

CLAIM SUMMARY / DETERMINATION

Claim Number:	E16312-0001
Claimant:	Pennsylvania Department of Environmental Protection
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$39,650.06
Action Taken:	Offer in the amount of \$39,110.06

EXECUTIVE SUMMARY:

On February 24, 2016, the Commonwealth of Pennsylvania Department of Environmental Protection (PADEP or Claimant), Oil & Gas Management Program (OGMP), Crawford County Office of Emergency Services (OES), notified the National Response Center (NRC) of a discharge of an estimated 3-4 barrels (126-168 gallons) of crude oil that overflowed from a 210 barrel above ground storage tank (AST) into a secondary containment that posed a substantial threat of discharge into Conneaut Creek, a tributary of Lake Erie, a navigable waterway of the United States.¹ The source of the discharge was determined to be an on-shore production facility (Jackson Unit 1) comprised of an oil/gas production well and tank installation.² The Responsible Party (RP) and owner of the facility is identified as Mr. ██████████.³ PADEP presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$39,650.06 on January 3, 2019.⁴⁵ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$39,110.06 of the \$39,650.06 is compensable and offers this amount as full and final compensation of this claim.⁶

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On February 24, 2016, PADEP responded to the discharge of an estimated 3-4 barrels (126-168 gallons) of crude oil that overflowed from a 210 barrel above ground storage tank (AST) into a secondary containment that posed a substantial threat of discharge into Conneaut Creek, a tributary of Lake Erie, a navigable waterway of the United States.⁷

Responsible Party

¹ United States Environmental Protection Agency Region III PolRep #1, dated March 20, 2016 from ██████████, Page 1, Section 1.1.2.2 Description of Threat.

² United States Environmental Protection Agency Region III PolRep #1, dated March 20, 2016 from ██████████, Page 1, Section 1.1.2 Site Description.

³ United States Environmental Protection Agency Region III PolRep #1, dated March 20, 2016 from ██████████, Page 1, Section 1.1.2.2 Description of Threat.

⁴ PADEP claim submission..

⁵ 33 CFR 136.103(b)(3).

⁶ 33 CFR 136.115.

⁷ United States Environmental Protection Agency Region III PolRep #1, dated March 20, 2016 from ██████████, Page 1, Section 1.1.2.2 Description of Threat.

PADEP identified and contacted the landowner of the property on which the on-shore production facility is located. USEPA POLREP #1 states that the landowner, who lives alone, is elderly and without resources to respond to the incident. PADEP also contacted the owner/operator of the on-shore production facility who has been identified as Mr. [REDACTED]. A "LEGAL NOTICE TO SUSPECTED DISCHARGER" was sent to Mr. [REDACTED] on March 19, 2016, care of his daughter, Ms. [REDACTED]. Ms. [REDACTED] responded to the notice advising that her father was also elderly and unable to pay for remediation activities.⁸

On January 31, 2019, upon receipt of the PADEP removal cost claim, the NPFC issued a Responsible Party Notification Letter to Mr. [REDACTED].⁹ On February 4, 2019, Ms. [REDACTED], RP's daughter, signed the certified mailer green card acknowledging receipt of the RP Notification letter. The NPFC has not received a response from the RP.¹⁰

Recovery Operations:

PADEP and Summit Township Volunteer Fire Department responded to contain the discharge of crude oil from the on-shore production facility (Jackson Unit 1). They laid hay bales and sorbent boom between the spill source location and the S. Townline Road ditch; sorbent boom was also deployed in the S. Townline Road ditch, in the Ruheville Ditch, and lastly, in Conneaut Creek.¹¹ It is important to note that the day the discharge was discovered, the weather was rainy increasing the threat of discharge into the nearby Creek.

PADEP met with the Federal On Scene Coordinator (FOSC), Mr. [REDACTED], of the United States Environmental Protection Agency (USEPA) Region III. Upon meeting, the FOSC agreed that PADEP would retain the lead agency responsibilities for this incident.¹² PADEP, in its capacity as the State On Scene Coordinator (SOSC), began response and oversight activities on February 24, 2016 and remained on scene until May 16, 2016 when the response was officially completed.¹³

Due to the RP's inability to take the required response actions to mitigate the incident, PADEP hired two contractors to perform response, disposal, and well plugging activities in order to remove the contamination and mitigate the continuing substantial threat of discharge.¹⁴ One-hundred (100) barrels of crude oil were recovered from the AST and recycled.¹⁵ One to four barrels of crude oil contaminated soil and debris were recovered and disposed of by the disposal

⁸ United States Environmental Protection Agency Region III PolRep #2, dated July 19, 2017 from [REDACTED], Page 3, Section 2.1.3 Enforcement Activities, Identity of Potential Responsible Parties.

⁹ NPFC RP Notification Letter to Mr. [REDACTED] dated January 31, 2019.

¹⁰ Certified mailer green card received February 12, 2019 for NPFC RP Notification letter dated January 31, 2019.

¹¹ United States Environmental Protection Agency Region III PolRep #2, dated July 19, 2017 from [REDACTED], Page 2, Section 2.1.2 Response Actions to Date.

¹² United States Environmental Protection Agency Region III PolRep #2, dated July 19, 2017 from [REDACTED], Page 2, Section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results.

¹³ PADEP Pollution Incident Daily Resource Report dailies from February 24, 2016 through May 16, 2016; PADEP claim submission dated January 3, 2019.

¹⁴ ECS&R quote to PADEP dated March 31, 2016 for [REDACTED] and Howard Drilling LLC quote to PADEP dated July 27, 2017.

¹⁵ United States Environmental Protection Agency Region III PolRep #2, dated July 19, 2017 from [REDACTED], Page 3, Section 2.1.4 Progress Metrics.

contractor, Environmental Coordination Services & Recycling (ECS&R). Howard Drilling LLC was hired by PADEP to plug the well.¹⁶ Howard Drilling performed well plugging actions from July 31, 2016 through August 7, 2016.¹⁷

II. CLAIMANT

The National Pollution Funds Center (NPFC) received a claim for uncompensated removal costs from PADEP for a sum certain amount of \$39,650.06 on January 3, 2019.¹⁸ The Claimant provided an Optional OSLTF Claim Form; Voucher Period 2/24/16 – 9/13/2017 showing a Voucher Total Expense of \$39,650.06. The claim submission consisted of PADEP employee daily sheets for \$2,229.97 (intermittently dated from February 24, 2016 to May 16, 2016); PADEP equipment costs sheets (for \$110.57 and \$29.52 respectively); ECS&R invoice # 161850 in the amount of \$4,740.00; June 14, 2016 receipt of \$4,740.00 payment to ECS&R; Howard Drilling LLC \$32,000.00 invoice to PADEP; Proof of \$32,000.00 outgoing payment from PADEP to Howard Drilling LLC; Commonwealth of Pennsylvania pay schedule (effective July 1, 2014).

On April 23, 2019, the Claimant sent an email to the NPFC amending its Voucher Period 2/24/16 – 9/13/2017, showing a Voucher Total Expense of \$40,190.06, after revising the Howard Drilling amount from \$32,000.00 to \$32,540.00, but it is important to note that when adding the claimed expenses of \$2,229.97 for PADEP personnel, \$140.09 for PADEP equipment, \$4,740.00 for ECS&R invoicing, and \$32,540.00 for Howard Drilling, the total equates to \$39,650.06 and not \$40,190.06.¹⁹ Since the Claimant never officially requested a sum certain change in writing to the revised voucher total of \$40,190.06, the NPFC is adjudicating the claim using the original sum certain amount of \$39,650.06. It is also important to note that the Claimant provided proof of payment to Howard Drilling in the amount of \$32,000.00 and not \$32,540.00. The Claimant did provide a copy of a payment to Howard Drilling in the amount of \$40.00 but the document shows it is associated with Longs #2 well site and not the Jackson Unit well therefore that document is not associated with the incident subject of this claim submission.²⁰

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²¹ As a result, 5 U.S.C. § 555 (e) requires the NPFC to provide a brief statement explaining its determinations. This determination is issued to satisfy that requirement for the Claimant's claim against the OSLTF.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining

¹⁶ ECS&R quote to PADEP dated March 31, 2016 and Howard Drilling LLC quote to PADEP dated July 27, 2017.

¹⁷ Howard Drilling daily resource reports from July 31, 2016 through August 7, 2016.

¹⁸ Optional OSLTF Claim Form signed by [REDACTED] and dated January 3, 2019.

¹⁹ April 23, 2019 email from PADEP to NPFC with claim voucher breakdown of costs.

²⁰ PADEP payment summary to Howard Drilling with a payment date of 9/11/17.

²¹ 33 CFR Part 136.

the facts of the claim.²² The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.²³ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and finds facts and makes its determination based on the preponderance of the credible evidence.

IV. DISCUSSION:

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.²⁴ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁵ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.²⁶

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.²⁷

Upon initial review of the claim submission, the NPFC made a request for additional information to the Claimant as described below.²⁸

1. Requested a detailed description of how far the oil traveled when it breached the secondary containment, and also its location when eventually contained and cleaned up, and a detailed description of the nexus from the overflowed tanks to the Conneaut Creek;
2. Requested a detailed disposal explanation and reasoning as to why the oil disposal method was chosen;
3. Requested a rate/pricing schedule, daily field logs, descriptions of actions undertaken, and disposal manifests from ECS&R, and the rate/pricing schedule, invoicing, daily field logs, and descriptions and reasoning of actions undertaken by Howard Drilling;

²² See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), “[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views.” citing *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010).

²³ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

²⁴ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁵ 33 CFR Part 136.

²⁶ 33 CFR 136.105.

²⁷ 33 CFR 136.203; 33 CFR 136.205.

²⁸ Email from (b) (6) to (b) (6) dated February 14, 2019.

4. Requested a detailed description of work performed by PADEP personnel, and also specific details about the location and placement of the booms from PADEP personnel;

In response to the NPFC's request for additional information, the Claimant provided the following information:²⁹

1. Several attachments, to include a Microsoft Word document noting Linesville, PA weather information from February 24, 2016 to April 8, 2016; EPA PolRep #1; Spill Summary Report for NRC Report #1141288; ECS&R rating/cost schedule;
- (2) ECS&R Bills of Lading dated April 8, 2016 w/ Driver Daily Summary, ECS&R Job Safety Analysis, April 8, 2016 Non-hazardous Waste Manifest, April 8, 2016 Carbon Limestone Landfill disposal ticket # 1129420; ECS&R Bill of Lading dated April 11, 2016 w/ Driver Daily Summary and April 11, 2016 Non-hazardous Waste Manifest; Revised Pollution Incident Daily Reports; Photographs of the scene and a photograph showing boom placement in response to the spill.
2. The Claimant answered the questions as such:
 - (a) Provided a description of the spill, how far it traveled from the initial breach of the secondary containment, and how it was determined to have posed a substantial threat to the Conneaut Creek (provided to Claimant by [REDACTED] of the EPA region 3).
 - (b) That the oil disposal method wasn't in-situ biodegradation, and that 9.96 tons of contaminated material was transported to a disposal facility.
 - (c) A description of the reasoning for the plugging of the well.

On April 3, 2019, the NPFC sent a second request for additional information to the Claimant asking for the following:³⁰

1. Requested he contact ECS&R for a copy of their published 2016 rate/pricing schedule.
2. Howard Drilling's published 2016 rate/pricing schedule, their invoicing, daily field logs, and descriptions of actions undertaken in response to spill incident.

The Claimant responded by providing Pollution Incident Daily Resource Reports for Howard Drilling, LLC, dated July 31, 2017, August 1, 2017, August 2, 2017 and August 7, 2017; an amended Voucher Period 2/24/16 – 9/13/2017, showing a Voucher Total Expense of \$40,190.06 although the Claimant did not actually request a revised sum certain.³¹

On April 24, 2019, the Claimant sent another response that included a copy of the March 31, 2016 ECS&R bid paperwork in which PA DEP was quoted a total projected cost estimate of \$4,945.00 for proper compliance and disposal of tank waste. Also submitted was a copy of the

²⁹ Email from [REDACTED] to [REDACTED] dated March 13, 2019 with attachments.

³⁰ Email from [REDACTED] to [REDACTED] dated April 3, 2019.

³¹ Email from [REDACTED] to [REDACTED], dated April 23, 2019

July 27, 2017 Howard Drilling bid paperwork in which PA DEP was quoted a total projected cost estimate of \$32,000.00 for plugging the well and its associated cleanup.³²

The evidence demonstrates that ECS&R submitted a winning bid and was hired to dispose of the contaminated material that was collected throughout the response, and also that Howard Drilling, LLC submitted a winning bid and was hired to plug the well to prevent any future accidental discharges. The FOOSC noted in its PolRep #2 that PADEP met with contractors to obtain cost estimates for these particular jobs.³³

The NPFC analyzed each of these factors and determined the majority of the costs incurred by PADEP and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC has determined that the costs invoiced were billed in accordance with the quoted rates between the parties. All costs approved for payment were verified as being invoiced at the appropriate pricing, including but not limited to, all third party or out of pocket expenses. All approved costs were supported by adequate documentation which included invoices/quotes and proofs of payment.

The amount of compensable costs is \$39,110.06, while \$540.00 was deemed non-compensable for the following reasons:

1. The Howard Drilling LLC quote dated July 27, 2017 was for \$32,000.00 to perform well plugging actions on the Jackson Unit 1. Proof of payment from PADEP was provided in the amount of \$32,000.00 with a system pay date of August 23, 2017.³⁴ Based on this information, when PADEP sent an email to the NPFC dated April 23, 2019 revising the amount for Howard Drilling to \$32,540.00, the NPFC denies the additional amount of \$540.00 because (1) it is not in accordance with the written quote and (2) PADEP did not provide the NPFC with proof of payment for the additional amount of \$540.00. PADEP did provide a copy of system payment for Howard Drilling in the amount of \$40.00 but that system printout shows it is for the Longs 2 well site and not the Jackson Unit 1 well site. As a result, the total PADEP denied costs are \$540.00.

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Claimant's request for uncompensated removal costs is approved in the amount of \$39,110.06.

Because this determination is a settlement offer³⁵, the claimant has 60 days in which to accept; the failure to do so automatically voids the offer.³⁶ The NPFC reserves the right to revoke

³² Email from [REDACTED] to [REDACTED], dated April 24, 2019

³³ United States Environmental Protection Agency Region III PolRep #2, dated July 19, 2017 from [REDACTED], Page 2, Section 1.1.3 Preliminary Removal Assessment/Removal Site Inspection Results.

³⁴ PADEP proof of payment system printout for Howard Drilling LLC dated August 23, 2017.

³⁵ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover

a settlement offer at any time prior to acceptance.³⁷ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/14/19*

Supervisor Action: *Approved*

costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR §136.115(a).

³⁶ 33 CFR §136.115(b).

³⁷ *Id.*