

CLAIM SUMMARY / DETERMINATION

Claim Number:	E17309-0002
Claimant:	PA Department of Environmental Protection
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$24,318.00

FACTS:

A. Oil Spill Incident: On May 27, 2017, heavy oil was observed discharging “from an outfall from the former J&L Aliquippa Works/Tin Mall facility.”¹ On the same evening, the Pennsylvania Fish and Boat Commission (PFBC) notified the Pennsylvania Department of Environmental Protection (PDEP) of a large volume of heavy oil reaching the Ohio River, a navigable waterway of the US. The area of the Ohio River impacted by the spill is located in Aliquippa, Beaver County, PA. The May 27, 2017, PA DEP – Emergency Response Incident Report indicates that the suspected outfall pipe contained a black coating. Analytical testing reports were generated from samples collected from the spill site by the PADEP Bureau of Laboratories. The samples confirmed the characteristics of #6 fuel oil.² Due to the hazards posed by the oil spill incident, PADEP hired the oil spill response organization, Weavertown Environmental Group to conduct removal actions.³

The United States Environmental Protection Agency (USEPA) originally issued a Notice of Federal Interest to the current property owner, Betters Real Estate Holdings, LP. By letter dated July 6, 2017, a representative from Wallace Pancher Group, [REDACTED], responded to the USEPA, stating:

At this time, it is unknown where the originating source of the oil is. In addition, there are off-site discharges (Particularly from SR15) that pass through the site and could likely be conveying off-site oils through the property. A previously identified discharge was noted coming from SR 51, as observed by Mr. [REDACTED] and Mr. [REDACTED], PADEP Water Quality Specialist earlier this year.

The origin of the spill is unknown. “EPA continues to work with the PADEP to determine the source of oil and identification of other responsible parties.”⁴

B. Description of removal actions performed: On May 28, 2017, Weavertown Environmental Group (Weavertown) responded to the oil spill incident, installing “approximately 300-feet of containment boom along the length of the contaminated shoreline and placed oil-only absorbent booms and pads within the containment area.”⁵

¹ See, Optional OSLTF Claim Form dated June 4, 2018.

² See, DEP Bureau of Laboratories Analytical Report for Water Quality Protection dated June 3, 2017.

³ See, page 2 of PA DEP – Emergency Response Incident Report dated May 27, 2017.

⁴ See, page 3 of USEPA Pollution/Situation Report dated October 3, 2017.

⁵ See, page 2 of PA DEP – Emergency Response Incident Report dated May 27, 2017.

In addition, Weavertown maintained the placed boom by utilizing personnel, utility vehicles, and protective equipment. Additionally, the oil spill removal organization provided proper disposal for all generated oiled materials and other non-hazardous waste.⁶ Weavertown responded to the spill site from May 28 through June 27, 2017. The Region 3 EPA Federal On-Scene Coordinator (FOSC), Ms. [REDACTED], provided FOSC oversight for this oil spill incident, including sight visits and oversight of removal actions. The FOSC concluded that Weavertown's response to the oil spill was "consistent with the National Contingency Plan (NCP)."⁷

CLAIM:

This claim for uncompensated removal costs was presented to the National Pollution Funds Center (NPFC) on June 14, 2018, by Mr. [REDACTED], on behalf of the Pennsylvania Department of Environmental Protection. The Claimant specifically seeks uncompensated removal costs in the amount of \$24,318.00 for costs associated with the oil removal actions conducted by Weavertown Environmental Group.

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].

⁶ See, Non-Hazardous Waste Manifest dated 6/21/2017.

⁷ See, email from [REDACTED], FOSC USEPA Region 3, to Mr. [REDACTED], PDEP, dated June 21, 2018.

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. Findings of Fact:

1. Ms. [REDACTED], US EPA Region 3, provided FOSC coordination 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(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. 33 U.S.C. § 2712(h)(1);
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 NCP and the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. NPFC 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.

Based on its review, the NPFC determined that the claimed costs are reimbursable from the Fund, and the actions were actions taken to minimize and mitigate the effects of the incident, and were reasonable and necessary and were at the direction of the FOSC. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreement in place at the time the services were rendered, and were determined by the FOSC to be consistent with the National Contingency Plan (NCP). The NPFC notes that upon adjudication of the underlying response costs as invoiced by the OSRO, some of the costs invoiced were lower than the standard rate schedule pricing based on verbal negotiated pricing.⁸

The NPFC therefore determines that the OSLTF will offer \$24,318.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E17309-0002. 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 Claimant.

AMOUNT: \$24,318.00

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *7/1/18*

Supervisor Action: *Approved*

Supervisor’s Comments:

⁸ See, email from Mr. [REDACTED], PDEP, to Mr. [REDACTED], USCG NPFC, dated June 27, 2018.