

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/8/2009
Claim Number	: 909008-001
Claimant	: State of Maryland
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	† [REDACTED]
Amount Requested	: \$54,509.68

FACTS:

Oil Spill Incident: On May 20, 2008, the Claimant, State of Maryland, (MDE-ERD) received a report regarding a home heating oil spill at the intersection of Middleburg Road and Crouse Mill Road in Middleburg, Carroll County, Maryland. MDE-ERD Unit 5603 responded in concert with Carroll County Fire Department.

Upon arrival MDE 5603 was informed by the Fire Department that a leaking filter from a home heating oil tank released approximately 260-gallons of home heating oil. The oil spill was traced from the basement sump pump, through a storm drain, under Middleburg Road, across a farm field, through the woods into Little Pipe Creek which is a tributary to the Monocacy River then to the Potomac River.

The Home Owner and Responsible Party, Ms. [REDACTED], was unable to afford the clean-up contractor therefore, MDE-ERD hired AEG Environmental (AEG) to respond and mitigate the spill.

The National Response Center was notified via report# 886040.

Description of Removal Activities: AEG responded to the site and conducted remediation and restoration of the home owner's property. Containment boom was placed in the field and wooded area. An estimated total of 86.52 tons of soil excavated then taken to Modern Landfill for proper disposal and an estimated total of 850-gallons of oily water was taken to AEG Environmental for proper disposal as well.

The Claim: On October 21, 2008, the MDE-ERD submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated State and removal costs in the amount of \$54,509.68 for the response efforts they provided regarding the home heating oil spill on May 20, 2008.

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. FOSC was provided by Mr. [REDACTED], U.S. EPA; Region III.
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 on time.
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 the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Determined Amount:

The NPFC determines that the OSLTF will pay \$54,509.68 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909008-001

AMOUNT: \$54,509.68

Claim Supervisor: [REDACTED]

Date of Supervisor’s review:

Supervisor Action:

Supervisor’s Comments: