

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915028-0001
Claimant	: A Clean Environment
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$130,642.98

**FACTS:**

***1. Oil Spill Incident:*** On June 25, 2014, A Clean Environment (ACE) received a phone call from Mr. [REDACTED] of Revilo Exploration, LLC. to respond to a crude oil spill at a well site Rodriguez # 19-1 (18375 Dripping Springs Road) in Okmulgee, OK. A tank battery overflowed and the crude oil flowed down an adjacent slope and into a drainage swale leading into the south end of Okmulgee Lake via a box culvert under Dripping Springs Lake Road. Evidence presented shows that the oil made it to the drainage swale but deployment of containment boom prevented the oil from actually entering the lake.<sup>1</sup> The NPFC has confirmed that the Okmulgee Lake is considered a navigable waterway as reported by the Federal On Scene Coordinator (FOSC), Mr. [REDACTED], of the United States Environmental Protection Agency (USEPA). Approximately two barrels of oil was discharged. Mr. [REDACTED] wanted oil containment boom placed across the lake in addition to the sorbent boom that had already been installed by the City of Okmulgee personnel.

This incident had been reported to the National Response Center (NRC) via Report # 1086838.

Revilo Exploration, LLC was designated as the named Responsible Party (RP). There was initial contact between ACE and its insurance company, but it eventually stopped responding to emails and phone calls.

***Description of removal actions performed:*** ACE was hired by the RP to remove and dispose of the oil and affected soil/vegetation.

On June 25, 2014, ACE personnel placed two separate 200' lengths of boom with 12" skirt at two locations below the box culvert. One length was placed with the sorbent boom and the second was placed closer to the box culvert where the creek entered the south end of the lake.

On June 26, 2014, ACE personnel removed vegetation from the slope with chain saws and weed eaters and placed it in an ACE watertight rolloff container. A 6-mil poly liner was inserted before soils and vegetation were loaded. After loading, the rolloff was tarped. Wash down pumps were used to push the crude oil out of the rocky surface and down to the swale, where it was captured in sorbent boom and pads. ACE personnel began clearing the thick vegetation in the swale, and laying down sorbents in the pools of crude oil. Stained

<sup>1</sup> See A Clean Environment Spill Response Report, page 3 of 4.

<sup>2</sup> See email dated March 24, 2015 from Mr. [REDACTED] to Ms. [REDACTED], Claimant.

vegetation was placed in poly buckets or 3-mil bags and transported by ATVs to the rolloff container. Seven gallons of AM-101 microbes<sup>3</sup> were applied to the swale, starting at the wash down pumps on the slope. The two containment booms were inspected by boat and an ACE security guard stayed on site throughout the evening.

On June 27, 2014, cleanup of the swale continued, which included clearing oil-contaminated vegetation. ACE personnel also started cleanup of the pooled crude oil contained by the sorbent boom at the box culvert inlet. A vac truck was used to remove approximately 504 gallons of oil and water. Additionally, a two man ACE crew utilized one of the boats to start cleanup of oil and vegetation from the containment boom to the box culvert outlet. Stained vegetation at the water's edge was hand pulled and placed in 6-mil poly bags. The banks were cleaned with wash down pumps. The floating oil emulsion from the bank area was consolidated using floating boom and then removed with dip nets and sorbent pads. The two containment booms were inspected by boat and then ACE security guard stayed on site throughout the evening.

On June 28, 2014, cleanup of the swale continued and a dozer, operated by an outside contractor, cleared the vegetation along the perimeter fence to allow ATV access to the swale at midpoint. Cleanup continued on the water downstream of the box culvert. By the end of the day, the response performed at the drainage swale was complete with the exception of the northern track west of the split flow. Work continued on the water and shoreline downstream of the box culvert. ACE security remained on site throughout the evening.

On June 29, 2014, work concentrated on vegetation removal and gross contamination cleanup of the northern track of the split flow, ending at the box culvert. It is important to note that the oil spill incident flow path split into two separate tracks along a vegetative slope area. An estimated 80% of the stained vegetation was cleared and bagged and the pooled oil was removed. The RP determined that ACE would cease its last day of removal actions but ACE but containment boom would remain in place.

Demobilization and decontamination of equipment began on June 30, 2014. ACE personnel started loading equipment for demobilization, including the removal of the two boats from the lake. All waste was bagged and secured in the rolloff container and all equipment was offsite by noon. ACE personnel deconned the pumps, boats, hoses, and tools.

On July 10, 2014, ACE personnel drove to the site for a seven day inspection of the booms that were left in place and both were found to be in good condition despite the fact that there was a light hydrocarbon sheen. The microbe swale area which was the location where the oil from the tank battery flowed from an adjacent slope to a swale where AM-101 microbes were applied to help degrade the hydrocarbons found in the affected area. That area was wet and the crude staining had turned to a light brown. No gross amounts of oil were found throughout the walk through which confirmed the spill had been successfully mitigated based on the Claimant's response actions. On August 22, 2014, the containment boom was officially picked up and on August 23, 2014, the containment boom was power washed and returned to service.

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<sup>3</sup> AM-101 microbes are a product used to degrade hydrocarbons and is commonly deployed in tough to reach response areas such a rocky marsh areas or swales.

3. ***The Claim:*** On February 23, 2015, ACE presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the total amount of \$130,642.98 for the services provided from June 25, 2014 through August 23, 2014. The claimed removal costs were 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 FOOSC, 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].

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. The NPFC verified via the EPA FOSC, [REDACTED], that an OPA incident in fact occurred and after his review of the removal actions, he determined the response to be consistent with the NCP.
2. The incident was determined to be a substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23);
3. Revilo Exploration was identified as the responsible party and it was notified by the NPFC when the claim was received. The responsible party did not respond.
4. The claim was submitted within the six year period of limitation for removal cost claims to the Fund. 33 U.S.C. § 2712(h)(1)
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 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, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

ACE provided a well-documented daily to show the actions it performed were for OPA-compensable costs and that the work performed mitigated the effects of the oil that was released from the tank battery. Additionally, the US EPA Region VI FOSC confirmed the actions undertaken by the Claimant were appropriate in its after-the-fact coordination for this incident.

Based on the evidence in this claim submission for the actions undertaken by ACE, the Claims Manager hereby determines that the Claimant incurred \$110,222.50 in removal costs that are compensable from the Fund submitted to the NPFC under claim #915028-0001.


The NPFC denies \$20,420.48 of the claimed costs on the following grounds: mathematical errors and rate sheet discrepancies.<sup>4</sup> Please see the attached spreadsheet for a complete explanation of the individual line items denied.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from June 25, 2014 through August 23, 2014.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will offer \$110,222.50 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915028-0001.

**AMOUNT: \$ 110,222.50**

<p>Claim Supervisor: </p> <p>Date of Supervisor's review: <i>6/23/15</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor's Comments:</p>
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<sup>4</sup> See Summary of Spreadsheet for an itemization of denied costs and the reason.