

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E15522-0001
Claimant	: Myers Well Service, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$141,430.08

FACTS:

1. Oil Spill Incident: The United States Environmental Protection Agency (US EPA) Region V¹ reports that on July 24, 2015, an above-ground storage tank located at 2589 Orangeville Road in Brookfield, Trumbull County, Ohio, failed and caused a discharge of 1,700 gallons of a brine/crude oil mixture into Big Run Creek, a tributary to the Shenango River. Both Big Run Creek and the Shenango River are navigable waterways of the US. The discharge caused a substantial threat to a drinking water intake at a nearby water treatment plant operated by Aqua Pennsylvania for the City of Sharon, Pennsylvania. The plant is located on the Shenango River, approximately three miles from the discharge location.²

The Responsible Party (RP), Big Sky Energy, Inc., was issued a Notice of Federal Interest and Notice of Federal Assumption by the US EPA Region V Federal On-Scene Coordinator (FOSC) on July 24, 2015, but the RP refused to sign the written notice.³ The RP was also issued a notice of source designation by the National Pollution Funds Center (NPFC).⁴ This incident was reported to the National Response Center via Report # 1123722.⁵

Description of removal actions performed: The Claimant, Myers Well Service, was contacted by RP to respond to the spill on July 24, 2015. It responded on-scene and removed the leaking tank and excavated the surrounding soil. Meyers Well Service and its subcontractors excavated all contaminated soil and transported it in roll-off boxes to a storage yard while awaiting analytical results for disposal. Myers Well Service and its subcontractors also backfilled and restored the area. Additional work included assisting with oil recovery from the creek (spill pads and booms). As the RP was not did not provide much direction to his contractors and was not on site, the FOSC (Mr. [REDACTED]) contacted the RP and he gave Mr. [REDACTED] permission to direct the contractors in what needed to be done for the response. This work was performed by the Claimant and under the direction of the EPA Region V FOSC from July 24, 2015 through July 30, 2015.

The US EPA Region V, the State of Ohio Environmental Protection Agency (OEPA), and the Ohio Department of Natural Resources (ODNR) observed all response actions performed by the Claimant and its subcontractors at the site. On August 31, 2015, the EPA and Meyers Well

¹ See US EPA Region V POLREP 1, dated 7/25/2015; email from Mr. [REDACTED] US EPA Region V FOSC, to Ms. [REDACTED], NPFC, dated 1/16/2016.

² See US EPA Region V POLREP 1, dated 7/25/2015.

³ See email from Mr. [REDACTED], US EPA Region V FOSC, to Ms. [REDACTED] NPFC, dated 1/16/2016.

⁴ See NPFC Notice of Designation 7/30/2015. See also NPFC RP Notification Letter dated 1/13/16.

⁵ See National Response Center Report # 1123722.

Service removed the containment boom from the creek. In addition, after discussion with Aqua Pennsylvania, the EPA removed the hard boom that was left in place around the water intake system that same day.

2. Presentment to the Responsible Party:

As noted above, Big Sky Energy, Inc., the owner of the above ground storage tank, is the RP for the incident.⁶ On August 26, 2015, the Claimant presented all invoices and documentation associated with this claim to the RP, via Myers Well Service Invoice # WS-23601, in the amount of \$141,430.08. Following receipt of this claim submission on January 13, 2016, the NPFC sent an RP Notification Letter to the RP.⁷ To date the RP has not paid the Claimant or responded to NPFC's Notification Letter.

THE CLAIMANT AND THE CLAIM:

On January 13, 2016, Myers Well Service submitted a removal cost claim to the NPFC, , asserting that the RP has failed to pay the removal costs the Claimant incurred responding to the incident from July 24, 2015 through July 30, 2015. On that basis, the Claimant seeks uncompensated removal costs in the total amount of \$141,430.08, for the services they provided the RP from July 24, 2015 through July 30, 2015. Documentation provided with the claim by the Claimant includes:

1. Signed Optional OSLTF Claim Form;
2. Myers Well Invoice WS-23601;
3. Rate Sheets for Myers Well;
4. Ground Tech Invoice 111;
5. New Pig Energy Invoice 51676-00;
6. New Pig Energy Invoice 06448331-00;
7. New Pig Energy Invoice 06448333-00;
8. New Pig Energy Invoice 21688950-00;
9. Proof of Payment for Third-Party Contractors;
10. Third-Party Receipts for Myers Well, Visa Payments;
11. Third-Party Receipts for Myers Well, American Express Payments.

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (OPA 90), 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for the removal costs and damages described in 33 USC § 2702(b) that result from the incident. The responsible party's liability includes the "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).

⁶ See email from Mr. [REDACTED], US EPA Region V FOOSC, to Ms. [REDACTED], NPFC, dated 1/16/2016.

⁷ See NPFC RP Notification Letter dated 1/13/16.

"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 at 33 USC § 2701(31) 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 USC §2713(a), all claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party or guarantor of the designated source of the incident. Then, as provided in 33 U.S.C. §2713(d), "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 Director, 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."

In addition, 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 Claimant’s removal actions were coordinated with the FOSC via US EPA Region V.⁸ 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party was identified and notified by the FOSC. 33 U.S.C. § 2701(32).
5. The claimant presented the claimed removal costs to the RP on [INSERT], prior to submitting the claim to NPFC.
6. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs.
7. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and further documentation provided by US EPA Region V⁹, and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

B. Analysis:

The NPFC Claims Division (CA) reviewed the cost invoices and dailies submitted by the Claimant to determine whether the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA 90 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 were reasonable and necessary.

The Claimant, Myers Well Service, submitted a well-documented claim to demonstrate that the actions it performed were OPA 90 removal actions, and that the work performed

⁸ See US EPA Region V POLREP 1, dated 7/25/2015; email from Mr. [REDACTED], US EPA Region V FOSC, to Ms. [REDACTED], NPFC, dated 1/16/2016.

⁹ See US EPA Region V POLREP 1-5, dated 7/25/2015 through 8/21/2015; email from Mr. [REDACTED], US EPA Region V FOSC, to Ms. [REDACTED], NPFC, dated 1/16/2016.

mitigated the effects of the oil spill that was both discharged into Big Run Creek and also threatened the Shenango River, both of which are navigable waterways of the US. Additionally, the US EPA Region V FOSC confirmed the actions claimed were performed by the Claimant and its subcontractors in response to this incident and determined that all of the Claimant's response actions were consistent with the National Contingency Plan. Upon adjudication of the claim, the NPFC verified that the rates charged were billed to the RP in accordance with the published rates for both the Claimant and its subcontractors. As such, the NPFC has determined which, of the amounts invoiced and paid, were reasonable.

Based on a review of all the supporting documentation and incident information, the Claims Manager determined that the Claimant did in fact incur \$133,379.82 in uncompensated removal costs that were reasonable and necessary, and 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 #E15522-0001. Those costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for removal actions by the claimant from July 24, 2015 through July 30, 2015 that are consistent with the NCP.

The Claims Manager has determined that \$8,050.26 were not supported by descriptive receipts (they are either not provided or are illegible/not itemized). The NPFC, therefore, could not determine whether or not those amounts are compensable costs under OPA 90.

Please see the attached Summary of Costs spread sheets for this claim for the detailed analysis. Should the Claimant seek reconsideration of any of the denied costs, it would need to provide clear, descriptive receipts/invoices for the denied costs, including but not limited to proof of payment by the Claimant of all third-party costs or services.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$133,379.82 as full compensation for the claimed reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E15522-0001. All such costs were incurred by the Claimant for removal actions as that term is defined in OPA 90 and, are compensable removal costs, payable by the OSLTF as presented by the Claimant. The NPFC further hereby determines that \$8,050.26 in claimed costs are denied for the reasons stated above.

AMOUNT: \$133,379.82

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action: *Approved*

Supervisor's Comments: