

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/8/2008
Claim Number	: E08430-002
Claimant	: Robert and Debra Kelly
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Claim Manager	: [REDACTED]
Amount Requested	: \$5,563.22

**FACTS:**

Oil Spill Incident:

On March 18, 2008, the Parten #5 oil well operated by Walden Resources LLC blew out during drilling operations near Oliver Springs, TN. Oil overflowed and ran down a drainage ditch through a culvert toward an unnamed tributary of Wright Creek, which flows into Indian Creek. It is unclear whether the oil actually discharged to a navigable water of the United States. The gas release from the well was ignited and the blowout caught fire. Nearby property was damaged or destroyed by the fire and residents were evacuated. The fire was extinguished and the well shut-in on March 25, 2008. The U.S. EPA took control of the response effort on March 26, 2008.

Claimant:

The claimants are local residents who raise livestock near the well site.

Claim:

The claimants seek reimbursement of \$5,563.22 for hay, grain, gravel, and the labor to build a fence on their property because the creek that runs through it got oil in it. The claimants allege that the costs were to keep their livestock away from the oil in the creek.

**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.

"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”.

Compensable damage types are natural resource damages, damage to real or personal property, loss of subsistence use of natural resources, lost government revenues, lost profits or impairment of earning capacity, and increased costs of public services. See 33 U.S.C. 2702(b)(2).

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].

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 FOOSC to be consistent with the National Contingency Plan or were directed by the FOOSC.”

**DETERMINATION OF LOSS:**

The claimants provided the Optional OSLTF Claim Form and a handwritten itemization of the claimed items. The claimants provided no actual evidence of costs or proof that they paid these costs, and provided no evidence that they actually suffered any damages resulting from the discharge of oil into a navigable water of the United States. They provided no direct evidence that their property was affected by anything. The NPFC requested documentation on two separate occasions, August 14, 2008 and October 23, 2008, but the claimants’ have not replied to date. The claimants have not diligently pursued this claim, and have not met their burden of proving damages, causation of damages or the value of those damages. Therefore, the NPFC has no choice but to deny the claim.

**AMOUNT: \$0.00**

**DETERMINATION:**

The claimants have not met their burden of proving that they suffered damages, that their alleged damages were the result of a discharge of oil into a navigable water of the U.S., or that they had any compensable costs. The claim is denied.

Claim Supervisor: The [REDACTED]

Date of Supervisor's review: 12/9/08

Supervisor Action: DENIAL APPROVED

Supervisor's Comments: