

CLAIM SUMMARY / DETERMINATION

Claim Number:	E15522-0004
Claimant:	Trumbull County Hazardous Materials
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,160.57

FACTS:

Oil Spill Incident: The United States Environmental Protection Agency (USEPA) Region V¹ reported that on July 24, 2015, an above ground storage tank located at [REDACTED] in Brookfield, Trumbull County, Ohio, failed and caused a release of 1700 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 release threatened a drinking water intake at a 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 release location.

The Responsible Party (RP), Big Sky Energy, Inc., who was issued a verbal Notice of Federal Interest and Notice of Federal Assumption by the US EPA Region V Federal On Scene Coordinator (FOOSC) on July 24, 2015.² The notice was given verbally since the RP refused to sign a written notice issued by the FOOSC.

The RP was notified by the Claimant and to date, has not responded. Alternatively, [REDACTED] of Big Sky Energy, Inc. responded to the NPFC's February 10, 2015, RP Notification Letter by email dated February 11, 2016, in which, in part, [REDACTED] asserts that the materials disposed of were not hazardous.³ This incident was reported to the National Response Center (NRC) via Report # 1123722. The RP provided no other credible evidence to be considered by the NPFC.

Description of removal actions performed: The Claimant, Trumbull County Hazardous Materials (TCHM), was notified of the release and dispatched fire department vehicles, equipment, and personnel to help respond to the incident. TCHM utilized absorbent boom to contain the spill.

The USEPA Region V, the state of Ohio Environmental Protection Agency (OEPA), and the Ohio Department of Natural Resources (ODNR) observed all response actions that were undertaken by the Claimant.

The Claim: On February 8, 2016, Trumbull County Hazardous Materials presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$1,160.57 for the services provided on July 24,

¹ See, US EPA Region V POLREP 1, dated 7/25/2015, as well as the email from [REDACTED], US EPA Region V FOOSC, to [REDACTED] NPFC, dated 1/16/2016.

² See, email from [REDACTED], US EPA Region V FOOSC, to [REDACTED], NPFC, dated 1/16/2016.

³ See, email from [REDACTED] to [REDACTED], NPFC, dated 2/11/2016.

2015. Trumbull County Hazardous Materials is claiming for the cost of materials and personnel used on-scene to contain the spill.

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 has been established via US EPA Region V.⁴ 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), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
4. A Responsible Party has been determined. 33 U.S.C. § 2701(32).
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 has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. NPFC 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 NPFC viewed the claim submission and found the rates charged were in accordance with the rates in place at the time services were rendered and the actions undertaken by the Claimant were determined by the FOSC to be reasonable, necessary and consistent with the NCP. On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$1,160.57 of uncompensated removal costs and that that amount is payable by the



⁴ See US EPA Region V POLREP 1, dated 7/25/2015, as well as the email sent by [REDACTED], US EPA Region V FOSC, dated 1/16/2016.

OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E15522-0004. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on July 24, 2015.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$1,160.57 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E15522-0004. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: \$1,160.57


Claim Supervisor: 
Date of Supervisor's review: <i>February 19, 2015</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: