

CLAIM SUMMARY / DETERMINATION

Claim Number:	E15522-0005
Claimant:	Aqua Pennsylvania, Inc.
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$20,157.73

FACTS:

Oil Spill Incident: On July 24, 2015, an above ground storage tank owned and operated by Big Sky Energy, Inc. discharged approximately 1700 gallons of a brine/crude oil mixture into Big Run Creek, a tributary to the Shenango River, a navigable waterway of the U.S.¹ Big Sky Energy, Inc. is the responsible party (RP) for this discharge. Big Sky Energy, Inc., was issued a Notice of Federal Interest and Notice of Federal Assumption by the US EPA Region V Federal On-Scene Coordinator (FOSC) on July 24, 2015, but the RP refused to sign the written notice.² The RP was also issued a notice of source designation by the National Pollution Funds Center (NPFC).³

As noted above, Big Sky Energy, Inc., the owner of the above ground storage tank, is the RP for the incident. On January 7, 2016, the Claimant presented all invoices and documentation associated with this claim to the RP, via USPS in the total amount of \$20,157.73. Following receipt of this claim submission on June 1, 2017, the NPFC sent an RP Notification Letter to the RP.⁴ To date the RP has not paid the Claimant or responded to NPFC's Notification Letter.

This incident was reported to the National Response Center via Report # 1123722.⁵ The discharge threatened the water intake of Aqua Pennsylvania, Inc.'s water intake three miles away from the spill site.

Description of Removal Activities for this claimant: The Shenango River is the source of water for Aqua Pennsylvania, Inc.'s Shenango Valley Drinking Water Treatment Plant. USEPA contractors placed hard boom and absorbent boom to protect the water intakes. The hard boom was removed on August 31, 2015. The Claimant states that they were sampling and testing the water taken into their facility and added chemicals to treat the incoming water. Claimant also alleged that they were engaged in boom activities at their water intakes.

The Claimant and Claim: Aqua Pennsylvania, Inc. treats river water to provide drinking water for Sharon, Pennsylvania. On June 1, 2017, Aqua Pennsylvania, Inc. submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$20,157.73.⁶

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

¹ See EPA POLREP #5.

² See email from Mr ██████████, US EPA Region V FOOSC, to Ms ██████████, NPFC, dated 1/16/2016 found in NPFC Claim E15522-0001.

³ See NPFC Notice of Designation 7/30/2015. See also NPFC RP Notification Letter dated 1/13/16.

⁴ See NPFC RP Notification Letter dated June 1, 2017.

⁵ See National Response Center Report # 1123722.

⁶ See Claim Package received by the NPFC on June 1, 2017.

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 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. EPA FOSC, ██████████, oversaw the response for this incident.⁷;
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;

⁷ See EPA POLREPS 1 through 5.

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. 33 U.S.C. § 2712(h)(1);

B. Analysis:

NPFC CA reviewed the documentation provided by the Claimant. The review focused on the following: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 C.F.R. §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, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this claim are not OPA-compensable based on the documentation provided or lack thereof. The NPFC has determined that \$6,603.32 is supported by the record. The NPFC denies the following amounts as claimed:

Denied Items:

1. All labor costs, for a total of \$4,735.60. The documentation provided does not provide a description of work or start and stop times for [REDACTED]. The documentation does not provide contemporaneous records corroborating the claim that the work was oil-spill work for each employee. There are no records showing start and stop times for oil spill response work. The claimant stated that some work was for boom deployment, maintenance and removal, but there are no records showing this. Further, the EPA POLREPs state that EPA contractors deployed and removed the boom at the Claimant’s intake therefore should the claimant request reconsideration, it will need to provide evidence by the EPA FOSC that they were performing the same actions as captured for the EPA START contractor(s).
2. The claimed costs of \$1,560.72 for soda ash are denied because the claimant could not provide any records of the usage and as such, the costs remain unsubstantiated.⁸
3. \$2,844.48 of the carbon costs are denied because the claimant’s usage records only show 2,609 lbs being used. At the average price of \$0.48 per lb, the NPFC has determined that the reimbursable amount is \$1,252.32.
4. The \$179.52 for coveralls purchased from Fastenal is denied because the claimant did not show the number used, requiring replacement. The claimant’s statement that they were used when its employees removed oil-soaked boom is unsubstantiated. The records do not show the necessity of coveralls due to the spill response. EPA records show that EPA contractors worked with the boom at the claimant’s intake and as such, the claimant will need to obtain documentation for the USEPA FOSC to support the charges claimed.
5. The \$157.33 for the nozzle and gasket purchased from Bisnuss Inc. is denied because it has not been shown to be required solely for response to the spill. Further, the claimant stated that it is now corporate stock and assets.
6. The newspaper costs of \$2,967.69 are denied because newspaper articles and “thank you” advertising are not OPA compensable oil spill removal costs.
7. The \$106.00 purchase at Tractor Supply Co. is denied as it is an unknown purchase with no justification to support the charge.
8. The Fedex expenses of \$597.76 are denied because none of the charges were for shipping samples to Cardinal Labs. The costs were for packages shipped to other Aqua locations. There are no details of the contents shipped or any records showing that it was related to oil spill response.

⁸ See [REDACTED] email of July 10, 2017.

9. The \$405.31 for meals and a purchase at a grocery store are denied because the expenses are not justified for employees not on travel and the grocery purchase is an unknown purchase. These costs are unsupported by the record.

The total denied costs are \$13,554.41. Should the Claimant decide to request reconsideration of any denied amounts, it MUST provide objective evidence demonstrating that the costs were to prevent, mitigate or minimize the effects of the oil as directed by or coordinated with the Federal On-Scene Coordinator (FOOSC).

The NPFC hereby determines that the OSLTF will pay \$6,603.32 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E15522-0005. All costs offered are for charges incurred by the Claimant or for costs expended by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF.

AMOUNT: \$6,603.32


Claim Supervisor: 
Date of Supervisor's review: <i>7/25/17</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: