

CLAIM SUMMARY / DETERMINATION FORM

Date	: 7/1/2010
Claim Number	: E09312-001
Claimant	: Charles Gayson Excavation & Environmental Services
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$14,060.00

FACTS:

- 1. *Oil Spill Incident:*** On Tuesday, August 11, 2009, a resident reported a surface-water sheen on Bel Air Lake in Liberty Township, Susquehanna County in Montrose, Pennsylvania. The Susquehanna County Emergency Management (SCEM) and the Pennsylvania Department of Environmental Protection (PADEP) responded to the incident. It was determined that the spill originated at the residence of ██████████, the Responsible Party (RP), on ██████████ Montrose, Pennsylvania. The spill was caused when a valve on the 1,000 gallon capacity underground storage tank (UST), being used to store heating oil, had spilled the oil while Lindsey Oil Company (Lindsey Oil), a contractor, was filling the tank. Oil was also released on the siding of the house, as well as on the surface soils around the valve. PADEP reported to the National Response Center that weathered oil was found in Bel Air Lake and in the basement sumps of residences.¹ Bel Air Lake is a tributary of Snake Creek which leads to the Susquehanna River, a navigable waterway of the United States. Lindsey Oil was called to empty out the UST that night. The Susquehanna Fire Department called Charles Grayson Excavation & Environmental Services (CGE) for cleanup of the fuel oil in Bel-Aire Lake and the Susquehanna River.
- 2. *Description of Removal Activities for this Claim:*** On August 11, 2009, at 7:34 pm, CGE arrived on-scene and worked to contain the oil sheen with skirted harbor boom, absorbent boom, and shallow boom absorbent pads to contain the fuel oil. A site supervisor, a site foreman, two laborers, two utility service trucks, and a van body supply truck were deployed. On Wednesday, August 12, 2009, oil was discovered in the sump pump in the basement of a neighboring residence. CGE did the clean-up for that, as well. The United States Environmental Protection Agency (USEPA) Federal On-Scene Coordinator (FOSC) ██████████ took over the response on Friday, August 14, 2009.
- 3. *The Claim:*** On April 7, 2010, CGE submitted a removal cost claim to the NPFC, for reimbursement of their uncompensated removal costs in the amount of \$14,060.00.

The claim consists of the CGE invoice for work done from August 11, 2009 to August 13, 2009; signed certified mail receipt by RP; March 25, 2010 FOSC Coordination Letter from FOSC ██████████; and the USEPA Region III Pollution Report #1.

On April 15, 2010 an RP Notification Letter was mailed to ██████████ from the NPFC advising that CGE had submitted a claim which identified him, the owner of the residence, as the RP for the oil spill incident. To date, no response has been received.

¹ See NRC Report # 914710.

The NPFC's review of the actual cost invoice and related documents focused on: (1) whether the actions taken were compensable "disposal actions" under OPA and the claims regulations at 33 CFR 136 (e.g. actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken are determined to be consistent with the National Contingency Plan (NCP) or directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

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 coordination was provided by ██████████ of the United States Environmental Protection Agency (EPA) Region – III on March 25, 2010.
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.
1. 4. In accordance with 33 CFR § 136.101(a)(2), 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.
6. The review of the actual costs, invoices and dailies focused on the evaluation of whether such costs qualify as “Compensation Allowable” under 33 CFR§ 136.205.

B. Analysis:

The NPFC Claims Manager has reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager also received information from FOSC Casillas regarding the scope of work performed by CGE and reviewed additional documentation retrieved from Coast Guard databases which substantiates the response actions taken.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$14,060.00 of uncompensated removal costs and that that amount is payable by the

OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# E09312-001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on August 11, 2009.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$14,060.00 as full compensation for OPA compensable reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number E09312-001.

AMOUNT: \$14,060.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *7/14/10*

Supervisor Action: *Approved*

Supervisor's Comments: