

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/6/2011
Claim Number	: 912011-0001
Claimant	: State of Kentucky
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$18,014.00

FACTS:

- 1. Oil Spill Incident:** On February 21, 2011, The Claimant, State of Kentucky Department of Environmental Protection (KDEP) received a report that that a sheen was observed on Beaver Creek in Barren County between the Cumberland Parkway and Highway 1297. Investigation revealed an old well was leaking and discharging oil into Beaver Creek, a navigable waterway of the US. Since the oil well is abandoned and there was no known responsible party, the Claimant coordinated with the Division of Oil and Gas in order to hire a contractor to handle response and plug the well in order to eliminate the continuing threat of oil into navigable waters.
- 2. Description of removal actions:** The Claimant hired and paid an Emergency Response Contractor, Melton Rentals and Contractors. The contractor arrived onsite on February 22, 2011 and provided response services through March 26, 2011 when the plugging contractor T & T Contracting could get the well plugged.
- 3. The Claim:** The Claimant presented a claim for its uncompensated removal costs associated with the Old Bowling Green Road incident in the amount of \$18,014.00. The claim consisted of: cover letter, KDEP report summary, FOOSC coordination by USEPA dated 9/8/11, Melton Rentals invoicing, solicitation for bid by Melton Rentals, NRC report, KDEP compliance evaluation report, photographs, site maps, Melton Rentals rate schedule, proof of payment to the contractor, disposal information, and daily field logs.

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:

"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. Findings of Facts:

1. The removal actions were coordinated with a Federal on Scene Coordinator (FOSC). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident did involve the discharge or substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23) to navigable waters.
3. A Responsible Party was not identified. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six-year statute of limitation for removal costs. 33 U.S.C. § 2712(h)(2).
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and has determined that the actions taken were deemed reasonable, necessary and consistent with the National Contingency Plan (NCP) pursuant to 33 CFR 136.203 and 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 National Contingency Plan (NCP) or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The total amount of costs incurred and claimed by KDEP for this incident amounted to \$18,014.00. Upon review of the documentation, the NPFC has determined that the invoice was billed in accordance with the rate schedule in place at the time services were rendered and the response actions undertaken were coordinated with the FOSC and determined be consistent with the NCP.

The Claims Manager hereby determines that the claimant did in fact incur \$18,041.00 of uncompensated removal costs and that 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 #912011-0001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident.

A. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$18,041.00 as full compensation for the reimbursable removal costs incurred by KDEP and submitted to the NPFC under claim #912011-0001. 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: \$18,041.00

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *12/6/11*

Supervisor Action: *Approved*

Supervisor’s Comments: