

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/11/2008
Claim Number	: E08430-003
Claimant	: Betty Russell
Type of Claimant	: Private (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$1,650.00

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 claimant is a local resident who lives about 325 feet from the well site.

Claim:

The claimant seeks reimbursement for \$1,650.00 for removal costs. It is not clear what the entire claimed cost covers, but it seems to include cleaning the claimant's houses, carport, driveway and other parts of her real property.

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:

The claimant seeks reimbursement for the costs of cleaning her residential real property. The claimant provided photographs of the fire and her property with incident response vehicles on it. Based on the claimant’s submission, the costs claimed are actually costs related to the fire and

explosion of the well and not compensable under OPA. The claimant has not shown that cleaning her home and property was necessary and reasonable to prevent, minimize or mitigate the effects of the discharge of oil to a navigable water of the United States. Additionally, the NPFC obtained information from the RP's insurer, Bituminous Insurance, which states that the claimant was paid for explosion and fire damage to her property. For these reasons, the claim is not compensable and the claimant cannot be reimbursed for her costs.

AMOUNT: \$0.00

DETERMINATION:

The claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: