

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 916145-0001
Claimant	: Pennsylvania Department of Environmental Protection Bureau of Oil and Gas
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$18,086.46

FACTS:

- 1. *Oil Spill Incident:*** The United States Environmental Protection Agency (USEPA) Region V reports¹ that on May 6, 2015, approximately 750 gallons of oil spilled into a beaver dam along Marvin Creek located in Keating Township, McKean County, PA. The beaver pond has contiguous drainage to Marvin Creek that flows into Potatoe Creek, which is a tributary to the Allegheny River. All of which are navigable waterways of the US.

Upon arrival at the scene, the Claimant, Pennsylvania Department of Environmental Protection, Bureau of Oil and Gas (PA DEP), personnel observed that the oil in the dam was approximately three-to-seven days old. Coverage on the dam pool was roughly 60' x 200' and about 500-1000 gallons.

This incident was reported to the National Response Center (NRC) via Report # 1115679.² At the time of this determination, a Responsible Party (RP) has not yet been identified.

- 2. *Description of removal actions performed:*** The Claimant, PA DEP, contracted Fox and Sons for cleanup and removal activities, working with the USEPA Federal On Scene Coordinator (FOSC) to ensure that the actions undertaken were performed in accordance with the NCP. Fox and Sons personnel placed boom and pads, as well as dispatched a vac truck and crew to pump oil from the dam. On May 19, 2015, the oily water and debris was disposed of at the Waste Treatment Corporation facility.
- 3. *The Claim:*** On April 4, 2016, PA DEP presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$18,086.46 for the services provided from May 6 through May 19, 2015. A copy of the vendor rate schedule is provided in the claim submission.

APPLICABLE LAW:

"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".

¹ See email from [REDACTED], USEPA Region V FOSC, to [REDACTED], NPFC dated 5/02/2016.

² See NRC Report # 1115679, opened 5/6/2015.

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 has been established via USEPA Region V.³ 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23);
3. No Responsible Party was determined for this incident. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 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.
6. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs claimed were associated with removal actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

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 in conjunction with the Federal On Scene Coordinator (FOSC) have determined the costs were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

PA DEP provided a well-documented daily to show the actions it performed were for OPA-related response actions and that the work performed mitigated the effects of the oil discovered in the beaver dam that threatened Martin and Potatoe Creeks, as well as the Allegheny River. Additionally, the USEPA Region V FOSC confirmed and provided coordination for the actions that were performed for this incident. Based upon the evidence in this claim submission and based on the FOSC coordination, the Claims Manager hereby determines that the Claimant incurred \$18,086.46 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by PA DEP and submitted to the NPFC under claim #916145-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from May 6 through May 19, 2015.

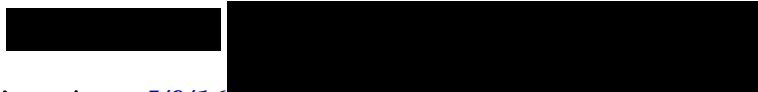
³ See email from [REDACTED], USEPA Region V FOSC, to [REDACTED], NPFC dated 5/02/2016.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$18,086.46 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 916145-0001.

AMOUNT: \$ 18,086.46

Claim Supervisor:



Date of Supervisor's review: *5/9/16*

Supervisor Action: *Approved*

Supervisor's Comments: