

CLAIM SUMMARY / DETERMINATION

Claim Number:	E16313-0001
Claimant:	Pennsylvania Department of Environmental Protection
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,782.02

FACTS:

Oil Spill Incident: On March 21, 2016, the Commonwealth of Pennsylvania, Department of Environmental Protection (PADEP), Oil & Gas Management Program (OGMP), received a complaint from a private citizen and responded to the incident location to contain the discharge of crude oil that was leaking from an oil well at an abandoned on-shore production facility in Cherrytree Township, PA. An estimated ten (10) barrels of crude oil discharged from the well, flowed overland, through a freshwater wooded wetland area, into an unnamed tributary and ultimately into Prather Creek, a navigable waterway of the United States. Of the estimated ten barrels, approximately half a barrel discharged into the creek.¹

The land owner, Ms. [REDACTED], (and thus the Responsible Party (RP)) expressed an inability to pay directly to EPA via a letter dated May 23, 2016.² The National Pollution Funds Center (NPFC) issued an RP Notification letter to Mrs. [REDACTED] dated March 1, 2018. To date, no response has been received by this office.

This incident was reported to the National Response Center via Report # 1143455.³

Description of Removal Activities for this claimant: The Claimant, PA DEP, responded to contain the oil at the spill site, along its path and into the creek. PA DEP personnel placed boom and padding to absorb the oily water, as well as built earthen dikes to contain the oil.

The EPA Region III Federal On-Scene Coordinator (FOSC), Mr. [REDACTED], was able to do a site assessment on April 20, 2016. It was at that time that the USEPA took control of the project, opened a Federal Project Number (FPN) E16313 in order to continue cleanup and removal activities.⁴

The Claimant and Claim: On February 28, 2018, PA DEP submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs in the original amount of \$1,782.02 for the services provided from March 21 through April 21, 2016. On March 27, 2018, PA DEP reduced its sum certain to \$1,599.65.⁵ This claim is for removal costs based on the rate schedule and invoicing in place at the time services were provided.

¹ See, USEPA POLREP #1 dated April 22, 2016, which covers the period of 3/21/16 through 4/22/16.

² See, Letter from Mrs. [REDACTED] to Mr. [REDACTED], USEPA OSC, dated 5/23/2016.

³ See, National Response Center Report #1143455.

⁴ See, USEPA POLREP #1 dated April 22, 2016 which covers the period of 3/21/16 through 4/22/16.

⁵ See, Email from Mr. [REDACTED], PADEP, to Ms. [REDACTED], NPFC, dated 3/27/2018 at 2:16pm.

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 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. OSC ██████████ of EPA Region 3, was the Federal On-Scene Coordinator (FOSC) for this incident, and he determined that the actions undertaken by the Claimant, PADEP, were consistent with the NCP for the payment of uncompensated removal costs 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);⁶
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has been identified. 33 U.S.C. § 2701(32).
5. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim and has determined which costs and actions taken by the Claimant are determined to be in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

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.

PA DEQ provided a removal cost claim⁷ to show the actions it performed were for OPA-compensable costs and that the work they performed mitigated the effects of the oil that was released from the well into Prather Creek. Additionally, the US EPA Region III FOSC confirmed the actions performed for this incident. Based upon the evidence in this claim submission for the actions undertaken by PA DEP, along with the EPA FOSC’s statement,

⁶ See, EPA Region III POLREP 1 for this incident.

⁷ The Claimant provided copies of both the 2014 New Pig Invoice # 21303964-00 and the 2017 New Pig Invoice # 22167488-00, which show that the PA DEP *reasonably* charged for boom and padding, as the materials are ordered in bulk by the State.

the Claims Manager hereby determines that the Claimant has incurred \$1,599.65 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by PA DEP and submitted to the NPFC under claim #E16313-0001.

The Claimant provided a copy of the state's rates, invoicing for boom and pads that were used during cleanup in order to demonstrate the rates charged were supported by the record. The NPFC hereby determines that the OSLTF will pay \$1,599.65 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E16313-0001. 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. Therefore, of the original claimed amount of \$1,782.02, \$182.37 in costs were not adjudicated, as the claim sum certain was reduced by the Claimant.⁸

AMOUNT: \$1,599.65

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/28/18*

Supervisor Action: *Approved*

Supervisor's Comments:

⁸ See, Email from Mr. Scott Lux, PA DEP, to Ms. Alyssa Lombardi, NPFC, dated 3/27/2018.