

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/16/2011
Claim Number	: G10001-0001
Claimant	: U.P. Environmental Services
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$31,642.50

FACTS:

Oil Spill Incident: On April 30, 2010 at approximately 12:30 p.m., U. P. Environmental Services (UPES) received a call from the United States Coast Guard (USCG) unit in Duluth, MN and was informed that some oil had been reported under a dock in Keweenaw waterway, a navigable waterway of the US. The USCG advised that they needed a response cleanup team as soon as possible on site. Following the call, the Claimant mobilized to the site and met with USCG personnel. No responsible party has been identified for this incident.

Description of removal activities: The Claimant responded on April 30, 2010. They began placing boom as confirmed in the USCG Polreps. The Claimant continued cleanup from April 30 through May 6, 2010 with the USCG and on May 6, 2010, oversight for the response transitioned to the United States Environmental Protection Agency Region 5.¹

From May 6, 2010 through May 24, 2010, the Claimant performed oil removal with absorbent materials, performed disposal of contaminated soils after being directed by the Federal On Scene Coordinator (FOSC) to remove contaminated soils from around the inside of the pier area.

The Claim: On March 9, 2011, UPES submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of the uncompensated removal costs in the total amount of \$31,642.50 for the services provided on the Keweenaw Waterway spill identified under Federal Project Number G10001, from April 30, 2010 through May 24, 2010. This claim is for removal costs based on the claimant's emergency response rate schedule in place at the time services were provided. It is important to note that the FOSC signed off on the Claimant dailies.

The claim consists of invoicing, dailies, disposal manifests, contracted rate schedule, photographs, subcontractor invoices, USCG Pollution Reports, affirmation and proof of payment for subcontractors, and a letter from the FOSC stating the response was consistent with the National Contingency Plan (NCP).

¹ See, Letter dated May 6, 2010 between USCG and USEPA.

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].

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 provided by USEPA Region 5, Mr. [REDACTED] via a letter dated March 8, 2011.
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 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 for removal costs.
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 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 "removable 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 and reasonable.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$31,642.50 of uncompensated removal costs and that the 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 # G10001-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of April 30, 2010, through May 24, 2010. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$31,642.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # G10001-0001. 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 present by the Claimant.

AMOUNT: \$31,642.50

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/16/11*

Supervisor Action: *Approved*

Supervisor's Comments: