

CLAIM SUMMARY / DETERMINATION

Claim Number:	913019-0001
Claimant:	A Clean Environment
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$16,745.38

FACTS:

Oil Spill Incident: On June 11, 2012¹, the Oklahoma City Fire Department reported to the Storm Water Quality (SWQ) that a semi truck, operated by H. Gill Trucking², had punctured its saddle fuel tank. SWQ confirmed that diesel fuel had pooled in a nearby storm drain. SWQ provided the semi truck driver with a list of environmental contractors for environmental remediation. H. Gill Trucking contracted A Clean Environment (ACE).³

Description of Removal Activities for this Claimant: ACE utilized sorbent boom and pads to collect any oil products as the area was pressure washed. After washing the area twice, Spill Dry absorbent was placed to collect the remaining free liquids. After the removal of all free liquids, the Spill Dry was collected and stored and the area was washed again.

Prior to the arrival of ACE, a local business's automated irrigation system turned on causing run off that flowed through the contaminated area resulting in the diesel fuel contaminating the storm drainage areas. ACE was required to use sorbents and bring in fresh water and a vacuum truck to clean approximately a half mile section of the contaminated storm water system.

On June 12, 2012, ACE sent the diesel contaminated water to Muskogee Waste & Water Co., Inc.⁴ and on June 14, 2012, the solid waste material was sent to Southern Oklahoma Regional Disposal (SORD) Landfill.⁵

The area was determined to be cleaned by SWQ personnel on June 12, 2012.⁶

The Claim: On December 20, 2012, A Clean Environment, presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$16,745.38.⁷

¹ Oklahoma City Storm Water Quality Response Form.

² California tag #VP74189, USDOT #1917735, VIN 5N393260

³ Signed contract between A Clean Environment and H. Gill Trucking dated June 11, 2012.

⁴ Muskogee Waste & Water Co., Inc. Invoice #2625.

⁵ Southern Oklahoma Regional Disposal (SORD) Landfill Ticket #590667.

⁶ Oklahoma City Storm Water Quality Response Form.

⁷ NPFC Standard Claim Form dated November 13, 2012.

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 (NCP) 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 NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs.
4. In accordance with 33 U.S.C. § 2712(h)(2), the claim was submitted within the six year statute of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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.

A Clean Environment Inc. provided a billing invoice to H. Gill Trucking on June 14, 2012. On August 1, 2012, ACE left a voicemail requesting the status of payment. On August 16th a message was left with an employee for the owner to contact the Claimant. On August 24th ACE spoke with the owner and they report that he stated “they were going out of business and he couldn’t pay”. On August 27th a message

was left with the owner's secretary. On August 30th the phone number for H. Gill Trucking had been disconnected.

The Claimant is requesting \$300.00 for two chemical analyses⁸ of an oil sample taken during the incident. The testing was performed by Environmental Testing Inc. at a rate of \$50.00 per test.⁹ NPFC calculates the oil analysis to be \$100.00 plus 15% mark up in accordance with rate schedule. Therefore, the OPA compensable costs are \$115.00 and the remaining amount of \$185.00 is denied as unsubstantiated.

The Claimant is requesting \$108.50 for the purchase of 1,550 gallons of fresh water to be used for the oil removal process. The water was purchased from the City of Wilson at a rate of \$50.00 for the first one thousand gallons and \$0.05 for each additional gallon.¹⁰ NPFC calculates the purchase of 1550 gallons to be \$77.50 plus a 15% mark up in accordance with rate schedule. Therefore, the OPA compensable cost is \$89.13 and the remaining amount of \$19.37 is denied as unsubstantiated.

The Claimant is requesting \$2,475.00 for the disposal of 5,500 gallons of hydro-carbon contaminated water. The liquid waste was disposed of at Muskogee Waste & Water Company at a rate of \$0.20 per gallon¹¹. The Claimant invoiced this cost at \$0.45 per gallon to the RP. NPFC calculates the disposal of 5,500 gallons to be \$1,100.00 plus a 15% mark up in accordance with rate schedule. Therefore, the OPA compensable disposal costs are \$1,265.00 and the remaining amount of \$1,210.00 is denied as unsubstantiated.

The Claimant is requesting \$140.00 for the disposal of 1.82 tons of contaminated solid waste material. The solid waste was disposed of at the Southern Oklamhoma Regional Disposal (SORD) Landfill at a rate of \$24.50 per ton¹². The Claimant invoiced this cost at \$35.00 per drum, four total. NPFC calculates the disposal of 1.82 tons to be \$44.59 plus a 15% mark up in accordance with rate schedule. Therefore, the OPA compensable disposal cost is \$51.29 and the remaining amount of \$88.71 is denied as unsubstantiated.

The Claimant is requesting \$58.63 in sales taxes for the taxable consumables totaling \$1,234.25 (4.75%). Since the NPFC has recalculated the compensable cost for the oil analysis and the fresh water purchase, the compensable tax on these consumables is adjusted accordingly. Therefore, the OPA compensable sales tax is \$48.93 and the remaining amount of \$9.70 is denied as unsubstantiated.

All other costs were validated and the NPFC has determined those costs to be reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

⁸ 8021B BTEX analysis and TPH Diesel Range Organics analysis.

⁹ Environmental Testing Inc. invoice number 60530.

¹⁰ City of Wilson water and sewer rates, Amended Resolution No. 2009-03 (A-1).

¹¹ Muskogee Waste & Water Company invoice number 2625.

¹² Southern Oklamhoma Regional Disposal (SORD) Landfill ticket number 590667.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$15,232.60 of uncompensated removal costs and 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 #913019-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on June 11, 2012. 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 \$15,232.60 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #913019-0001. 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 Claimants.

AMOUNT: \$15,232.60

Claim Supervisor:

Date of Supervisor's review: *1/30/13*

Supervisor Action: *Approved*

Supervisor's Comments: