took action to mitigate the impact of the spill by contacting oil producers in the area to request containment support, contacting Central Utah Water Conservancy District (CUWCD) to discuss reducing flow in the Strawberry River, reporting the spill to Utah Department of Environmental Quality and TriCounty Health Department, and by making arrangements to bring in an Oil Spill Response Organization (OSRO) to begin cleaning up the spill. The OSRO, Envirocare, mobilized personnel and equipment from Salt Lake City to Duchesne. Containment boom was deployed along Strawberry River and the Duchesne River.<sup>1</sup>

On September 25, 2010, the OSRO had fourteen personnel mobilized to the site and was working to develop access points into the rivers, place containment boom, and remove oil contamination along the banks. A Pollution Removal Funding Authorization (PRFA) was opened on September 26, 2010, and the OSRO, along with other agencies, continued to work for the duration of the spill cleanup (until October 6, 2010, when all remaining resources were demobilized from the site). The County is only seeking reimbursement of costs for the pre-PRFA portion of its removal costs incurred as a result of this spill.<sup>2</sup>

<sup>1</sup> See US EPA POLREP # 1, dated 10/01/2010.

<sup>2</sup> *Ibid.*

3. **The Claim:** On May 5, 2011, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$85,735.27 for the services provided from September 24 through 26, 2010. This claim is for removal costs based on the rate schedules in place at the time services were provided.

This claim consists of copies of: the Optional OSLTF Claim Form; Duchesne Internal Cost Audits, Invoices and receipts; NRC Report # 955263; US EPA Region VIII Incident Description; US EPA Region VIII POLREPS #1 and 2; American West Analytical Laboratories Report; and news reports, maps, photographs and internal email correspondence.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

#### **APPLICABLE LAW:**

"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 has been established via US EPA Region 8.<sup>3</sup> 33 U.S.C. § 1321(d)(2)(K).
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)(2)
4. The Responsible Party is unknown. 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 uncompensated removal costs claimed.
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 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. The Claims Manager

<sup>3</sup> See US EPA POLREP #1, dated 10/01/2010.

validated the costs incurred and determined what was reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

On that basis, the Claims Manager hereby determines that the Claimant incurred \$85,735.19 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 #E10814-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from September 24 through 26, 2010. The Claimant represents that costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the claimant. \$0.08 of claimed costs has been denied as a result of a math error on the Claimant's part. It claimed a total of \$68,700.24 in costs for its contractor, EnviroCare, Inc. However, the amount paid via wire-transfer was only \$68,700.16. The difference, therefore, has been denied.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$85,735.19 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E10814-0001. The approved costs are for charges paid 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. The NPFC denies \$0.08.

**AMOUNT: \$85,735.19**

Claim Supervisor	
Date of Supervisor's review:	9/1/11
Supervisor Action:	Approved
Supervisor's Comments:	