

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|---------------------|
| Claim Number | : 912005-0001 |
| Claimant | : State of Kentucky |
| Type of Claimant | : State |
| Type of Claim | : Removal Costs |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$22,109.92 |

Facts:

1. **Oil Spill Incident:** On 29 June 2010, the Kentucky Department for Environmental Protection (KYDEP) responded to a request for assistance from Lawrence County Emergency Management due to a release from an abandoned oil well. Responders found that oil was releasing onto the ground and draining into a nearby pond. The pond allegedly discharged to an unnamed tributary that was .4 mile from Yatesville Lake. KYDEP maintained containment and performed clean-up until the Division of Oil & Gas could plug the well. The Division of Oil & Gas plugged the well and KYDEP ended the emergency response on July 30, 2010.

Investigation revealed an unregistered oil well approximately 150 yards from the [REDACTED] property released crude oil which traveled down a ditch and made it to a ¼ acre pond owned by [REDACTED]. A responsible party could not be identified. KYDEP hired Enviropro to handle response. KYDEP reported the incident to the National Response Center (NRC) on June 29, 2010 via report # 945960.

2. **Response Actions:** KYDEP hired Enviropro to handle the response. They sent 6 workers, 2 pickup trucks, 1 trailer with environmental supplies, 1 vac truck, 1 skid steer, and 1 dump truck. A barrel skimmer was deployed in the pond. Blowers were used in an attempt to blow the oil to the corner of the pond where the skimmer was located. The skid steer was used to excavate contaminated soil around the leaking oil well. A three foot berm was constructed around the well in an attempt to prevent additional oil from reaching the ditch. Booms were used to "rake" the pond in additional attempts to move the oil to the skimmer. Extremely thick vegetation at the end of the pond prevented workers from removing oil from that area. Booms were placed around the pond drain to prevent any oil from leaving the site overnight. No product was noted downstream of the drain.

Approximately 10 gallons of oil were released from the well overnight. The berm constructed the previous day prevented any additional oil from reaching the ditch. The berm was reinforced to approximately 4 ft and lined with plastic. An underflow dam was constructed in the affected ditch approximately 30 yards from the oil well to prevent further contamination in the event oil escaped the containment area.

A second underflow dam was constructed approximately 50 yards downstream of the pond. As of June 30, 2010, there was no sign that any product had made it past the pond. Additional cleanup measures continued on June 30, 2010. The skimmer was deployed and additional attempts to get any remaining oil to the skimmer were made with blowers and booms. Multiple attempts were made to remove the oil from the thick vegetation; however the workers were placing themselves in danger and that work stopped. All free product that could be reached was removed. Booms were placed across the pond to recover any product flushed from the vegetation. The Division of Oil & Gas indicated that the oil well would be put on a priority list to be capped. Property owner [REDACTED] was instructed to monitor the well area daily and

advise KYDEP if the containment area was compromised or became full. The underflow dams remain in place until the well is capped and all visible oil is flushed and recovered from the pond.

Claim & Claimant:

On 6 October 2011, the KYDEP (Claimant) presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$22,109.92 for the services provided on or about June 29, 2010 through July 30, 2010.

In support of this claim, the Claimant provided the following supporting documentation:

1. Cover letter, undated presenting claim for \$22,109.92;
2. KYDEP Environmental Response Branch Report, signed and dated by USEPA on 9/8/11;
3. June 29, 2010 Claimant email with NRC Report # 945960;
4. June 29, 2010 KYDEP Incident Investigation Report;
5. November 19, 2010 KYDEP Emergency Declaration Paperwork;
6. 28 color photos taken between June 29, 2010 – June 30, 2010;
7. July 16, 2010 KYDEP Compliance Evaluation Report;
8. 14 color photos taken at site on July 16, 2010 and August 5, 2010;
9. Enviropro invoice dated August 5, 2010;
10. Copy of three Google site maps;
11. August 18, 2010 letter from Enviropro summarizing the services they provided;
12. June 29, 2010 Enviropro Corrective Action Plan for response to the incident;
13. 12 color photos from Enviropro;
14. Copy fo lab analysis dated July 7, 2010;
15. Copy of disposal manifests;
16. Copy of vendor contract and rate schedule.

The NPFC denied the claim originally on December 8, 2011 because the Claimant failed to demonstrate that the incident subject of this claim posed a substantial threat of discharge into a navigable waterway of the US.

Request for Reconsideration:

On 6 January 2012, the Claimant sent an e-mail to the NPFC stating that he was providing additional photo documentation of the spill location. The Claimant asserted that this documentation was the best they could do to try to show that the oil would have traveled into the lake if actions had not been taken. On January 10, 2012, the NPFC sent an email to the Claimant confirming whether or not the email of January 6, 2012 with the photo documentation was in fact what the Claimant considered to be their request for reconsideration. The Claimant responded to the NPFC via email the same date and confirmed that he is requesting reconsideration and the photo documentation is intended to show the connections to the waterway and the Claimant stated they do not intend on submitting any other documentation.

On reconsideration, the Claimant presented the following:

1. One photograph asserts to show the “original spill location, where the abandoned well was plugged under supervision of the KY division of Oil and Gas Conservation”;
2. One photograph showing the “well was located adjacent to an unnamed tributary (UT) of the Right Fork of Little Blaine Creek, where oil spilled from the well and entered the UT”;
3. One photograph showing the “UT flows downstream to a privately owned pond”;
4. One photograph showing the “spillway pipe of private pond, discharging into the UT of the Right Fork of the Little Blaine Creek”;
5. One photograph of a “private pond approximately 30’ wide and 50’ long”;

6. One photograph of the "UT of the Right Fork of Little Blaine Creek flows parallel to Cedgap Road before crossing onto US Army Corps of Engineers property";
7. One photograph "taken from the dam of the pond facing upstream";
8. One photograph of the "UT Right Fork of Little Blaine Creek crosses onto the US Army Corps of Engineers property"; and
9. A photograph of the "UT of the right Fork of Little Blaine Creek crosses onto the US Army Corp of Engineers property"

The Claimant presents this evidence in an effort to demonstrate that there was a discharge of oil and that discharge of oil posed a substantial threat to an UT (un-named tributary); that this UT discharged into a navigable waterway (Right Fork of Little Blaine Creek, Blaine Creek and Yatesville Lake) of the United States. If the Claimant can establish that the Right Fork of Blaine Creek, Blaine Creek or Yatesville Lake are navigable waterways, then they can establish that they have met their burden under OPA and the Claims Regulations to be compensated for the costs incurred in responding to this incident.

NPFC Determination on Reconsideration:

The NPFC denies this claim upon reconsideration. The Claimant has failed to show that the un-named tributaries are in fact navigable waterways of the United States and that the discharge threatened or substantially threatened a navigable waterway of the United States. The photographs provided on reconsideration show that there was a discharge from the UT, to Little Blaine Creek, but that Little Blaine Creek is not a navigable waterway of the United States. The Claimant's submission shows that once a substance hits the Little Blaine Creek, it then discharges into "a private pond", then to Yatesville Lake although the Claimant fails to demonstrate that Yatesville Lake is navigable, or that it leads to another waterway that is in fact a navigable waterway of the US. Because the Claimant has failed to meet its burden under the Claims Regulations 33 CFR 136/105(a) and 33 CFR 136/105(e)(6) and under 33 U.S.C. 2701 (32), this claim is

Claim Supervisor: 

Date of Supervisor's review: 3/31/12

Supervisor Action: *Denial on reconsideration approved*