

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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Staff Symbol: Ca
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5890
May 16, 2013

via e-mail: [REDACTED]@yahoo.com

P & P Cementing
ATTN: Billy Pierce
P.O. Box 187
Nowata, OK 74048

Re: Claim No. E12622-0001

Dear Mr. Pierce:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$67,081.00 is full compensation for OPA claim number E12622-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance / Release Agreement, where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are

required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at [REDACTED]

Sincerely,

[REDACTED]
Cindy A. Strange
Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement
Summary of Costs spreadsheet

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: E12622-0001	Claimant Name: P & P Cementing
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I, the undersigned, ACCEPT this settlement offer of \$67,081.00 as full and final compensation for the removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

_____ Title of Person Signing	_____ Date of Signature
_____ Printed Name of Claimant or Authorized Representative	_____ Signature

_____ Title of Witness	_____ Date of Signature
_____ Printed Name of Witness	_____ Signature

_____ *DUNS/EIN/SSN of Payee Please Circle one	_____ Payee
_____ Bank Routing Number	_____ Bank Account Number

CLAIM SUMMARY / DETERMINATION

Claim Number:	E12622-0001
Claimant:	P & P Cementing
Type of Claimant:	US (Corporate)
Type of Claim:	Removal Cost
Claim Manager:	Gina Strange
Amount Requested:	\$67,941.00

FACTS OF THE INCIDENT:

On 23 May 2012, locals discovered oil in Coon Creek, a navigable waterway of the US and immediately notified the Oklahoma Corporation Commission (OCC) who is the designated State On Scene Coordinator (SOSC). A small amount of oil had appeared on the surface of Coon Creek and while OCC was assessing the area, it was clear that the volume of oil was increasing, about 5 to 7 bbls of crude oil. OCC's preliminary assessment and site inspection determined that OCC believed the oil to be coming from an old abandoned well drilled back in the 1910s but never produced. It appears that the well was originally on dry land and at some point, a change in the creek banks placed the well inside the creek. As of May 26, 2012, OCC and their contractor was not able to locate the exact location of the well believed to be under a shallow shale.

The Claimant, P&P Cementing, was called by the Oklahoma Corporation Commission (OCC) and responded to a request for assistance in locating and containing the source of the spill in Coon Creek, a navigable water of the United States. The Claimant responded to the leak after the approval of Mr. Robert Bernier of the United States Environmental Protection Agency (USEPA), Region Six. USEPA is the designated Federal On Scene Coordinator (FOSC) for this incident. USEPA issued a total of six (6) POLREPS in order to document the actions undertaken for this incident.

REMOVAL ACTIONS:

The removal actions for this incident took place from May of 2012 through September of 2012 and are summarized below as provided by the Claimant (these actions are corroborated by the FOSC's six POLREPS in its submission:

May 2012:

The Claimant arrived on scene and began removing oil and saltwater from the creek, and tried to contain the flow of the oil. A track hoe was brought in to clear the bottom of the creek in an effort to find the source of the spill. The track hoe continued to work the creek bottom and moved a large amount of shale and soil.

The track hoe removed more shale and soil and the Claimant began to probe for the source of the discharge by hand. The Claimant put a creek dam in place and began a skimming operation to remove the oil. The Claimant continued probing for the source of oil by hand without success. Once again they cleaned the fluids to the bottom of the creek bed and probed for a well.

The Claimant brought in a 5 inch mud pump to control the influx of fluid. The flow of oil required a second pump to move the oil to an area where it could be contained. The Claimant used a 2 inch trash pump to accomplish this. The search for the source of the discharge began to get harder as the level of the fluid in the creek continued to increase. The Claimant continued to gather and remove fluid as part of this process.

Robert Bernier of USEPA Region 6 arrived on scene. At this time the oil had continued to increase and the absorbent booms and oil pads were being utilized to catch the run off to the main creek. The Claimant continued to use the 5 inch mud pump and the 2 inch trash pump but it was still difficult to maintain the fluid level at a workable level.

At the direction of the FOSC, the Claimant interrupted the flow of the creek to keep the fluid from overtaking the working area. Under FOSC direction, the Claimant returned the track hoe to the site and continued to search for the source of the leak. The FOSC directed the Claimant to cut and build a dam to transfer fluid around the contaminated area. The Claimant used a 5 inch mud pump. The water was transferred down stream to release the water pressure on the area and the search for the source of the leak continued.

The oil had begun to seep from the cut off channel and absorbent booms and oil pads were required to keep the fluids from the main channel. The track hoe worked to remove additional debris from the bed of the creek and the Claimant continued to skim oil from the water. No well was found and oil continued to form at the bed of the creek.

In the month of May, the Claimant provided approximately 15 personnel, not all of which were charged in an effort to keep costs down, to work at the scene to search for the source of the discharge. The Claimant disposed of approximately 770 barrels of oil/water product as a result of their actions.

According to the POLREP, personnel was used to build a diversion channel that will bypass the affected area or pits.

June 2012:

The fluid continued to come into the work area. The Claimant used the trash pump to pump oil from the main leak to a sump where it could be picked up. The FOSC left the scene but instructed the Claimant to continue the work until a source for the contamination could be found. The Claimant continued to clear the creek bed.

Preparations to the temporary dam before the creek cut was made, using the 2 inch pump. The creek cut will begin after letting the area water and dewater. The Claimant waited on final approval from the FOSC. The FOSC approved and the cut on the creek began. The Claimant brought in a second dozer and track hoe to make the cut faster.

There was a requirement for additional oil boom to catch oil pushed by the equipment and prevent it from getting into the main creek.

Once the cut was complete and the track hoe made the bed cut to get below the shale in the creek to allow proper drainage of the work site in question, the creek was ready to de-water. This process took time because they had to wait for nature to leach the water from the work area. The Claimant returned to the site when the de-watering process was completed.

The main objective of the removal was to cut the parallel channel to the creek to keep the water influx within the search area to a minimum in order to increase the chances of finding the source. On 12 June, it was decided to proceed with building the parallel channel, which was completed within a few days. More heavy equipment was brought in, the main channel will be allowed to dewater for several weeks and then the search will resume by digging and scraping the hard shale in the area of the potential source. POLREP No. 4

During the month of June, the Claimant spent approximately 30 hours of personnel time and collected approximately 210 barrels of product for disposal.

July 2012:

The Claimant worked to remove the shale in order to form the entrance to the creek bed by the backhoe. The back hoe completed the entrance and a ramp was made for the dozer. The creek was left to de-water.

The track hoe cut the shale and a fissure of 30 feet was found in the bed of the creek. The oil was seeping from the full expanse of the fissure. The oil had slowed but the water continued to move into the work area from under the bed of the creek.

A well was found about 100 yards from the seep and with permission of the FOSC, a pulling unit was brought to the location to pull the tubing and check the integrity of the well casing. Fluid in the holding area had increased and a 5 inch mud pump was used to move the fluid to a holding area for removal. The Claimant used a vacuum truck to carry fluid to the test well.

A decision was made to bring in a 500 barrel frac tank to hold the fluid from the large pit so it could not seep back into the old creek channel. The pulling unit ran tubing to the total depth of the well in preparation to cement the bottom of the well and close to lower formations. The water in the work area decreased due to the dewatering and the oil slowed to a very small amount.

Work resumed after the creek main channel was dry enough to continue digging and scraping the hard shale in the attempt to locate an old well believed to be the source seeping onto the source. Work continued removing more shale using heavy equipment and more oil and water by transfer pumps and vac trucks.

By 30 July 2012, an abandoned well was found upstream near the site and the team decided to investigate it as a potential source. Oil from the formation could be seeping through the bore flowing the subsurface and following the gradient downstream into the source area. The area around the well head was examined but no source of oil was located. A bottom cement plug was

placed to isolate the potential zone or the formation where the oil could be coming from. The frac tank was used as temporary storage.

August 2012:

During the first week of August, the work concentrated on addressing the abandoned well found near the creek as a potential source of the oil seep. After a bottom plug was placed, the wellbore was treated with acid as a formation breaking agent to determine if a hydraulic connection was present with the fissure discovered earlier in the creek bottom.

Water continued to be transferred from the large pit to the frac tank and from the working area to the large pit. The pulling unit prepared to acidize the open zone. The Claimant rented an acid tote and 350 gallons of acid is pumped into the formation under pressure to gain direction access to the fissure.

The pulling unit and rig crew rigged to the well and pumped cement to the formation and the tubing was pulled and the wire line truck shot second set into the holes in the well. The pulling unit ran tubing to the circulation holes and pumped cement. The tubing was then pulled and the rig crew rigged to the well head and pressured up on the casing squeezing cement into the formation. This closed all areas of the well so no more leaks can occur.

The last of the fluid was removed from the frac tank and the tank was removed from the location. Removal activities continued until around the end of August with periodic transfers from the collection area to the frac tank. At this point, after many attempts to find out the potential source of the oil seep without success, the FOSC and OCC decided to step back and try and figure out if another approach was feasible.

The Claimant indicated that at this point they waited for the FOSC to offer further and final direction regarding the completion of the project. The oil from the fissure has continued to slow and is now very little, probably because the pressure confined by the shale on the bed of the creek has been relieved.

September 2012

The Claimant had equipment on site to complete the work. They removed the product collected over the course of the project. They used a backhoe to continue to look for the source of the seep. They hauled away the debris collected as a result of their actions. This was the last month they were on scene. They completed work on the cattle fence and cleaned up the site to minimize the possibility of a further seep or leak.

Discussions continued as to how the seep could completely stop if the oil was trapped under the shale from an old well or flow line leak and release during a pressure in the shale. The only other removal activity related to the site came around mid-September when a temporary fence was installed around the oil collection area since the landowner was to re-introduce cattle in that side of the field.

According to the FOSC, they will eventually have to return to the site to restore the creek and its banks to the original gradients, and it is still possible that a source of the discharge is found,

but that work, if and when it is done, will not be done by this Claimant. That work will be done directly through USEPA removal contractors.

CLAIM AND CLAIMANT:

This claim is presented by P & P Cementing for reimbursement of their uncompensated removal costs in the amount of \$67,941.00 to the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC), and was received at the NPFC on 6 February 2013.

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".

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:

A. Overview:

1. USEPA Region 6, as the FOSC for this incident, determined that the actions undertaken by P & P Cementing were performed as directed by the FOSC and are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the report of a discharge or substantial threat of a discharge of "oil" as defined in OPA 90, 33 U.S.C. 2701 (23) to navigable waters;
3. 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;
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. 2712(h)(1);
5. No Responsible Party has been identified.
6. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined which removal costs were incurred for removal actions in accordance with the NCP and whether the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205. The Claims Manager also identified denied costs and the grounds for denial.

B. Analysis:

The NPFC CA reviewed the documentation submitted in support of the Claimant's submission for reimbursement of uncompensated removal costs to the Fund. The review focused on (1) whether the incident involved a discharge or substantial discharge of oil into "navigable waters" (2) 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); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC to be consistent with the National Contingency Plan (NCP) or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

Upon review of the claim submission, the NPFC has determined that the majority of the removal costs presented and incurred are compensable under the provisions of OPA and the governing Claims Regulations. However, the NPFC has determined that a total of \$860.00 is denied because those costs are out of line with the published rate schedule as provided by the Claimant and therefore deemed not reasonable and denied accordingly. The Claimant informed the NPFC that they used sub-contractors and that they do not have published rate sheets. The NPFC, therefore compared their rates to the Claimant's rates. Some of those rates were not in line with

the Claimant's rates and those rates were reduced so that they fell in line with the Claimant's rates as a basis for determining reasonableness.¹

Although the incident was Federalized and an FPN opened, the Claimant's costs were not paid under the FPN due to an administrative error. With respect to the disposal associated with this incident, the Claimant owns its own disposal facility and did not provide disposal manifest(s). They did, however provide the information regarding disposal of all waste as follows: API Number 105-27971, Well Name: Total Service WD-1 Section 30-26N-16E/NE/NE/NE NOWATA CO., Order number 321363. The NPFC found this to be acceptable as proof of proper disposal.

Lastly, the Claimant could not provide copies of checks as proof of payment as they do not get returned checks. However, they could provide bank statements that indicated payments to subcontractors in the amounts that were claimed. The NPFC found this to be acceptable as proof of payment.

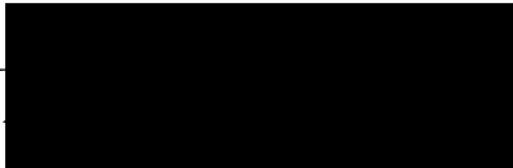
The NPFC will not itemize the denied costs here in this Claim Summary Determination but rather will attach the spreadsheet created by the NPFC for all costs where the Claimant can see each line item billed, claimed, paid, denied and reason for each denial. The NPFC hereby determines that the NPFC offers, and the OSLTF is available to pay, **\$67,081.00** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E12622-0001.

DETERMINATION:

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.203 and 136.205. The costs determined to be payable are for uncompensated removal costs that are determined to be consistent with the National Contingency Plan.

AMOUNT: \$67,081.00

Claim Supervisor:



Date of Supervisor's review: *5/16/13*

Supervisor Action: *Approved*

Supervisor's Comments:

¹ See, NPFC Summary of Costs spreadsheet