CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915022-0001
Claimant	: A Clean Environment
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	[redacted]
Amount Requested	: $29,361.59

FACTS:

1. ***Oil Spill Incident:*** On May 20, 2011, A Clean Environment (ACE) received a phone call from CRD Investments (CRD) that approximately 40 barrels of oil was released from an oil treater located just off County Road 290 in Loco, OK. The oil travelled along the road, through a tin horn and culminated where the creek met the pasture.

   CRD (the owner of the oil treater and the potential Responsible Party (RP)) attempted to clean the contaminated area. It dug a bail hole at the end of the spill area, flushing it with approximately 1300 barrels of water. The area between the tin horn and the bail hole was also backhoed to remove oiled vegetation. However, because of a rain event at the site, the leftover oil passed the bail hole and moved further north than the original spill.

   During cleanup efforts, another leak was found at the pump jack west of the oil treater. The oil at this location was traced to two different areas going west of the pump towards a pond.

   This incident was reported to and under the advisement of a representative from the Oklahoma Corporation Commission but it does not appear it was reported to the National Response Center (NRC).

2. ***Description of removal actions performed:***

   ACE was contracted by the RP to remove and dispose of the oil and the affected soil/vegetation. From May 2-27, 2011, ACE performed the following work: built four underflow dams; placed particulates, sorbent pads and containment boom along both the road ditch and in the pond; excavated, backhoed and bulldozed soil to remove product; and used a vacuum truck to remove the standing pockets of oil from the two spill sites. Approximately 10 roll-off boxes of soil, absorbents and oil-contaminated debris were disposed of at the SORD Landfill.

3. ***The Claim:*** On January 29, 2015, ACE submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of $29,361.59 for the services provided from May 5 through July 30, 2010. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

   The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

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. There was no FOSC coordination for this incident as required. 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23); however, it did not pose a substantial threat to navigable waters.
3. A Responsible Party was determined and subsequently notified by the NPFC. However, no response has been received from the RP to date. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
5. 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.

B. *Analysis:*

NPFC CA reviewed the actual cost invoices and dailies to confirm whether or not 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, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager was unable to validate that the costs that were incurred, were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP) as determined by the FOSC.

ACE claims a total of $29,361.59 in uncompensated removal costs. However, there is Federal On Scene Coordination (FOSC) issues with this claim. First, while it could be argued that there was a discharge of oil, it is not clear that this discharge posed a SUBSTANTIAL threat to a navigable waterway as determined by the FOSC. While the RP did notify the Oklahoma Commerce Commission, no FOSC coordination has been provided by either Coast Guard (via the NRC) or USEPA for this spill. Additionally, the water bodies affected by this oil spill do not appear to be navigable waterways. While it appears through documentation that the oil entered the water, ACE states that the mediums affected were a pond and a creek that ended in a pasture.

Based upon the preponderance of the evidence, this claim is denied because (1) the response has not been coordinated with a Federal-On Scene Coordinator (FOSC) in accordance with 33 CFR 136.203 and (2) no FOSC has determined that the actions undertaken by the Claimant were deemed consistent with the National Contingency Plan in accordance with 33 CFR 136.205 nor were the actions by the Claimant directed by the FOSC and (3) the Claimant has failed to meet its burden to demonstrate that a substantial threat of discharge oil into or upon a navigable waterway existed. Should ACE choose to request reconsideration of its claim, and if, in fact, one or both of these are navigable waterways, ACE would need to provide the latitude and longitude for the spill location. ACE would need to coordinate its response efforts and receive a written statement from Region 6 EPA FOSC.

Based on the foregoing, this claim is denied.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay $0.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915022-0001.

AMOUNT: $0.00

Claim Supervisor: [redacted]

Date of Supervisor's review: *2/24/15*

Supervisor Action: ***Denial approved***

Supervisor's Comments: