

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/11/2008
Claim Number	: E08430-004
Claimant	: Betty Russell
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Claim Manager	: ██████████
Amount Requested	: \$3,068.00

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 \$3,068.00 for damages to her real property including her pool and yard, and time off of work.

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.

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.

DETERMINATION OF LOSS:

The claimant seeks reimbursement for costs of cleaning and repairing her pool and landscaping. The claimant provided photographs of the fire and her property and she provided receipts for pool cleaning and repair, pool water replacement, house cleaning and landscape repair. The claimant also asked for reimbursement for pay while she was off work. She provided no evidence of her lost pay. The claimant provided no evidence that her damages resulted from the discharge of oil into a navigable water of the United States. There is no evidence that the claimant was affected by anything other than the explosion and fire at the well site. Her damages occurred prior to any oil reaching any waterway. Therefore, any of the claimants' losses were a result of a well fire, or other cause other than oil in the water, and are thus not compensable. Additionally, the NPFC obtained information from the Federal On-Scene Coordinator, who states that he is arranging to repair her property in the early spring, thereby rendering the claim for damage to her property moot.

AMOUNT: \$0.00

DETERMINATION:

The claimant has not met her burden of proving that she suffered damages that were the result of a discharge of oil into a navigable water of the U.S. Her damages occurred from the explosion and fire from the well, and the response activity relating to the blow out, explosion and fire, not a response to a discharge of oil to a navigable water of the U.S. The claim is denied.

Claim Supervisor: ~~Thomas D. Morrison~~

Date of Supervisor's review: 12/16/00

Supervisor Action: 1-2-01

Supervisor's Comments: