

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E11519-0002  
Claimant : Western Wayne County Hazardous Materials Response Team  
Type of Claimant : Local Government  
Type of Claim : Removal Costs  
Claim Manager : XXXXXXXXXX  
Amount Requested : \$13,820.00

### FACTS:

1. **Oil Spill Incident:** The United States Environmental Protection Agency (USEPA) Region V reports<sup>1</sup> that, on April 28, 2011, at approximately 1900 hours local time, a caller reported a sheen on the Upper River Rouge to the Farmington Fire Department. The spill was discovered in a drainage retention pond near the intersection of Grand River and Orchard Lake Road in Farmington, MI. The drainage retention pond overflowed into the Upper Rouge River, a branch and tributary of the Rouge River, a navigable waterway of the US. Both the source of the sheen and Responsible Party (RP) are unknown.

2. **Description of removal actions performed:** On April 28, 2011, the Claimant, Western Wayne County Hazardous Response Materials Team (WWC HMRT), arrived on-scene. Both an Incident Action Plan (IAP) and a safety plan were developed. The IAP consisted of placing containment boom on both sides of the bridge on the Wayne County side (200 feet), with 170 feet of 8" absorbent boom on the inside (upstream). The safety plan consisted of having all members near the water to wear personal flotation devices (PFD) or be tied off by rope. 200 feet of containment boom and 170 feet of absorbent boom were placed in the creek to contain any migrating fuel released from the Farmington location.

At 2345 hours, the Claimant and others involved within the Unified Command (UC) assessed the scene and made recommendations to reinforce booms placed by Oakland County Hazmat team (OCH). Safety was performed by OCH, with WWC HMRT placing containment boom on both sides of the bridge under Nine Mile Rd. 100 feet of containment boom was placed in the creek and 120 feet of 5" absorbent boom (from OCH) was placed in the creek on the east side of 9 Mile Rd., south of Grand River.

At 0200 hours, Western Wayne County HMRT departed the scene.

3. **The Claim:** On July 27, 2011, Western Wayne County Hazardous Materials Response Team (WWC HMRT) submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$13,820.00 for the services provided from April 28 through April 29, 2011. This claim is for removal costs based on the rate schedule in place at the time services were provided.

<sup>1</sup> See US EPA POLREP # 1 for this incident, dated 4/29/2011.

This claim consists of copies of:

1. OSLTF Claim Form;
2. Farmington Department of Public Safety Report # 11-2192;
3. WWC HMRT Incident Report # 42811;
4. WWC HMRT Invoice # 339;
5. Letter from EPA Region V OSC [REDACTED];
6. US EPA Region V Oil Spill Analysis Report for FPN E11519;
7. US EPA POLREP # 1;
8. US EPA Extended Spill Summary for NRC Report # 974350;
9. WW HMRT Cost Recovery Sheet.

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 FOOSC, 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. FOSC coordination has been established via a memo from Ms [REDACTED] US EPA Region V, to the NPFC, dated June 13, 2011.<sup>2</sup> 33 U.S.C. § 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)(2)
4. No RP could be 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 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 National Contingency Plan (NCP) or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager hereby determines that the Claimant did in fact incur \$13,820.00 of uncompensated removal costs and that that amount is payable by the OSLTF as full

<sup>2</sup> See Memorandum from Ms [REDACTED] US EPA FOSC, to the NPFC, dated 6/13/2011.

compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E11519-0002. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from April 28 through April 29, 2011.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$13,820.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E11519-0002. 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: \$13,820.00**

Claim Supervisor: 

Date of Supervisor's review: *9/8/11*

Supervisor Action: *Determination approved*

Supervisor's Comments: