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CLAIM SUMMARY / RECOMMENDATION FORM

Date : 8/14/2006
 Claim Number : 906097-001
 Claimant : State of Texas
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]
 Amount Requested : \$1,879.84

FACTS:

On May 5, 2006, 55-gallons of tar balls were found washing in from the Gulf of Mexico on South Padre Island, Cameron County, Texas; a navigable waterway of the United States.

State on Scene Coordinator, [REDACTED] responded to the call.

Federal on Scene Coordination was made on May 5, 2006 with [REDACTED], who authorized the state to take the lead for immediate response.

Chemical Response & Remediation Contractors, Inc. (CRRRC) was hired to cleanup the spill.

The cleanup was consistent with the National Contingency Plan.

To date, the responsible party is unknown.

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (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. Removal costs are those "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) 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.

Under 33 USC §2713(a) all claims for removal costs or damages, with exceptions not applicable here, shall be presented first to the responsible party or guarantor of the source designated.

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

FOIA 2010-033000002
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 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."

Moreover, 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].

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. This is a *de novo* review. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

DETERMINATION OF LOSS:

The claimant is seeking reimbursement of uncompensated removal costs associated with this incident.

AMOUNT: \$1,879.84

RECOMMENDATION:

The NPFC hereby determines that the OSLTF will pay \$1,879.84 as full compensation for the reimbursable removal costs incurred by the claimant under claim # 906097-001. The claimant has met their burden of proof in accordance with 33 CFR 136.105(a) & (e)(6) and 33 CFR 136.203 & 205.

Claim Supervisor: 

Date of Supervisor's review: 8/25/06

Supervisor Action: *Approved*

CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/28/2008
Claim Number	: 908088-001
Claimant	: State of Florida
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$2,813.92

FACTS:

Oil Spill Incident: On July 4, 2006, Pasco County, Florida Emergency Management contacted the State Warning Point stating that a pleasure craft exploded at the boat ramp located at Anclote Park in the Anclote River, a navigable waterway of the US. The Florida fire department responded, filling the vessel with foam and water to extinguish the flames. The fire department estimates that approximately 50 gallons of fuel were lost in the Gulf of Mexico. Coast Guard Sector St. Petersburg FOSC was on scene and agreed. The responsible party (RP) [REDACTED] was able to trailer the vessel and pull it out of the water. The vessel was full of contaminated water (foam, water, oil and fuel). Most of the contaminated water drained onto the soil, where the vessel was trailered. A large area of mulch mixed with sandy soil was contaminated with approximately five gallons of gasoline and one half gallon of motor oil. The RP refused to take any cleanup action in the park. SWS First Response was hired to clean up the site.

Description of Removal Activities for this claimant: Florida BER hired SWS First Response to clean up the contaminated site. SWS removed a 25 foot by six foot by six foot area of soil after taking soil readings with a PID. The contaminated soil was transported to Clark Environmental for disposal. Invoices are for Florida State personnel, equipment and administrative costs and SWS

The Claim: On July 30, 2008 the Florida Department of Environmental Protection submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs of State personnel, equipment and administrative costs and SWS contracted personnel, equipment, lab fees, and disposal costs in the amount of \$2,813.92.

Florida DEP is claiming \$348.50 in State personnel expenses, \$116.91 in State equipment (vehicle, sorbents, PID's and clothing) expenses and \$22.00 in State administrative documentation/photo fees. Also included are \$899.75 in SWS contracted personnel costs, \$938.70 in SWS contracted equipment costs, \$243.18 in lab fees and \$244.88 in disposal costs.

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. Coast Guard Sector St. Petersburg provided FOSC coordination.
2. The incident involved the 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 on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

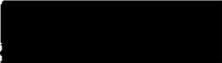
NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the 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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$2813.92 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #908088-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident on July 4, 2006. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$2813.92 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 908088-001. 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: \$2813.92

Claim Supervisor: 

Date of Supervisor's review: *8/28/08*

Supervisor Action: *Approved*

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 4/22/2003
Claim Number : 903050-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$6,412.52

BACKGROUND: On December 17, 2002, a mystery spill of oil was discovered in the Gulf of Mexico, a navigable waterway of the US. TGLO responded to the report and found oil on the beach and in the water. The oil was coming from an abandoned flowline. NO responsible party could be found. FOSC coordination was made with [REDACTED] of MSU Galveston, who authorized TGLO to take the lead to remove, recover and dispose of the spill. TGLO hired T & T Marine to handle the cleanup operations. TGLO monitored the cleanup efforts of the contractor and confirms the cleanup was consistent with the NCP.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs associated with this incident.

AMOUNT: \$6,323.79

RECOMMENDATION: I recommend payment in the amount of \$6,323.79. The following items have been reduced as the amount charged exceeded the maximum allowable for the category:

1. Front end loader -- the maximum allowable daily charge is \$466.27 vice [REDACTED]
2. 40' Bed trailer -- the maximum allowable daily rate is \$70.00 vice [REDACTED]

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 4/24/03

Supervisor Action: Approved

Supervisor's Comments:

RP

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 6/12/2003
 Claim Number : 903078-001
 Claimant : Garner Environmental Services, Inc.
 Type of Claimant : Corporate (US)
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]
 Amount Requested : \$3,764.00

BACKGROUND: On December 11, 1999, The M/V Magnus Challenger was undergoing a priority II Annual Freight Vessel examination at the Manchester Terminal in Houston, Texas. The vessel was placed on Port State Control Detention for steering gear problems. After the vessel was released from detention, the vessel also experienced an oil spill the following evening. Approximately 55 gallons of oil entered the waters of the Gulf of Mexico, navigable waters of the US, and several barrels were spilled on deck during bunkering. The incident occurred as a result of a transfer of fuel oil from the T/B Hollywood 212, the M/V Magnus Challenger overfilled their number three fuel tank. Garner Environmental was hired by the PRP to handle cleanup operations and the USCG issued the M/V Magnus Challenger a violation.

PRP Info: Magnus Carriers Corporation, [REDACTED]

DETERMINATION OF LOSS: Garner seeks reimbursement for their uncompensated removal costs associated with this incident on the remaining balance of their invoice. The original amount of Garner's invoice to the RP is \$8,764.00 and the RP made a \$5,000.00 partial payment.

AMOUNT: \$3,628.00

RECOMMENDATION: I recommend payment to Garner in the amount of \$3,628.00. The charge for hand tools in the amount of \$136.00 is denied. The costs of these items are considered in the overhead of Garner's loaded rates.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 6/25/03

Supervisor Action: Approved

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date : 01/13/2004
 Claim Number : 904031-001 (TX 2003-2862)
 Claimant : State of Texas
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager :
 Amount Requested : \$1,978.04

BACKGROUND: On October 17, 2003, a mystery spill of oil was discovered in the Gulf of Mexico at East Beach in Galveston County, Texas, a navigable water of the US. The SOSOC responded and found two gallons of oil in Texas coastal waters, and coordinated with the FOSC who authorized the state to take the lead for immediate response. TGLO hired T&T Marine and monitored the good cleanup efforts of the contractor. The cleanup was consistent with the NCP.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs.

AMOUNT: \$1,978.04

RECOMMENDATION: I recommend payment in the amount of \$1,978.04. All claimed costs are within the regional average for this area.

Claim Supervisor:


Date of Supervisor's review: 1/13/04

Supervisor Action: *Approved*

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date : 6/22/2004
Claim Number : 904078-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$5,548.32

BACKGROUND: On 8/26/03 a mystery spill of oil was discovered in the Gulf of Mexico in Cameron County, Texas. SOSC [REDACTED] responded and found 252 gallons of crude oil in the form of tar balls and tar mats on Boca Chiea Beach that had washed up. Response officer coordinated w/FOSC ([REDACTED]) who authorized the state to take the lead for immediate response. GLO hired Chemical Response & Remediation Contractors (CRRC) and monitored the cleanup operations. On 3/17/04 the NPFC-ca determined that the claimant's OPA compensable damages were \$5,403.27. On 6/14/04 the claimant requested that their claim be reconsidered. TGLO provided the detailed explanation for the \$85.00 misc supplies we originally denied.

DETERMINATION OF LOSS: The claimant seeks \$5,548.32 in reimbursement for costs incurred during removal.

DETERMINED AMOUNT: \$5,488.27

RECOMMENDATION: Supplies/materials were reconsidered in the amount of \$85.00. Proper documentation was submitted. TGLO is seeking reimbursement for these uncompensated removal costs. I used the Gulf Coast Regional Average to measure this claim.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 6/22/04

Supervisor Action: *Reconsideration Approved*

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 5/30/2006
Claim Number : 906077-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$295.99

FACTS:

On July 22, 2005, tar balls were discovered in the Gulf of Mexico in Willacy County, Texas, a navigable water of the U.S.

FOSC coordination was made with [REDACTED] from the Marine Safety Satellite Office in Brownsville, Texas. According to [REDACTED] report, 80 gallons of tar balls were discharged from an unknown source. The Texas General Land Office (TGLO) was given the authorization to conduct the clean-up.

SOSC [REDACTED] responded to the scene where he picked up the tar balls and ensured the cleanup was consistent with the National Contingency Plan.

To date, the responsible party is unknown.

DETERMINATION OF LOSS:

TGLO is seeking reimbursement for response and clean-up costs.

AMOUNT: \$295.99

RECOMMENDATION:

The NPFC hereby determines that the OSLTF will pay \$295.99 as full compensation for the reimbursable removal costs incurred by TGLO in accordance with 33 CFR 136.203/205.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 6/2/06

Supervisor Action: *Approved*

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 6/6/2006
 Claim Number : 906074-001
 Claimant : State of Texas
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]
 Amount Requested : \$483.38

FACTS: On November 4, 2005, an unmarked drum was discovered having been washed in from the Gulf of Mexico in Cameron County, TX, a navigable water of the U.S. SOSC [REDACTED] responded and found approximately 55 gallons of Kerosene, a refined oil product, which leaked from the unmarked drum. The response officer coordinated with USCG [REDACTED] who authorized the GLO to take the lead for immediate response and cleanup. The response officer hired RM Walsdorf to pickup the drum and Calidad for proper disposal. TGLO determined the cleanup to be consistent with the NCP.

APPLICABLE LAW: Under the Oil Pollution Act of 1990 (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. Removal costs are those "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) 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.

Under 33 USC §2713(a) all claims for removal costs or damages, with exceptions not applicable here, shall be presented first to the responsible party or guarantor of the source designated.

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 all evidence, information, and documentation deemed necessary by the Director, NPF, 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

FOIA 2010-033000013

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."

Moreover, 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].

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. This is a *de novo* review. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs associated with this incident.

A. *Overview:*

1. The incident involved the discharge of "oil" as defined in OPA 90, 33 USC § 2701(23), to navigable waters.
2. The claim was submitted on time.

The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim.

AMOUNT: \$483.38

RECOMMENDATION: The NPFC Claims Manager have determined that \$483.38 is compensable based on the claimant's adequate level of effort of response and based on the claimed rates which were determined reasonable when compared to the rate schedule for RM Walsdorf, Inc.

Claim Supervisor [REDACTED]

Date of Supervisor's review: 6/7/06

Supervisor Action: *Approved*

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

DF

Date : 11/22/2002
Claim Number : 903011-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$4,332.67

BACKGROUND: On May 11, 2002, tar balls were discovered washing in from the Gulf of Mexico on South Padre Island, a navigable waterway of the US. TGLO responded and found a spill of approximately 280 gallons of oil in the water and on the shore. TGLO coordinated with MSSO Brownsville who authorized TGLO to take the lead to recover, remove and dispose of the mystery spill. TGLO hired U.S. Liquids of Central Texas and TGLO monitored the cleanup efforts of the contractor. The cleanup was consistent with the NCP.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs associated with this incident. I used the Gulf Coast Regional Average to measure this claim.

DETERMINED AMOUNT: \$4,332.67

RECOMMENDATION: I recommend payment in the amount of \$4,332.67 as all costs are within the regional average and therefore deemed reasonable and necessary.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 11/22/02

Supervisor Action: *Approved*

Supervisor's Comments:

RF

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 8/1/2002
Claim Number : 902177-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$2,161.88

BACKGROUND: On May 4, 2002, mystery tar balls of crude oil were discovered washing ashore in the vicinity of the Ranger Station on Padre Island from the Gulf of Mexico, a navigable waterway of the US. TGLO responded and an estimated 327 gallons of oil was in the water. TGLO coordinated with MSO Corpus, who authorized them to take the lead for immediate response and cleanup. TGLO hired Corpus Christi Area Oil Spill Control to handle the cleanup. Samples were taken and analyzed but no source was found. TGLO monitored the cleanup efforts of the contractor and the MSO verified the cleanup was consistent with the NCP.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs associated with this incident. I used the Gulf Coast Regional Average to measure this claim.

AMOUNT: \$2,161.88

RECOMMENDATION: I recommend payment in the amount claimed as all costs are within the acceptable limits of the Regional Average calculation and deemed reasonable.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 8/1/02

Supervisor Action: *Approved*

Supervisor's Comments: SO & A/R - *Approved*

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/10/2006
Claim Number	: M02045-001
Claimant	: Marine Co., Inc., dba Harrison Dock Builders
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$29,531.00

BACKGROUND:

On January 3, 2002 two fishing vessels ran aground on Fort Jefferson, one of the islands of the Dry Tortugas National Park which is run by the U.S. National Park Service. The two vessels broke up on the coral reefs and oily debris was observed on the water. Since the waters around the national park are considered navigable waterways of the United States they are protected under the Oil Pollution Act of 1990.

The U.S. Park Service and Coast Guard were on scene. A federal project number was assigned to the spill incident and the Oil Spill Liability Trust Fund (OSLTF) was accessed and made available for the Federal On Scene Coordinator to hire a spill clean up contractor. The clean up contractor's costs were paid by the fund since the fishing vessels were not insured and the owners had no assets available to pay for clean up.

The claimant, Harrison Dock Builders (Harrison Dock) was under contract with the U.S. Department of Transportation (DOT) to make improvements to the Ft. Jefferson dock. The cleanup contractor, Titan Marine used the dock at Fort Jefferson. Titan Marine was granted permission to use the Ft. Jefferson Dock by the claimant.

APPLICABLE LAW:

In general, claims for removal costs or damages must first be presented to the responsible party. If the responsible party denies the claim or does not settle the claim within 90 days, the claimant may commence an action in court against the responsible party or present the claim to the Fund 33 USC §2713(c).

The uses of the OSLTF are described at 33 USC §2712(a). It provides in relevant part that: Damages include damages for injury to natural resources, injury to or economic losses from the destruction of real or personal property, loss of subsistence use of natural resources, Government loss of revenues, loss of profits or earning capacity as a result of loss or destruction of real or personal property or natural resources, and costs of increased public services 33 USC §2702(b).

Damage claims must be presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 USC §2712(h)(2).

Under 33 CFR 136.105(a) and 136.105(e)(7), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a claim presented to the Fund should include, as applicable: A description of the actions taken by the claimant, or other person on the claimant's behalf, to avoid or minimize removal costs or damages claimed.

DETERMINATION OF LOSS:

Harrison states that it had to lay-off workers and had continuing overhead expenses for equipment rental during the oil spill clean up. The NPFC recognizes that increased costs can result in loss profits and this loss may be compensable under OPA. Harrison Dock alleges that its construction costs increased because of the one month delay caused by the cleanup. Harrison Dock's sum certain for increased costs claimed is \$29,531.00.

Harrison presented its claim to the responsible parties (RP) as required under 33 USC §2713(a). One of the RPs responded stating that it could not compensate Harrison Dock because it had no insurance, or assets, and the other RP did not respond. Harrison Dock submitted its claim to the National Pollution Funds Center (NPFC) as permitted under OPA and its governing regulations. This claim was submitted within the three year statute of limitations for damage claims.

The claimant submitted some accounting for its labor and equipment costs during the period of the spill clean up; however this financial information did not include any saved expenses from the rental fees charged to the spill response contractor.

If the claimant received fees for renting equipment to a third party spill responder these should be included in the claim and shown as a saved expense that would offset some or all of Harrison Dock's claim for increased costs. Without a complete and transparent financial accounting of Harrison Dock's saved expenses the NPFC can not find sufficient evidence of increased costs. Therefore, the claimant has not proven that it incurred a loss of profits resulting from the oil spill.

Claim Supervisor:	[REDACTED]
Date of Supervisor's Review:	15 February 2006
Supervisor Action:	Claim is approved as presented. Claim is hereby denied.
Supervisor's Comments:	Claimant has failed to prove that it lost profits, how rental of existing equipment mitigated damages and explain how the contractual requirements with US Department of Transportation were specifically impacted by the response to the oil spill incident.

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 6/7/2002
Claim Number : 902033-001
Claimant : T&T Marine Salvage, Inc.
Type of Claimant : Corporate (US)
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$725.00

BACKGROUND: On May 11, 2001, MSU Galveston was called out on a drum response on the beach in Galveston off the Gulf of Mexico, a navigable waterway of the US. The MSU states they hired T & T Marine, at that time, there were no visible markings on the drum to determine who the responsible party was. The contractors arrived on scene and conducted an initial assessment. After moving the drum around, a TESORO label became evident. At this time, the contractors were asked to stop while the MSU contacted the PRP. The MSU states that TESORO's environmental department in Houston was contacted. They then connected the MSU with someone in their Galveston office. The MSU states that TESORO did tell them that they would assume responsibility for the drum and requested the MSU supervise the removal because they did not have the personnel available to monitor the removal. The MSU remained on scene until the drum was removed. TESORO advised the MSU that they would call T & T. Sometime later, T & T called the MSU stating that TESORO was refusing to pay for the removal, however, they would pay for the disposal. TESORO was contacted again by the MSU. The MSU explained to TESORO that they were the RP and they should pay the contractor. TESORO agreed and again sometime later, the MSU was advised that the contractor was still unpaid so the contractor has exercised their right to come to the Fund. The claimant billed the PRP on June 4, 2001. Upon receipt of the claim, I sent an RP notification letter to TESORO dated April 5, 2002, advising the PRP that T & T Marine has submitted the invoice to us as an OPA liability. On April 9, 2002, I received a call from [REDACTED] of TESORO. He provided a statement which indicates they agreed to handle the disposal only as a good Samaritan but they contend they are not the PRP because their drums are sold to customers, therefore they are not responsible.

DETERMINATION OF LOSS: T & T Marine seeks reimbursement for uncompensated removal costs associated with this incident. The statement I received from the MSU states they feel the USCG should pay the contractor on this claim and they will be better at case documentation in the future. I used the Gulf Coast Regional Average to measure this claim.

AMOUNT: \$660.00

RECOMMENDATION: I recommend payment in the amount of \$660.00, which is a reduction of \$65.00 as the charge for the 24' Box truck exceeds the regional average and has been reduced accordingly.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 6/7/02

Supervisor Action: *Approved*

Supervisor's Comments:

No RP. SO & A/R - *Approved.* [REDACTED]

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 1/2/2002
Claim Number : N01357-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$1,576.61

BACKGROUND: On July 15, 2001, a mystery spill was discovered in the Gulf of Mexico, a navigable waterway of the US. TGLO responded to the spill approximately 20 gallons of oil in the water. Samples were taken but no responsible party was found. FOSC coordination was made with MSO Houston and they were on site at the incident. The USCG opened a federal project to handle the cleanup of the incident. TGLO assisted USCG with the response. MSIS is no longer available and I have been unsuccessful at retrieving the casualty report from MISLE. CIMS does not have the POLREPS available but I have requested a copy for the file from the Case Officer,
[REDACTED]

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated costs associated with the response to this incident.

AMOUNT: \$1,576.61

RECOMMENDATION: I recommend payment as claimed because the state published rates for TGLO have been determined to be reasonable.

Claim Supervisor [REDACTED]

Date of Supervisor's review: 1/2/02

Supervisor Action: *Approved*

Supervisor's Comments:

SO & A/R - *Approved.* [REDACTED]

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 12/7/2001
Claim Number : 902028-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$1,462.36

BACKGROUND: On August 23, 2001, tarballs were discovered at County Park Edwin Atwood Park at Access #5 in South Padre Island. The oil was washed in from the Gulf of Mexico, a navigable waterway of the US. FOSC coordination was made with MSD Brownsville. A joint investigation by TGLO and the MSD revealed the spill was cleanable. The MSD handed the lead to TGLO to recover, remove and dispose of the spill. No responsible party could be found. The MSD determined the cleanup consistent with the NCP.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs associated with the incident. I used the Texas Regional Average to measure this claim.

AMOUNT: \$1,452.36

RECOMMENDATION: I recommend payment in the amount of \$1452.36, which is the amount claimed less a \$10.00 fuel surcharge. No justification was documented for the fuel surcharge.

Claim Supervisor [REDACTED]

Date of Supervisor's review: 12/11/01

Supervisor Action: *Approved*

Supervisor's Comments:

SO & A/R - *Approved.* [REDACTED]

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 2/12/2002
Claim Number : 902025-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$1,503.80

BACKGROUND: On July 22, 2001, tar balls from a mystery spill of waste oil were discovered in the vicinity of Mustang Island State Park, in the Gulf of Mexico, a navigable waterway of the US. TGLO and MSO Corpus (FOSC) responded to the incident and did discover tar balls totaling 5 barrels of oil from the water. No responsible party could be found. The FOSC and TGLO agreed the spill was cleanable and that TGLO would take the lead to recover, remove and dispose of the incident. TGLO hired Corpus Christi Area Oil Spill Control Association. Note that at some later point in time, the FOSCR - [REDACTED], rescinded his authorization for cleanup as evidenced in the MCIR report without ever notifying TGLO. I contacted the FOSCR initially on December 7, 2001 and received a certified receipt from the CG server advising email was read on December 10, 2001. I called the MSO on January 15th, 2002 and left a message to call regarding the incident and I gave MC Case # to [REDACTED] to pass on to [REDACTED]. To date I have received no response and feel the claimant has enough information to warrant payment.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs associated with this incident. I used the Texas Regional Average to measure this claim.

AMOUNT: \$1,437.70

RECOMMENDATION: I recommend payment for everything except the 15% markup in the amount of \$66.03, which was applied to the disposal charge.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 2/19/02

Supervisor Action: *Approved*

Supervisor's Comments:

SO & A/R - *Approved.* [REDACTED]

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 10/23/2001
Claim Number : N01360-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND: On July 19, 2001, MSO Corpus received a report from the Park Ranger of Padre Island National Seashore of oil washing up on the beach near J. P. Luby Park. The affected water was the Gulf of Mexico, a navigable waterway of the US. TGLO met up with the USCG at the scene. Approximately 30-35 tar balls over approximately 100 yards were observed. The joint investigation revealed the spill was cleanable and a federal project would be opened. The USCG hired Miller Environmental to handle the cleanup and disposal. No source found.

DETERMINATION OF LOSS: TGLO seeks reimbursement for personnel and vehicle expenses associated with the response to this incident.

AMOUNT: \$210.98

RECOMMENDATION: I recommend payment in the amount claimed. The state's published rates are deemed reasonable.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 10/24/01

Supervisor Action: *Approved*

Supervisor's Comments:

SO & A/R - *Approved.* [REDACTED]

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 10/10/2001
Claim Number : 902008-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND: On July 18, 2001, tar balls were discovered on South Padre Island and county beach access #6. The oil had washed in from the Gulf of Mexico, a navigable waterway of the US. FOSC coordination was made with MSO Corpus. The MSO and TGLO responded and found tarballs ranging in size from baseball to basketball. No Responsible Party could be found. TGLO communicated with the FOSC (MSO Corpus) who agreed the spill was cleanable and that TGLO would take the lead. TGLO hired Alamo Environmental for cleanup and disposal. TGLO remained on scene to monitor the cleanup efforts and verify the cleanup was consistent with the NCP.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs associated with this incident. I used the Regional Average to measure this claim.

AMOUNT: \$2,581.63

RECOMMENDATION: I recommend payment in the amount of \$2,581.63, which is a reduction of the following:

- 1- Liners reduced to \$2.00 max allowable vice the [REDACTED] each being charged
- 2- Fuel surcharge of \$10.00 is denied
- 3- Drums reduced to \$58.23 max allowable vice the [REDACTED] each being charged

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 10/10/01

Supervisor Action: *Approved*

Supervisor's Comments:

SO & A/R: *reviewed & approved.* [REDACTED]

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 10/23/2001
 Claim Number : N01361-002
 Claimant : State of Texas
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]

BACKGROUND: On July 23, 2001, TGLO responded to a report of tarballs in the Gulf of Mexico in the vicinity of Port Aransas City Beach markers 2-11. The water affected was the Gulf of Mexico, a navigable waterway of the US. FOSC coordination was made with MSO Corpus. The USCG opened a federal project on July 21, 2001 to handle the cleanup efforts resulting from Tropical Storm Allison. It was determined that this incident was related to the previously opened FPN and this was to be considered a continuation of that FPN. No responsible party is associated with this project. The USCG hired Miller Environmental to handle this cleanup.

DETERMINATION OF LOSS: TGLO seeks reimbursement for their personnel and vehicle expenses associated with the response to this incident.

AMOUNT: \$313.34

RECOMMENDATION: I recommend payment in the amount claimed based on the state's published rate schedule, which is deemed reasonable.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 10/23/01

Supervisor Action: *Approved*

Supervisor's Comments:

SO & A/R -- *approved.* [REDACTED]

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 10/23/2001
 Claim Number : N01361-001
 Claimant : State of Texas
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]

BACKGROUND: On July 21, 2001, TGLO responded to a report of tarballs washing ashore in front of the Malaquete Visitors Center on the Padre Island National Seashore. Approximately 185 gallons were discovered. The water affected was the Gulf of Mexico, a navigable waterway of the US. FOSC coordination was made with MSO Corpus. After joint investigation, the USCG opened a federal project to handle the cleanup efforts. The USCG hired Miller Environmental to handle the cleanup and disposal. Samples were taken and no responsible party was identified.

DETERMINATION OF LOSS: TGLO seeks reimbursement for their personnel and vehicle expenses related to the response to this incident.

AMOUNT: \$754.04

RECOMMENDATION: I recommend payment in the amount claimed based on the fact that the state's published rate schedule is deemed reasonable.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 10/23/01

Supervisor Action: *Approved*

Supervisor's Comments:

SO & A/R - *approved* [REDACTED]

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/19/08
Claim Number : 907087-001
Claimant : Washington State Dept. of Ecology
Type of Claimant : Local Government
Type of Claim : Removal Costs
Claim Manager :
Amount Requested : \$12,883.86

FACTS:

1. Oil Spill Incident: The Washington State Department of Ecology (the claimant) reported that on October 8, 2006, their personnel responded to the sunken F/V Julie in the La Push Marina, La Push, Washington. The claimant hired a prime contractor, Philip Services Inc., who then subcontracted Global Diving and Salvage, to mitigate the spilled diesel and to remove the remaining petroleum products from the sunken vessel. The contractors removed approximately 190 gallons of diesel. The claimant identified the owner of the F/V Julie as [REDACTED] (the responsible party (RP)). The claimant billed the RP \$11,084.89 for the contractor removal costs, and \$1,798.97 for the Dept. of Ecology response costs, bringing the total to \$12,883.86. The claimant reported that the RP provided documentation proving that he could not afford to pay for the cleanup; therefore [REDACTED] debt was dismissed.

2. The Claim: The state of Washington (Dept. of Ecology) submitted a removal cost claim to the NPFC in the amount of \$12,883.86 for their uncompensated removal costs associated with this incident. The claim was received at the NPFC on September 27, 2007. Review of the documentation provided by the claimant, and information within the USCG's MISLE database revealed that there is another potential responsible party (PRP). The second PRP [REDACTED] was the owner of record at the time of the spill (see vessel's Certificate of Documentation).

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. Findings:

1. The incident involved the discharge of “oil” as defined in OPA 90, 33 USC § 2701(23), to navigable waters.
2. 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. (See, NPFC Claim Form).
3. The claim was submitted on time.

4. The NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the National Contingency Plan (NCP) for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.

B. The NPFC has determined that the invoices provided by the claimant support a total of \$12,038.13 in incurred removal costs. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below. The review of the actual costs, invoices, and dailies focused on:

1. the actions taken were compensable "removal actions" under OPA and the NPFC claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize or mitigate the effects of the incident);
2. the costs were incurred as a result of these actions;
3. the actions taken were determined by the NPFC-ca to be consistent with the NCP, and
4. the costs were adequately documented.

C. Denied Costs:

1. The NPFC has denied \$467.56 for indirect/overhead costs; we cannot approve unsubstantiated indirect/overhead costs per line item as charged in this claim, as this is considered an improper use of the Oil Spill Liability Trust Fund (OSLTF). See 33 CFR §136.105(e)(6).
2. The NPFC has denied \$129.38 claimed for ferry passes due to lack of documentation/receipts.
3. The NPFC has denied \$161.29 claimed for Vacuum Truck due lack of information that would allow us to measure this cost (e.g. – vacuum truck capacity, hourly rate, amount of hours used, etc.)

AMOUNT: \$12,038.13

Claim Supervisor: 

Date of Supervisor's review: 3/20/08

Supervisor Action: *Approved*

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 3/28/2001
Claim Number : 901088-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND: On March 6, 1999, the MSU Galveston received a report of a 55-gallon drum on the beach. USCG notified TNRCC of the beached drum. TNRCC inspected the drum and described it as rusty with both bungs intact with seals on them. The drum was reported to have a partial label indicating TOX R6587. The drum was located on the rocks on the Gulf of Mexico beach between San Luis and Jamaica Beach, a navigable waterway of the US. It was determined that the drum posed a substantial threat to the nearby waters if left to further deteriorate in the weather. TNRCC hired Boots & Coats aka Code 3, Inc to remove the drum, identify its contents and dispose of it properly. The contractor arrived on scene and overpacked the drum. A winch on the contractor's truck was used to pull the overpacked drum from the rocks to the highway. The overpacked drum was loaded onto the truck and transported to the contractor's facility where a hazcat test would be performed. On March 8, 1999, the drum in the overpack was inspected and appeared to never have been opened. Upon opening, the contents appeared to be unused oil. A hazcat test was performed and identified the contents as oil. The overpacked drum was transported to a recycler, ChemSep.

DETERMINATION OF LOSS: TNRCC seeks reimbursement for uncompensated removal costs associated with this incident. I used BOA+25 to measure this claim.

AMOUNT: \$925.40

RECOMMENDATION: I recommend we pay BOA+25 which is less than the amount claimed. I have also directly denied all charges billed on 3/7/99 as the log does not indicate any service provided on this date at all. Also I am denying the Resource Manager labor hours as there is no justification for the need for a Resource Manager when there was a foreman on a one drum incident. Also I have denied the Supervisor charge on 3/29/99 - three weeks after the drum was disposed of. There is no substantiation to warrant the charge

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 3/29/01

Supervisor Action: *Approved*

Supervisor's Comments:

Settlement Offer: *Approved* [REDACTED]
Acceptance/Release: *Approved* [REDACTED]

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/15/2002
Claim Number	: 086075-004
Claimant	: Buffalo Marine Services
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]

BACKGROUND:

Incident Information:

On 18 March 1996 the T/B BUFFALO 292, a 275-foot bunker barge, owned by Buffalo Marine Services (BMS), was being pushed by the towboat SAN GABRIEL, southbound in the Houston Ship Channel. The T/B BUFFALO 292 was loaded with 17,000 barrels of Bunker C fuel in the port and starboard tanks 2,3,4, and 5. Tanks 1 and 6 were empty. Inclement weather conditions were producing winds of 35 knots (gusts up to 45 knots), sea conditions remained between four and six feet, and the current was steady at approximately 4 knots. While attempting a port turn, eastbound into the Gulf Intracoastal Waterway, the BUFFALO 292 buckled causing a catastrophic failure forward of the #3 port and starboard tanks and creating a 30-degree bend in the barge. As a result, approximately 132,300 gallons (4200 barrels) of Bunker C discharged into the Galveston Bay entrance, next to the Houston Ship Channel, where it crossed the Gulf Intracoastal Waterway into Galveston Bay and the Gulf of Mexico, a navigable waterway of the United States. Approximately 300 miles of Texas waterfront property was affected by the oil slick.

Claim Information:

Buffalo Marine Services submitted their claim asserting their entitlement to a Limit of Liability. The National Pollution Funds Center reviewed their claim and granted them a Limit of Liability. Subsequently, they submitted their claim costs for third party property damages and third party loss of profits.

Property Damages:

Private and commercial properties claimed damages. The owners or managers of the following properties reported damage:

- Three (3) Hotels:
- Holiday Inn Sunspree
 - Sandpiper Motel
 - Seaside Inn

- Two (2) Condominiums:
- Beachgate Condos
 - Island House Condos

- Organizations:
- The Salvation Army
 - S.S. Houston Enterprises

- Private Property Parties:
- [REDACTED]

LOST PROFITS AND EARNINGS:

Lost profits and earnings were claimed by a number of entities:

Three (3) commercial residences:

- Beachgate Condos
- Sandpiper Motel
- Seaside Inn;

Two (2) Private Communities:

- Baja Beach Club
- Betta Beach/Park Board

One (1) Private Company

- Port Bolivar Fisheries

One (1) Private Property

- [REDACTED] and

Three (3) claims that represent large fishing communities:

- [REDACTED]
- [REDACTED]
- [REDACTED]

DETERMINATION OF LOSS:

The National Pollution Funds Center sent BMS Notice of Designation, requiring them to advertise their claim process to third parties who had property damage and/or loss profits arising from their oil spill. BMS settled all third party claims both in and out of court prior to presenting their Limit of Liability claim to NPFC. In their submission to NPFC, BMS provided numerous documents to explain and prove much of the Property Damage and Lost Profits and Earnings that the twenty (20) third party claimants alleged. The claim's Property Damage and Lost Profits and Earnings totaled \$521,279.95.

The NPFC reviewed the documents submitted by BMS and audited each claim submitted to determine whether the claimant made a justifiable payment for property damages and lost profits and earning capacity. We wanted to ensure that the payment was reasonable and met claim criteria for OPA compensation. To do this, the NPFC requested the claimant supply us proof of payments to third party claimants. In particular, we requested copies of the claimant's cancelled checks. In May 2001, the Chalos Law Firm, representing BMS, contacted the NPFC stating that their client needed time to find and submit cancelled checks. The NPFC corresponded with The Chalos Law Firm through email, and eventually in a formal letter requesting copies of the cancelled checks as required under *OPA 136.105(a)* *Claimant bears burden of providing all evidence, information and documentation deemed necessary by the Director of the NPFC to support the claim.*

The Chalos Law Firm eventually informed us that their client did not have copies of cancelled checks. We understand that monies from BMS and their insurer were deposited in accounts to their attorneys at the time of this incident. These attorneys have since closed their firm and BMS doesn't have access to their records. Without proof of payments to the individual claimants the NPFC can't reimburse BMS for third party claims. Payment cannot be made in the absence of proof of payment of these claims.

DETERMINED AMOUNT:

\$0.00

DETERMINATION:

Due to claimant failing to meet it's burden of proving the claim with evidence showing that actual payment of third party claims occurred, I recommend that the claim be denied.

Claim Supervisor:	[REDACTED]
Date of Supervisor's Review:	28 April 2004
Supervisor's Action:	Approved as presented
Supervisor's Comments:	Claim is denied for failing to provide evidence of payment to third parties.

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 10/9/2003
Claim Number : 901047-001
Claimant : Marathon Oil Company
Type of Claimant : Corporate (US)
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$129,753.28

BACKGROUND: On 4/20/97, an oil slick was observed in the vicinity of a sub-sea pipeline, Eugene Island, Block #304-297, Gulf of Mexico, St. Mary, LA., owned and operated by Marathon Pipe Line Company (MPL). Marathon Oil Company, initiated an emergency response effort, as per the Offshore Oil Spill Contingency Plan. The FOSC, MSO Morgan City, directed the efforts by "highly encouraging these resource to be deployed". Following an inspection, performed by Global Divers, the Marathon Pipe Line was found to be in good working order, no leaks found. The source of the discharge was never determined and the amount spilled was reduced to 196 gallons from 3300 bbls. The FOSC's investigation report #MC97006132, recorded "Cleanup Req? N". Also, note that the FOSC instructed the response efforts be scaled back on Tuesday 04/22/97. Due to the lack of "on scene" FOSC documentation and the age to the case, I requested, via letter dated 2/27/03, the claimant obtain "after the fact" review, validation and approval by the FOSC (see [REDACTED] e-mail dated August 8, 2003).

DETERMINATION OF LOSS: The claimant is seeking reimbursement of uncompensated removal costs for MPC International and sub contractor Bayou Pipe Coating Co., Global Divers & Contractors, (2) NRC Response Vessels and Morris Environmental Inc. associated with this incident.

AMOUNT: \$85,410.67

RECOMMENDATION: I recommend payment in the amount of \$85,410.67 based on daily costs documentation and contractor invoices. The following deductions were made:

[MPC International]

Requested Personnel Costs = \$2,251.58
Supported Personnel Costs = \$1,503.64 (*Reduced by \$747.94)

- Personnel Hours were reduced. FOSC instructed "scaled back" or end of the removal effort on 04/22/97 also the amount spilled was reduced substantially (no cleanup required) and the pipeline was determined in good working order.

Requested Travel Costs = \$206.98
Supported Travel Costs = \$206.98 (Reduced \$0.00)

(Bayou Pipe Coating Co.)

Requested Subcontractor Costs = \$250.00
Supported Subcontractor Costs = \$250.00 (Reduced \$0.00)

Requested Helicopter & Crew Boat Costs = \$18,582.59

Supported Helicopter & Crew Boat Costs = \$16,243.44 (*Reduced by \$2,339.15)

- Helicopter AFE # 74306 had two invoiced flights, which were not properly supported, no date provided. MARA 11 Helicopter BH206L-1 charged on 04/23/97 and MARA 44 Helicopter BH206-L3 charged on 04/24/97 were beyond the, FOSC instructed "scale back" or end of removal effort on 04/22/97.

[Global Divers & Contractors]

Requested Personnel Costs = \$44,060.70

Supported Personnel Costs = \$44,060.70 (Reduced \$0.00)

Requested Divers Travel Costs = \$24,577.50 (non-saturation rate)

Supported Divers Travel Costs = \$24,577.50 (Reduced \$0.00)

Requested Divers Equipment Costs = \$360.50 (M/V SEA LION cellular phone usage)

Supported Divers Equipment Costs = \$0.00 (*Reduced by \$360.00)

- The cellular phone charge was not supported, no invoice or record of calls provided.

Requested Mobilization/Demobilization and De-Saturation Costs = \$71,000.00

Supported Mobilization/Demobilization and De-Saturation Costs = \$35,400.00 (*Reduced by \$35,600.00)

- The flat rate of \$71,000.00 is not supported, 4/23/97 daily records 24 hrs of De-Saturation (0001-2400) / 4 Divers in Saturation Standby rate is \$1275.00/hr and the recorded Mobilization/Demobilization rate is \$4,800.00 (surface gas).

Requested NRC Vessel Costs = \$10,000.00 (M/V CHARLIE G & M/V DAVID D)

Supported NRC Vessel Costs = \$ 5,000.00 (*Reduced by \$5,000.00)

- Actual costs (\$2,042.47) for M/V CHARLIE G charged under MPC International – Helicopter & Crew Boat Costs above. An additional charge of \$5,000.00 is disallowed and found unreasonable due to the small amount of oil spilled.

[Morris Environmental]

Requested Personnel Costs = \$1,047.50

Supported Personnel Costs = \$ 752.50 (*Reduced by \$295.00)

- Personnel Hours were reduced. FOSC instructed scaled back or end of the removal effort on 04/22/97 also the amount spilled was reduced substantially (no cleanup required) and the pipeline was determined in good working order.

Requested Equipment Costs = \$667.00

Supported Equipment Costs = \$667.00 (Reduced \$0.00)

Note - The claimant adjusted their bill to reflect payment by check from Chevron totaling \$43,251.09 for service provided during the emergency response effort to identify the source of discharge.

Total amount requested = \$129,753.26
Total amount determined compensable = \$85,410.67
Total amount denied = \$44,342.59

Claim Supervisor: 

Date of Supervisor's review: *10/21/03*

Supervisor Action: *SO & A/R approved*

Supervisor's Comments: 

RF

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 6/26/2001
Claim Number : 901047-002
Claimant : Marathon Oil Company
Type of Claimant : Corporate (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]

BACKGROUND:

On or about 20 April 1997, there was a discharge of oil into the waters of the Gulf of Mexico, in the vicinity of Eugene Island. Claimant has a pipeline in that vicinity. As the source of the discharge was not clear, claimant shut down its pipeline until an investigation could be completed. The investigation determined that claimant's pipeline was not the source. All of the appropriate entities - NRC and USCG, were notified about this incident.

This claim was submitted to the NPFC on or about 27 November 2000. According to the documentation submitted, the incident occurred on 20 April 1997. Accordingly, the NPFC denied this claim for its failure to comply with the statute of limitations on 6 March 2001. 33 USC 2712(h)(2) provides that "no claim may be presented under this section for recovery of damages unless the claim is presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care...."

On 30 April 2001 claimant requested reconsideration on our decision. It is their position that their claim for lost profits did not exist until they obtained confirmation from the CG regarding the cause of the spill i.e. the RP. This is a misinterpretation of the statute of limitations. The determination of the RP is irrelevant to the statute of limitations. The focus of the statute is the date on which the injury was reasonably discoverable with the exercise of due care.

Claimant is asserting that it had to shut down its pipeline as the result of a discharge of oil, and lost profits as a result. It is therefore arguable that claimant knew that it had suffered damages pretty close to the time of this incident.

The statute of limitations in OPA is strictly applied, and there is no provision which allows for its waiver.

In its request for reconsideration, claimant asserts that it was in part relying on information received during an NPFC Fund Use Seminar. Claimant should be aware that the information provided in that forum is very general in nature, and a presenter is not in a position to make a determination on a claim. All claims are evaluated on their individual merits once received at our offices.

DETERMINATION OF LOSS: Claimant asserts that it suffered damages in the amount of \$38,782.19 in lost profits – when it shut down its pipeline.

AMOUNT: \$0.00

RECOMMENDATION: Deny claim upon reconsideration for failure to meet statute of limitations.

Claim Supervisor:	[REDACTED]
Date of Supervisor's Review:	27 June 2001
Supervisor Action:	Recommendation is approved as presented.
Supervisor's Comments:	Claim, upon reconsideration is hereby denied. Claimant has failed to meet the SOL and provide arguments that would dissuade us as to why they couldn't identify their lost profits earlier than March 28, 2000.

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 10/18/2000
 Claim Number : 900409-001
 Claimant : Southern Waste Services
 Type of Claimant : Corporate (US)
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]

BACKGROUND: On September 22, 1999, there was a gasoline spill into the Coastal Gulf of Mexico, a navigable waterway at Cape Haze Marina in Englewood, FL. Cape Haze Marina (RP) called and reported the spill to MSO Tampa immediately. USCG, DEP, and FD were on scene for this spill. Investigation determined less than 10 gallons of gasoline had been spilled into the waters. FOSC coordination was made with MSO Tampa and the cleanup was consistent with the NCP. Cape Haze Marina contracted Southern Waste Services to perform the cleanup operations.

DETERMINATION OF LOSS: After failure to respond to payment requests, SWS seeks reimbursement for uncompensated removal costs associated with this incident.

RECOMMENDATION: This claim was measured utilizing the BOA on file for SWS. I recommend we pay the amount claimed less the \$1.00 charge for providing a disposal manifest, less the \$4.00 charge for labels made for the disposal drums, and less the \$15.00 charge for the stress management liquids. When I spoke with the claimant, he stated the stress management liquids were drinks for the guys at the site. My recommendation is to pay \$2442.45.

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 08/25/2000
Claim Number : 900318-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND: On June 3, 1999, Public Works Manager called TGLO and reported tarballs washing up on South Padre Island beach behind the condos, which leads to the Gulf of Mexico, a navigable waterway. The oil covered 2 miles of beach. A joint inspection between TGLO and USCG was done and no responsible party was found. FOSC coordination was made with MSO Corpus Christi. They handed the lead to TGLO for cleanup. TGLO contracted RM Walsdorf and Marine Salvage & Services.

DETERMINATION OF LOSS: TGLO requests reimbursement for uncompensated removal costs. The BOA for Marine Salvage & Services was utilized to measure this claim. There is no BOA on file for RM Walsdorf. The amount claimed is less than BOA+25. Also note on Marine Salvage's invoice, there was an across the section discount of 1/3 applied to the disposal portion of the bill. Appropriate notations are made on spreadsheet.

RECOMMENDATION: I recommend we pay amount claimed of \$2844.90, which is less than BOA+25

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 09/07/2000
Claim Number : 900298-001
Claimant : State of Texas
Type of Claimant : State - "Local Government"
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND: On April 28, 1999, tarballs were discovered on the beach between markers 36 to 37 on the National Seashore which leads into the Gulf of Mexico, a navigable waterway. Approximately 5 barrels of crude oil needed to be cleaned up. The USCG provided a ride to TGLO as they were short vehicles during the notification period. Investigation revealed no responsible party. FOSC coordination was made and USCG gave the cleanup lead to TGLO who contracted Miller Environmental to perform the cleanup operation.

DETERMINATION OF LOSS: TGLO is requesting reimbursement for uncompensated removal costs. Used Miller's BOA as comparison. Amount claimed is less than BOA+25.

RECOMMENDATION: I recommend we pay the amount claimed of \$3392.77

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 08/31/98
Claim Number : 9C8309-001
Claimant : State of Florida
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND:

On 23 December 1997, the Florida Marine Patrol responded to a small oil spill from an unknown source in the Gulf of Mexico. The spill occurred near 4144 Pine Dale Court in Hernando Beach, Florida.

On 30 June 1998, we received from the State a \$52.49 claim for uncompensated removal costs to respond to the spill. The State also submitted a \$9.57 natural resource damage claim, number 9C8309-002.

DETERMINATION OF LOSS:

The State notified and coordinated its removal actions with the FOSC. To evidence this, the State provided a Preliminary Pollutant Discharge Report, signed by the Federal On Scene Coordinator (FOSC). The claimed costs appear to be reasonable based upon prior claims submitted by the State and paid by the National Pollution Funds Center (NPFC).

RECOMMENDATION:

I recommend that the NPFC pay the full amount claimed. The removal actions taken by the State and the costs claimed appear to be reasonable.

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 07/18/2000
 Claim Number : 900172-001
 Claimant : State of Texas
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]

BACKGROUND: On October 17, 1997, at 4:53pm local time, the Texas Natural Resource Conservation Commission notified the National Response Center that a drum washed up on Gulf Beach near Matagorda City, Gulf of Mexico, a navigable waterway. TNRCC reported that the drum contained diesel and stated that it was found to be leaking and appeared to be 1/2 to 5/8 full. The drum was locate between the county park and fishing pier on the Gulf Beach. A county health inspector confirmed the location and condition of the drum. No responsible party was found. Waste Control Services sampled the drum and the chemist described the sample as diesel. There was no visible sheen in the water but there was an oil stain on the beach. Texas Natural Resource Conservation Commission contracted Waste Control Services for removal and disposal of the incident.

DETERMINATION OF LOSS: Texas Natural Resource Conservation Commission is requesting \$978.00 for the removal and disposal costs associated with this spill. TNRCC contracted Waste Control Services for this spill. The contractor's labor hours sheet indicates that there is a "4 hour minimum" charge in effect for this spill.

RECOMMENDATION: I recommend we pay the amount claimed of \$978.00, which is less than the Regional Average chart I used as a comparison for the charges on this claim.

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 07/21/2000
Claim Number : 900207-001
Claimant : State of Texas
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND: On December 6, 1998, an incident occurred in the Gulf of Mexico at South Padre Island beach, a navigable waterway, by condos north to Atwood King Park 2.5 miles. TGLO was called to investigate and no responsible party was found. Public Works are who discovered tar balls washing up on the beach and 2.3 miles of beach were affected. There were 5 - 55 gallon drums of tar balls recovered. The state funded the cleanup and contracted RM Walsdorf to conduct the cleanup. FOSC coordination was made with the Coast Guard.

DETERMINATION OF LOSS: TGLO is requesting \$2325.21 for cleanup and removal costs associated with this incident. I used a BOA from Spill Response, Inc. of Texas as they are a widely utilized cleanup contractor as the comparison for reasonable rates. The BOA+25 exceeds the amount claimed by TGLO.

RECOMMENDATION: I recommend we pay \$2325.21

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 07/24/2000
Claim Number : 900297-001
Claimant : State of Texas
Type of Claimant : State - "Local Government"
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND: On March 4, 1999, a Park Ranger at the Mustang Island State Park reported observing tarballs impacting the beach area at the Day Use Park which has access to the Gulf of Mexico, a navigable waterway. TGLO investigated and found an area of impact approx. 15ft by 100 yards with about 30% coverage of the patchy tarballs. Cleanup was coordinated with the FOSC (MSO Corpus Christi). The cleanup effort was lead by the state. TGLO contracted Corpus Christi Area Oil Spill Control to conduct the cleanup.

DETERMINATION OF LOSS: TGLO requests reimbursement of uncompensated removal costs incurred from this incident. I reviewed the BOA on file for Corpus Christi Area Oil Spill Control. I recommend we pay the amount claimed of \$3280.89 less the \$41.40 staff charge for the paperwork preparation on the analysis with regards to waste disposal.

RECOMMENDATION: I recommend payment of \$3239.49

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date	: 08/07/2003
Claim Number	: 9C8002-002
Claimant	: Amerella Shipping, Inc.
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Claimed Amount	: \$15,069.44

BACKGROUND:

On June 6, 1997, an oil sheen was noticed off of the starboard side of the T/T FRIENDSHIP (FRIENDSHIP) while it was anchored in the Galveston Lightering Zone, a navigable waterway of the United States. When the sheen was noticed the FRIENDSHIP was lightering oil to the smaller vessel, M/V DENEBA (DENEBA), for delivery to a shore facility.

The owner and managers of the FRIENDSHIP are Amerella Shipping Company, Ltd. of Oslo, Norway (Amerella), SeaTeam International, Inc. (SeaTeam) of Oslo, Norway and Liberia, and Seatankers Management Company (Seatankers) of Oslo, Norway. The FRIENDSHIP was under a charter agreement signed by SeaTeam, on behalf of the owner. The charterer was Arcadia Petroleum, Limited (Arcadia) and its agent Barber Ship Management of the UAE. Amerella Shipping Company, Ltd. meets the requirements under section 1007, of the Oil Pollution Act of 1990 (OPA) regarding foreign entities and is eligible to make a claim.

After a crewmember reported the sheen to the Master of the FRIENDSHIP, lightering operations ceased at 6:45 AM. The Master reported the oil sheen to the Marine Safety Office (MSO) Galveston, Texas and the National Response Center. He then notified the owner's Qualified Individual (QI), and the ship's management company of a possible oil discharge and vessel delay. The FRIENDSHIP's crew deployed boom and sorbent to contain and clean up the oil sheen. In an effort to locate the source of the oil, the Master ordered the FRIENDSHIP ballasted to raise its starboard side out of the water.

Around 1:30 PM, the Coast Guard and the ship's QI arrived on board the FRIENDSHIP with a diver. The Coast Guard investigator was the acting Federal On-Scene Coordinator (FOSC) and he inspected the vessel's seachest, holding tanks, engine room, and slop tanks. The FOSC then questioned the crew and reviewed the vessel's documents. The FOSC agreed with the ship's QI that a diver could be useful to locate the source of the discharge, so the diver surveyed the hull, but could not find the source of the oil.

The FOSC took oil samples from each vessel, but due to improper sampling protocol these could not be used as evidence to identify a responsible party. When neither vessel could be identified as the source of the discharge the Coast Guard concluded that the pollution incident was a mystery spill. The FOSC permitted the FRIENDSHIP to resume lightering with the DENEBA at 7:45 PM on June 6, 1997.

CLAIM:

In 1998 Amerella presented its claim to the National Pollution Funds Center (NPFC) claiming that the pollution-related vessel delay cost them \$15,328.88 in lost profits. As the owner of the FRIENDSHIP, Amerella made its claim solely for its loss of profits. The charterer, Arcadia has not presented a claim from this incident to the NPFC. [REDACTED] of Eastman, Watson, Dale and Forney of Houston, Texas represents Amerella as the owner of the FRIENDSHIP and its management SeaTeam and Seatankers.

The NPFC has worked with [REDACTED] to establish what would constitute sufficient evidence to demonstrate Amerella actually suffered a loss of profits from this mystery spill. The administrative record indicates several attempts to obtain documentation from the claimant (i.e. February 13, 1998, June 5, 1998, January 4, 2000 and in September 2002).

On May 16, 2003 [REDACTED] submitted documents (exhibits A-J) as evidence of Amerella's loss of profits. The charterer and owner generally keep a balance of the vessel delays and attribute to each delay either, laytime (charged to the owner's account) or demurrage (charged to the charterer's account). At the end of the charter, the owner and charterer reconcile this balance.

In May 2003 the claimant submitted documentation that we requested. The claimant modified its claimed amount to \$15,069.44.

DETERMINATION OF LOSS:

We reviewed the documents and found sufficient evidence that Amerella incurred a loss of profits from the pollution related vessel delay. The vessel log shows an elapsed time of 14 hours and 28 minutes, from the time lightering ceased, until the FOSC permitted lightering to resume. The Coast Guard reported 13 hours and 15 minutes of vessel delay. We were unable to determine why the Coast Guard reported one hour less than the FRIENDSHIP's vessel log. The National Pollution Funds Center accepts the vessel's log as the correct amount of time for the pollution-related vessel delay.

To verify the cost of the vessel delay as claimed by Amerella we reviewed the charter agreement. Daily demurrage is \$25,000 and under the charter agreement this delay is assessed on a pro rata basis or only for the specific time of the vessel's delay, which is 14 hrs and 28 minutes. To calculate the claimed amount of loss profits, we divided the daily demurrage rate by 24 hours to get the hourly demurrage rate (e.g. $\$25,000 / 24 \text{ hrs} = \$1,041.67$). Then we divided the hourly demurrage rate of \$1,041.67 into minutes (e.g. $\$1,041.67 / 60 \text{ min} = \17.36 per minute) for the cost per minute. The delay time converted into minutes is $14 \text{ hrs} \times 60 = 840 \text{ min} + 28 \text{ minutes} = 868$ minutes. Total minutes of 868 multiplied by the demurrage rate per minute of \$17.36, comes to \$15,068.48 in oil pollution related demurrage.

We note from the documentation that Amerella through its agents SeaTeam and Seatankers agreed to a 50% split with the charterer for the delay attributable to the mystery spill. The

Statement of Facts (exhibits A-B) for lightering operations (6/01/97 to 6/16/97) and the SeaTeam Laytime Statement for the FRIENDSHIP (exhibits C-D) confirm the pollution-related delay time of 14 hours and 28 minutes. Exhibit E is a fax from Barber Ship Management to Seatankers agreeing to split the pollution related delay in half. Exhibits F and G are faxes between the owner and charterer regarding the demurrage. Exhibit H is an internal memo from Seatankers Post Fixture, the owner's management company, to Seatankers A/C dated December 18, 1997 stating that the owner and charterer will split the pollution-related delay cost, which would be 7 hours and 14 minutes or \$7,534.72 each. From the memo:

#7 "For pollution event please note LOH (owner's loss of time) as follows:

50% already deducted by charterer in their demurrage statement = 7 hours and 14 minutes,

50% deducted by charterer during settlement negotiations = 7 hours and 14 minutes

Total 14 hours and 28 minutes at \$25,000 (per day) = \$15,069.44

The documentation indicates that the two parties negotiated a final invoice for the pollution-related vessel delay by splitting the total hours of 14 hours and 28 minutes or \$15,069.44 to 7 hours and 14 minutes or \$7,534.72 (see claimant's exhibit E the Barber Ship Management telex [REDACTED] dated August 6, 1997 advising Seatankers Management as to the deal). Therefore the owner's loss equals the owner's share of the total cost. The owner is only entitled to the cost it incurred, which was half of the pollution-related delay or \$7,534.72.

AMOUNT of LOSS:

The NPFC calculates the pollution-related vessel delay cost the owner \$7,534.72.

RECOMMENDATION:

I recommend that the Fund pay the claimant \$7,534.72 in vessel delay lost profits.

Claim Supervisor:	[REDACTED]
Date of Supervisor's Review:	15 October 2003
Supervisor Action:	Approved as presented.
Supervisor Comments:	Claimant is entitled to 50% of claimed costs due to the owner splitting the demurrage 50-50 with the charterer.

CLAIM SUMMARY / DETERMINATION FORM

FOIA 2010-0330000-42

Date : 12/9/2002
Claim Number : 9C8002-001
Claimant : Amerella Shipping, Inc.
Type of Claimant : Corporate (US)
Type of Claim : Request for Reconsideration
Claim Manager : [REDACTED]
Amount Requested : \$26,790.94

BACKGROUND: Assoc Claims: 9C8002-002. T/T FRIENDSHIP discovered oil in the water while beginning lightering operations. Please refer to the original Claim Summary / Determination Form, dated 10/31/2002, for a complete "Background" description. I performed a Reconsideration Determination, specifically focused on the denial of the 100% reimbursement for the costs to replace the "Spill Response Kit". The Claimant requested reconsideration for one particular item, "that the entire costs of the kit be reimbursed to owners". The Claimant explained further "once the seal is broken on a kit and it is used, it becomes incumbent to have the kit replaced by the vendor, and they usually do so by replacing the entire kit".

DETERMINATION OF LOSS: T/T FRIENDSHIP acted as a Good Samaritan responding to the spill and cleaning up the oil. This reconsideration request is outlined as follows:

The Claimant is seeking full reimbursement for supplies (Spill Response Kit) provided by Stromme Ship Service.

The total invoice amount is \$8,131.11.

The original determination was approved for \$4,159.37.

This request is for the denied amount totaling \$3,971.74.

The original denial was based on a deduction for shipping and handling charges, which were incurred 7 days prior to the incident date. Also, charges for various kit items, which were either not used or intended for this type of removal activity, were deducted.

DETERMINED AMOUNT: \$18,043.20 (USD)

DETERMINATION ON RECONSIDERATION: I recommend payment of the original amount of \$18,043.20 (USD) for the removal costs portion of the claim. This request for reconsideration and additional payment of \$3,971.74 for the spill Response Kit costs originally denied should again be denied for the following reasons:

The Claimant argues that the kit is of single use integrity for quicker, more consistent, cheaper and more efficient spill response. I agree, this is probably a more effective process for better spill response. However, this decision is a company policy which is supported by the claimant statement that "first of all...[to] avoids the temptation of the crew pilfering the kit of certain items..." and "...there is not enough space on a vessel to house extra materials..." and "...such replacement of the kits ensures that the kit at all times is at 100% capacity..."

OPA and the Claim Regulations (33CFR136) allows claimants to seek reimbursement for removal costs associated with actions taken that were necessary to prevent, minimize or mitigate the effects of the incident. Actions must be consistent with the National Contingency Plan (40CFR300). I determined that the response efforts for this incident were such that only a portion of the vessel's Spill Response Kit was necessary. These costs were allowed. The costs for the rest of the equipment in the kit were not necessary and not used, are not OPA compensable removal costs, they are "overhead" costs that the claimant incurred based on company policy not based on actual oil spill response.

In addition, Federal Regulations and International Treaties require that all Foreign Tank Vessels operating in U.S. waters must comply with 33 Code of Federal Regulation 155.205 (a), which states that vessel's greater than 400 feet (T/T FRIENDSHIP measured 1100ft) must carry appropriate discharge removal equipment & supplies for the containment and removal of on-deck oil cargo spills of at least 12 barrels. The "Spill Response Kit" is packaged and provided to satisfy this requirement. My determination is also based on the fact that the Claimant is required to maintain this equipment onboard. The original determination to reimburse the Claimant for the expended items only is appropriate.

Therefore, I determined that the original \$18,043.20 (USD) is proper cost for this spill response effort. The Claimant's request for reconsideration of the \$3,971.74 in "extra" Spill Response Kits costs is denied.

Claim Supervisor: 

Date of Supervisor's Review: *1/26/03*

Supervisor Action: *Approved*

Supervisor's Comments:

Claimant's Request for Reconsideration failed to provide evidence that the additional cost requested were reasonable removal costs associated with response to this incident.

Make original offer of \$18,043.20 again to claimant.

The use of the spill "kit" was a business decision (convenience provided by a vendor; to prevent pilfering) NOT related to the discharge. While the regs require certain spill response equipment to be aboard certain vessels – there isn't a requirement that the equipment be purchased in kit.

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 04/08/98
 Claim Number : 9D7249-001
 Claimant : State of Florida
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]

BACKGROUND:

On 15 October 1995, the Florida Marine Patrol responded to a small oil spill that arose from a fishing vessel pumping its bilge. At the time, [REDACTED] was the owner of the vessel. The spill occurred in a channel that empties into the Gulf of Mexico at the Hudson Shrimp Docks, Hudson, Florida.

On several occasions, the State attempted unsuccessfully to recover its removal costs from [REDACTED]. On 23 July 1997, we received from the State a \$64.80 claim for uncompensated removal costs to respond to the spill.

DETERMINATION OF LOSS:

Based upon the information provided by the claimant, the State notified the FOSC of the discharge. According the State's Pollutant Discharge Case Report, the Florida Marine Patrol notified Officer Jarrett of MSO Tampa of the oil pollution incident.

RECOMMENDATION:

I recommend that the National Pollution Funds Center pay the full amount claimed. The actions taken by the State and the costs claimed appear to be reasonable.

According to policy, the NPFC does not normally seek cost recovery from responsible parties for claims we pay that are under \$500.

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 03/03/98
 Claim Number : 9D7237-001
 Claimant : State of Florida
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]

BACKGROUND:

On 10 August 1995, the Florida Marine Patrol responded to a small oil spill from a sunken vessel in the Gulf of Mexico at [REDACTED]. The Fort Myers Fire Department and the owner of the vessel, [REDACTED] cleaned up the spill. However, [REDACTED] did not remove the sunken vessel from the water. Once cleaned up, the Florida Marine Patrol made several inspections to ensure that the vessel did not cause any further oil discharges.

On 23 July 1997, we received from the State a \$156.04 claim for uncompensated removal costs to respond to the spill.

DETERMINATION OF LOSS:

Based upon the information provided by the claimant, the State notified the FOSC of the discharge. According the State's Pollutant Discharge Case Report, the Florida Marine Patrol on 10 August 1995 notified PO Quick of MSO Tampa of the oil pollution incident.

RECOMMENDATION:

I recommend that the National Pollution Funds Center pay the full amount claimed. The actions taken by the State and the costs claimed appear to be reasonable.

According to policy, the NPFC does not normally seek cost recovery from responsible parties for claims we pay that are under \$500.

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 03/10/98
 Claim Number : 9D7241-001
 Claimant : State of Florida
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]

BACKGROUND:

On 21 June 1995, the Florida Marine Patrol responded to a small oil spill from a sunken pleasure vessel in the Gulf of Mexico at [REDACTED]. [REDACTED] owned the 38' wooden, chris craft vessel.

On several occasions, the State attempted unsuccessfully to recover its removal costs from [REDACTED]. On 23 July 1997, we received from the State a \$59.75 claim for uncompensated removal costs to respond to the spill.

DETERMINATION OF LOSS:

Based upon the information provided by the claimant, the State notified the FOSC of the discharge. According the State's Pollutant Discharge Case Report, the Florida Marine Patrol on 21 June 1995 notified [REDACTED] of MSO Tampa of the oil pollution incident. The report also indicates that the Coast Guard responded to the oil pollution incident.

RECOMMENDATION:

I recommend that the National Pollution Funds Center pay the full amount claimed. The actions taken by the State and the costs claimed appear to be reasonable.

According to policy, the NPFC does not normally seek cost recovery from responsible parties for claims we pay that are under \$500.

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 04/10/98
 Claim Number : 9D7234-001
 Claimant : State of Florida
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]

BACKGROUND:

On 12 August 1995, the Florida Marine Patrol responded to a small oil spill from a sunken pleasure vessel in the Gulf of Mexico at the Sigsbee Park Marina, Key West, Florida. At the time, the vessel was owned by [REDACTED]. The Florida Marine Patrol and MSO Miami removed the vessel from the water, thereby eliminating the source of the oil spill.

On several occasions, the State attempted unsuccessfully to recover its removal costs from [REDACTED]. On 23 July 1997, we received from the State a \$191.01 claim for uncompensated removal costs to respond to the spill.

DETERMINATION OF LOSS:

Based upon the information provided by the claimant, the FOSC and the Florida Marine Patrol worked together to eliminate the source of the oil spill. Therefore, it appears that the State coordinated its removal activities with the FOSC.

RECOMMENDATION:

I recommend that the National Pollution Funds Center pay the full amount claimed. The actions taken by the State and the costs claimed appear to be reasonable.

According to policy, the NPFC does not normally seek cost recovery from responsible parties for claims we pay that total under \$500.

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

SLA
RF**CLAIM SUMMARY / RECOMMENDATION FORM**

Date : 01/27/99
Claim Number : 9D7207-001
Claimant : State of Florida
Type of Claimant : State
Type of Claim : Removal Costs
Claim Manager : [REDACTED]

BACKGROUND: A vessel discharged oil into the waters of the Gulf of Mexico.
Claimant responded.

DETERMINATION OF LOSS: Claimant contacted the proper FOSC - MSO Tampa - to coordinate its actions. Claimant's actions were properly coordinated in accordance with the NCP. The actions taken and costs incurred are reasonable and consistent with the NCP.

RECOMMENDATION: pay removal costs in the amount of \$47.09

Claim Supervisor : [REDACTED]

Date of Supervisor's review:

Supervisor Action :

Supervisor's Comments:

CLAIM SUMMARY / RECOMMENDATION FORM

Date : 10/17/2003
 Claim Number : 903137-001
 Claimant : State of Texas
 Type of Claimant : State
 Type of Claim : Removal Costs
 Claim Manager : [REDACTED]
 Amount Requested : \$2,162.52

BACKGROUND: On April 25, 2003, a mystery spill of oil was discovered in the Gulf of Mexico, a navigable waterway of the US. The oil washed ashore one tar mat the size of 5'x7'. TGLO responded and found approximately 235 gallons of oil had been discharged into the Texas Coastal waters. FOSC coordination was made with [REDACTED] of MSO Houston-Galveston. The FOSC authorized TGLO to take the lead for immediate response. TGLO hired T & T Marine to handle the cleanup. TGLO monitored the cleanup and confirms the cleanup was consistent with the NCP. No responsible party was found.

DETERMINATION OF LOSS: TGLO seeks reimbursement for uncompensated removal costs associated with this incident.

AMOUNT: \$2,102.53

RECOMMENDATION: I recommend payment in the amount of \$2,102.53. The maximum allowable charge for each drum disposal is \$162.44. T & T Marine charged \$174.44 for each drum disposal and there were 5 drums disposed of. I have reduced the disposal charges by \$59.99.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 10/20/03

Supervisor Action: Approved

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/28/2009
Claim Number	: N04080-002
Claimant	: Main Pass Oil Gathering Company & BP Pipelines (North America) Inc.
Type of Claimant	: Corporate (US)
Type of Claim	: Affirmative Defense
Claim Manager	: [REDACTED]
Amount Requested	: \$2,453,439.41

L. FACTS**Summary**

As Hurricane Ivan was tracked through the Gulf of Mexico in September 2004, it fluctuated between a Category 4 and Category 5 status. Hurricane Ivan passed just east of Louisiana's Mississippi River Delta and made landfall on September 16, 2004, just below a Category 4 status with winds around 130 mph. The high winds, waves, surges, mudslides, and currents associated with Hurricane Ivan caused substantial damage to pipelines in the Gulf of Mexico, including the Main Pass Oil Gathering (MPOG) and Shell's Nakika pipelines, especially at their crossing, both of which were buried in about 22 feet of water within MP Block 69.^{1 2}

Shortly after the passage of Hurricane Ivan, aerial reconnaissance flights were conducted to detect any oil discharges from the pipelines in the Gulf. On September 23, 2004, BP reported an oil slick 2.5 miles by 0.5 miles in the area of Main Pass Block 69 (Block MP-69).³ The preliminary investigation into the oil spill indicated that the source of the discharge was Shell's Nakika pipeline, but subsequent inspections revealed that oil was discharging from both the Nakika and the MPOG pipelines at this juncture. The MPOG pipeline's other leaks were within three feet of the crossing. Another site of oil discharges from the MPOG pipeline was between Customhouse Bay and North Pass, barely offshore of the Mississippi Delta, Louisiana.⁴

At the crossing, Shell's Nakika and Claimants' MPOG pipelines were subjected to such forces during Ivan that the cement mats previously positioned above and between these buried pipelines, were displaced. Without separation, the pipelines wore through their outer concrete coating to direct contact at this juncture and cracks in both pipelines at this crossing discharged oil into the waters of the Gulf of Mexico.⁵

Claim and Claimants⁶

On May 21, 2008, Main Pass Oil Gathering Company (Main Pass) submitted its claim asserting that it is entitled to reimbursement for removal costs totaling \$2,453,439.41 from the Oil Spill

¹ See, Claimants' Binder 6, Section 8, ICS 214 form and attachments, dated 9/29/04, by [REDACTED] p. 1.

² See, Enclosures 1 and 2 for summaries of preexisting conditions of the most intense hurricanes in the Gulf of Mexico.

³ See, Claimants' Binder 5, Section 4, BP Spill Reports, dated 9/23/04 and 10/01/04, pp. 1.

⁴ See, Claimants' Binders 5&6, Sections. 5, 6, 7, 8, 9 & 10, Hurricane Ivan Assessment Meeting Minutes and attachments, Incident Actions Plans and attachments, Responder Log Books, ICS-214 Responder Logbooks, Inspector's Daily Diary and Work Reports, and Diver's Dailey Job Logs.

⁵ *Id.*

⁶ For purposes of this decision, we accept the incident information alleged in MPOG/BP's formal claim letter, dated May 21, 2008 and the MPOG/BP's amended claim letter, dated July 2, 2008.

Liability Trust Fund (OSLTF or Fund). First, the Claimant, Main Pass claimed that it had incurred uncompensated response costs under Section 2702(b) of the Oil Pollution Act (OPA), 33 USC § 2702(b) for the clean up of oil discharges from the Nakika pipeline of the Shell Pipeline Company LP (Shell). Second, Main Pass, alleged that as a responsible party (RP) for oil discharges from its Main Pass Oil Gathering (MPOG) pipeline, it is entitled to an "act of God" affirmative defense (33 USC § 2703(a)(1)) pursuant to 33 USC § 2708(a)(1) for the oil discharge from its MPOG pipeline. Both pipelines were damaged and discharged oil at the crossing of Shell's Nakika and the MPOG pipelines and elsewhere by the exceptional forces associated with Hurricane Ivan as it passed through the Gulf of Mexico on September 16, 2004.⁷

The National Pollution Funds Center (NPFC) received an amended claim, dated July 2, 2008. The amendment revealed that Main Pass and BP Pipelines (North America) Inc. (BP) were, respectively, the owner and operator of the MPOG pipeline. And as operator, BP undertook the response efforts and thus incurred the costs, of which, certain costs were charged back to Main Pass and documented in the submissions. As amended, the NPFC will focus on the Claimants' "act of God" affirmative defense to OPA liability, and their entitlement to recover the removal action costs expended for the oil discharges from the MPOG pipeline. As the second claim, the NPFC will review Main Pass/BP's claim for uncompensated removal costs in responding to Shell's Nakika pipeline oil spill under 33 USC § 2702(b). Both are claims for costs incurred in the aftermath of Hurricane Ivan.

Review of Claimants' Record

"Act of God" Claim

The Claimants stated that in cooperation with other oil companies with assets in the Gulf of Mexico, it undertook preventive measures prior to Hurricane Ivan and immediately responded to the damages left behind by the hurricane. While the record of this claim devotes much space describing the actions taken by Main Pass/BP to respond to their pipeline oil spills in the wake of Ivan, little information is provided identifying what measures were undertaken to prevent the oil spill incident, or to avoid its impact by the exercise of due care or foresight. The NPFC was not able to find information to determine whether the MPOG pipeline was "shut in," before the onset of Hurricane Ivan, or after Ivan, whether the pipeline was de-pressurized and whether product transport ceased while the MPOG and the Nakika pipelines were under investigation for damage and oil discharges. (*See*, Binders 5&6)

As part of their record, Main Pass/BP produced no documents eliciting what measures had taken place in the planning, design, and construction of the MPOG pipeline, although one of BP's responders recorded in their daily field log that the MPOG pipeline was located in a known mudslide area.⁸ The Claimants referenced the damage which occurred to their MPOG pipeline at the crossing with the Shell's Nakika pipeline at Block MP-69, but little was said about what forces caused the MPOG pipeline to fail at the crossing juncture. Main Pass/BP submitted no account of how the hurricane forces, the wind, the tidal surges, the currents, seafloor failure, and/or the mudslides the pipeline crossing were factors in causing the damage to the pipelines at the crossing, except that the cement mats above and between the pipelines were dislodged by the forces of the hurricane and, despite concerted efforts, could not be found by their divers.^{9,10}

⁷ *See*, MPOG/BP's formal claim letter, dated, May 21, 2008 (recv'd May 27, 2008).

⁸ *See*, Claimants' Binder 6, Section 8, ICS 214 form and attachments dated 9/23/04 by [REDACTED] p. 2.

⁹ *See*, Claimants' Binders 5&6, Sections. 5, 6, 7, 8, 9 & 10, H. Ivan Assessment Meeting Minutes and attachments, Incident Actions Plans and attachments, Responder Log Books, ICS-214 Responder Logs, Inspector Daily Diary and Work Reports, and Diver's Dailey Logs.

Claim for Uncompensated Removal Costs for Shell's Pipeline

In a similar fashion, little, if any, information was provided in their claim for uncompensated removal costs for clean up of oil discharged from Shell's Nakika pipeline. For billing purposes, BP sent Shell a demand for payment of \$1.998 million for uncompensated removal costs to clean up oil discharges from "Site 2" from Shell's Nakika pipeline at the crossing with the MPOG pipeline. Yet, BP provided no estimates of oil quantities discharged or cleaned up, nor did BP represent how this demand figure was derived, and Shell declined payment.¹¹

Once the oil spill was discovered on September 23, 2004, in the vicinity of the Nakika/MPOG pipeline crossing, an initial release amount of 900 gallons was estimated for the oil spill.¹² But the Claimants did not provide any refinement or verification of this amount elsewhere in the record. According to the Assessment Meeting notes, Shell confirmed that 90% of the oil discharged was from the Nakika pipeline.¹³ However, this note preceded the discovery and confirmation of leaks from the MPOG pipeline as noted at the 10/02/04 Assessment meeting.¹⁴ And nowhere in the record was this 90% proportion developed for our consideration. (See, Binders 5&6)

The record revealed that BP responded to notice of the leaks with necessary repairs to prevent further discharges from the MPOG pipeline. But the Claimants did not provide estimates or verification of the amount or proportion of the MPOG pipeline discharges to the entirety of oil spills at this crossing and in the area subject to BP's removal action efforts. The record also referenced sampling of the Shell and the MPOG pipelines and the sheen of the oil spill incident, but we find no oil sampling results, no oil sampling reports, or expert reports to identify the source of the oil. (See, Binders 5&6)

II. APPLICABLE LAW

Title I of the Oil Pollution Act of 1990, 104 Stat 484, 33 USC §2701 *et seq.*, provides a strict liability and compensation regime for certain oil pollution. In general, "each responsible party for a vessel or a 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 or the exclusive economic zone is liable for the removal costs and damages...that result from such incident. 33 USC §2702(a).

The removal costs referred to in subsection (a)...are...any removal costs incurred by any person for the acts taken by the person which are consistent with the National Contingency Plan. 33 USC §2702(b)(1)(B).

The RP for a pipeline includes any person owning or operating the pipeline. 33 USC § 2701(32)(E).

¹⁰ See, Enclosure 3 for "Summary of Preexisting Conditions in the Gulf of Mexico Pertaining to Mudflows/Mudslides."

¹¹ See, Claimants' Binder 5, Sections 1&2, BP's Demand letter and Shell's response.

¹² See, Claimants' Binder 5, Section 5, Hurricane Ivan Assessment Meeting Minutes and attachments, dated 09/25/04 (14:00 Hours).

¹³ See, Claimants' Binder 5, Section 5, Hurricane Ivan Assessment Meeting Minutes and attachments, dated 10/01/04 (14:00 Hours).

¹⁴ See, Claimants' Binder 5, Section 5, Hurricane Ivan Assessment Meeting Minutes and attachments, dated 10/02/04 (0800 Hours).

Any person or government may present a claim to the RP for removal costs or damages. 33 USC § 2701(3), (4). If a claim is presented and the RP denies liability or does not settle the claim within 90 days the claim may be presented to the Fund. 33 USC §2713(c). The Fund is expressly available to the President for the “payment of claims in accordance with section 2713...for uncompensated removal costs...or uncompensated damages. 33 USC §2712(a)(4).

The OPA expressly provides that in some circumstances claims may be presented direct to the Fund without first presenting the claim to the RP, including claims “by a responsible party who may assert a claim under section 2708”. 33 USC § 2713(b)(1)(B).

Specific to this Shell claim a “responsible party may assert a claim for removal costs and damages under section 2713...only if the responsible party demonstrates that –

- (1) the responsible party is entitled to a defense to liability under section 2703 of this title”...

33 USC § 2708(a)(1).

The OPA provides that in some circumstances the RP may establish a complete defense to liability. “A responsible party is not liable for removal costs or damages...if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by –

- (1) an act of God”...

33 USC § 2703(a)(1).

The OPA expressly provides that “‘act of God’ means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight.” 33 USC §2701(1).

In enacting OPA Congress recognized that existing laws provided inadequate remedies and too many barriers to recovery favoring those responsible for spills. Costs should be enough to encourage industry efforts to prevent spills and better contain them when they occur.¹⁵ As in the Clean Water Act (CWA or FWPCA, 33 USC §1251 et seq.) and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA 42 USC 9601 et seq.), the liability associated with the same or similar “act of God” affirmative defenses is strict.¹⁶ The absence of fault or the exercise of due care is not in itself a defense to liability.¹⁷

III. “ACT OF GOD” CLAIM AS RP FOR THEIR REMOVAL COSTS

Case Precedent

In Apex Oil Company, Inc. v. United States, 208 F.Supp.2d 642 (E.D. La. 2002) (court upheld Coast Guard denial of RP claim because the flood and current conditions at the time of the casualty and spill did not constitute an “act of God” and the RP’s underpowered tug was a factor

¹⁵ S.Rep No.94, 101st Cong., 1st Sess., (1989); 1990 U.S.C.C.A.N 722, 724.

¹⁶ S.Rep 101-94, 11; 1990 U.S.C.C.A.N. 722, 733-734.

¹⁷ See, Apex Oil Company, Inc. v. U.S., 208 F.Supp.2d 642, 652 (E.D. La., 2002) and In re Complaint of Metlife Capital Corp., 132 F.3d 818, 820-821 (1st Cir. 1997) (OPA is a strict liability statute).

in the casualty), the court addressed at length the “act of God” defense under the OPA and its companion environmental regimes, the CERCLA and CWA. The court determined that the OPA “act of God” defense should be read to be at least as restrictive in its scope as it is under both the CWA and CERCLA. Indeed while the CWA definition is “textually similar”¹⁸ to the OPA definition, the CERCLA definition is identical.¹⁹ The court recognized that in respect to “exceptional natural phenomena” the burden of proof is much more onerous than under traditional or common law “act of God” concepts, citing to CERCLA legislative history addressing such a distinction between the traditional defense and aspects of the CERCLA definition which is particularly relevant in the context of the instant claim. This was reflected in the legislative histories in support of the enactment of CERCLA and also to sustain amendments to CERCLA under the Superfund Amendments and Reauthorization Act (SARA):

“The defense for the exceptional natural phenomenon is similar to, but more limited in scope than, the [traditional]²⁰ ‘act of God’ defense. It has three elements: the natural phenomenon must be exceptional, inevitable, and irresistible. Proof of all three elements is required for successful assertion of the defense. The [traditional]²¹ ‘act of God’ defense is more nebulous, and many occurrences asserted as ‘acts of God’ would not qualify as ‘exceptional natural phenomenon.’ For example, a major hurricane may be an ‘act of God,’ but in an area (and at a time) where a hurricane should not be unexpected, it would not qualify as a ‘phenomenon of exceptional character.’”

H.R. Rep. 96-172(1), 1980 U.S.C.A.N. 6160 6189, and H.R. Rep. 99-253(IV), 1986 U.S.C.A.N. 3068, 3101.

While courts considering the “act of God” defense under the various regimes have consistently handed down decisions denying the defense, they have done so on various bases including the absence of sole causation and the unexceptional or anticipated nature of the phenomenon. U.S. v. Alcan Aluminum, 892 F.Supp. 648 (M.D. Pa. 1995) (Hurricane Gloria was not the sole cause of the release where the release was caused in part by unlawful disposal and heavy rains from Gloria were not the kind of natural phenomenon to which the exception applied). U.S. v. Stringfellow, 661 F.Supp. 1053 (C.D. Cal 1987) (Heavy rainfall was not an exceptional natural phenomenon under CERCLA where rains foreseeable based on normal climactic conditions and harm caused could have been avoided by properly designed drains.) Sabine Towing and Transportation Co., Inc v. U.S., 666 F.2d 561(Ct.Cl. 1981)(CWA case where freshet conditions occasioned by spring run-off were not a grave natural disaster or unanticipated).

In United States v. Barrier Industries, Inc., 991 F.Supp. 678 (S.D.N.Y.1998), the court found that spills of hazardous substances caused by bursting pipes after unprecedented cold spell was not an “act of God” within the meaning of CERCLA because the cold spell was not the sole cause of the spill. Numerous other factors antedating the cold weather causally contributed to the problems at the site. Id. at 679. In United States v. M/V SANTA CLARA I, 887 F. Supp. 825 (D.S.C. 1995), the court considered whether an “act of God” had been established under CERCLA. In that case, the defendant claimed that it should not be liable for the clean-up expenses because the release of hazardous materials was caused by a storm. In rejecting that argument, the court reasoned that even if the storm had been poorly forecasted, the vessel expected bad weather and had been

¹⁸ An “act of God” means an act occasioned by an unanticipated grave natural disaster. 33 USC §1321(a)(12).

¹⁹ 42 USC § 9601(1).

²⁰ The word “traditional” was added to the legislative history text of SARA, H.R. Rep. 99-253(IV), 1986 U.S.C.A.N. 3068, 3100.

²¹ The inclusion of “traditional” is for clarification purposes.

instructed to take extra precautions against rough seas. Accordingly, the “act of God” defense was held inapplicable. *Id.* at 843.

In *Liberian Poplar Transports, Inc. v. United States*, 26 Cl.Ct. 223 (1992) an oil spill occurred while oil was transferred during a severe thunderstorm. The court found that plaintiff failed to establish this storm as an “act of God” under the FWPCA because the storm could have been anticipated. *Id.* at 225-226. In *Kyoei Kaiun Kaisha, Ltd. v. M/V BERRING TRADER*, 795 F. Supp. 1054 (W.D. Wa. 1991), the owners and operators failed to show that “an act of God” was the sole cause of the grounding of the vessel during a severe storm and high winds because the storm was not the sole cause; acts of the crew contributed to grounding. *Id.* at 1056-1057. In *St. Paul Fire & Marine Ins. Co. v. United States*, 4 Cl.Ct. 762 (Cl. Ct. 1984), where severe subsurface settlement caused a rupture of an storage tank and the resulting oil discharge into a river, the court found the soil settlement causing the rupture was entirely foreseeable and was not an “act of God” under the FWPCA. *Id.* at 768.

Discussion

Hurricane Ivan, Not “Exceptional” or “Unanticipated”

Ivan was a major hurricane, rated just below a category 4 as it made landfall along the Gulf coast. Ivan was ranked 29th of the top 65 most intense hurricanes to strike the U.S. mainland from 1851-2006. While the severity ranking does not rule out an “act of God” defense, Ivan, however, occurred in an area where, and at a time when, it should not have been unexpected. The record is replete with information that industry operators, as well as any person that watches the weather channel would know. There is a hurricane season and the risks include major and minor hurricanes, tropical storms and the damages that can result. Hurricane risks to the oil production industry in the Gulf have long been recognized by industry and regulators alike. Ivan was tracked and forecast in a great deal of detail as clearly shown in the record and we recall it was tracked on television and in the press like most any hurricane today that approaches the coast of the United States. While arguably Ivan may have been grave, irresistible or inevitable, in our view Ivan was not “exceptional” or “unanticipated” as those terms are used in the OPA definition of “act of God.”

Denial of the claim is also consistent with the policy purposes underlying the OPA strict liability regime as discussed by the court in *Apex, supra*. Under the circumstances presented by this claim, where industry knowingly operates in the face of such risks, shifting the entire OPA oil removal cost and damage risk from industry to the public’s Fund would be inequitable and would undermine important incentives that liability brings to prevent and contain oil pollution.

Main Pass/BP’s Actions to Prevent or Avoid Pipeline Oil Spills

In addition to the determination of whether Ivan was “exceptional” or “unanticipated,” Main Pass/BP must also show that the damage to the pipeline resulting in oil spills could not have been prevented or avoided with the exercise of due care or foresight, or that an “act of God” was the sole cause of the incident.

The Claimants’ record was singularly lacking in evidence of the actions, if any, to prevent or avoid the hurricane effects. For instance, the NPFC cannot discern from the record what the status of the MPOG pipeline before and in the aftermath of Ivan. Was it “shut in,” before and after Ivan? After Ivan was the pipeline operational and pressurized to transport product? What was the status of the MPOG pipeline during its assessment and investigation for damage and oil discharges? (*See*, Binders 5&6)

Main Pass/BP have not produced evidence that their pipeline damage and resultant oil spills especially at the crossing with Shell's Nakika pipeline in MP Block -69 were not preventable or avoidable. The Claimants have failed to demonstrate that the effects of this hurricane could not have been prevented or avoided with the exercise of due care or foresight, or that the "act of God" was the sole cause of the pipeline damages and the oil spill incident.

Main Pass/BP's Planning and Preventive/Avoidance Measures in Design, Construction, or Location

The Claimants Main Pass/BP produced no documents concerning the planning (location), design, and construction of the MPOG pipeline, except one account suggesting that the MPOG pipeline was located in a known mudslide area.²² But there was no information about how the pipeline was designed and constructed to prevent or avoid damage in anticipation of hurricane forces, tidal surges, the currents, seafloor failure, and the mudslides. Similarly, no risk assessment or engineering analysis/recommendations on construction, location, and threats was ever provided.

The MMS reports reviewed by the NPFC disclosed that forces on the seafloor during Ivan caused larger mudflow movements, resulting in greater platform and pipeline losses.²³ In the shallow water of the Gulf, buried pipelines have experienced consistent damage from pipeline movement during the hurricane studies of Andrew, Lili and Ivan. Where pipelines are buried in weak silty soils, they are susceptible to failure under the hurricane forces on the seafloor, causing a weakening of the surrounding soil, and failing under the reverse currents generated by the hurricane ocean patterns.²⁴ At pipeline crossings, the movement of pipelines created lost separation, mats, or cover as a result of pipelines being displaced. In shallow depths, 200 feet or less, pipelines appear to be more susceptible to hurricane forces and should include provisions to maintain separation after installation. Mats and rock appear to be inadequate in areas of seafloor movement, and mudflows.²⁵

Main Pass/BP provided the details of how the hurricane forces dislodged the cement mats at the pipeline crossing and scattered them to undetectable locations. The Claimants also detailed how the Nakika and MPOG pipelines wore through their outer cement coating at the crossing and fractures occurred as a result of hurricane forces during Ivan.²⁶ But the Claimants failed to identify or even speculate which of the hurricane forces caused the damages and whether the pipeline was designed, construction, and appropriately located in anticipation of such forces to prevent or avoid such damages from occurring. (See, Binders 5&6)

Because of these omissions, the Claimants have failed to demonstrate that the pipeline damage and the resulting oil spills could not have been prevented or avoided by the exercise of due care or foresight, or that the "act of God" was the sole cause of the pipeline damages and the oil spill incident.

IV. CLAIM FOR UNCOMPENSATED REMOVAL ACTION COSTS for SHELL PIPELINE OIL DISCHARGE

²² See, Claimants' Binder 6, Section 8, ICS 214 form and attachments dated 9/23/04 by [REDACTED] p. 2.

²³ See, "Pipeline Damage Assessment from Hurricane Ivan in the Gulf of Mexico," Report No. 440 38570 (Rev. No. 2) Technical Report, Mineral Management Service (DET NORSKE VERITAS), pp. 31-34, May 15, 2006.

²⁴ *Id.* p. 33.

²⁵ *Id.* p. 33.

²⁶ See, Claimants' Binders 5&6, Sections. 5, 6, 7, 8, 9 & 10, H. Ivan Assessment Meeting Minutes and attachments, Incident Actions Plans and attachments, Responder Log Books, ICS-214 Responder Logs, Inspector Daily Diary and Work Reports, and Diver's Dailey Logs.

A. Claim Record and Discussion

On April 30, 2007, BP initiated the claim for uncompensated removal costs. In its letter to Shell, the BP letter demanded payment of \$1.998 million for response costs related to the oil discharges from "Site 2" its Nakika pipeline at the crossing with the MPOG pipeline. On June 6, 2007, Shell declined to remit payment because of Main Pass/BP's shared responsibility for the response costs.

As the NPFC reviewed this record for support of Main Pass/BP's claim, we find the Claimants have failed to disclose how they derived the \$1.998 million figure for the Shell demand letter, nor did they provide an alternative figure with support. The Claimants also have failed to provide us with data or bases for determining how much oil was spilled and what proportion of oil was spilled from the Nakika and from the MPOG pipelines during this incident. Nor did the Claimants disclose the volume of oil in the MPOG pipeline posing a threat of discharge in the aftermath of Ivan and prior to discovery of the MPOG pipeline leaks at the crossing. (*See*, Binders 5&6)

Claimants have also failed to identify and quantify the amount of oil discharged from either Shell's Nakika and the MPOG pipelines during this incident, or to quantify the sum certain or the proportion of the \$2,453,439.41 in removal costs which was expended to clean up the oil spilled by Shell's Nakika pipeline, and the difference, attributable to the removal costs for oil discharged from their MPOG pipeline. Because we find no basis to pay this claim, the NPFC will deny Claimants' request for uncompensated removal costs.

V. CONCLUSION

Having reviewed these claims, the NPFC denies the "act of God," claim because the Claimants, Main Pass/BP, have not established that the costs resulting from an unanticipated grave natural disaster or other natural phenomenon of an exceptional character. And the Claimants failed to demonstrate that the effects of the hurricane were not preventable or avoidable by the exercise of due care or foresight, or that the "act of God" was the sole cause of the damages and oil discharges of this incident. The NPFC denies the second claim because the Claimants, Main Pass/BP, provided no basis for the NPFC to pay this claim. The Claimants failed to quantify the amount of oil discharged from the Shell Nakika pipeline, or to ascertain the amount or proportion of oil discharged from the MPOG pipeline. Nor did they quantify the sum certain, the proportion of the \$2,453,439.41 in removal costs that was expended to clean up the oil spilled by Shell's Nakika pipeline, excluding the difference, the removal costs attributable to oil discharged from their MPOG pipeline. Accordingly, Main Pass/BP's claims against the OSLTF are denied.

Claim Supervisor: 

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:



5720
31 August 2010

MEMORANDUM

From: Gina Strange

Reply to: NPFC (ca)
Attn of: Gina A. Strange
3-6847

To: File
NPFC

Subj: JUSTIFICATION FOR MEMORANDUM - FOIA 2010-033

Pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552), the National Pollution Funds Center (NPFC) received a request for documents from Lexis Nexis on or about 19 August 2010 via Darci Bolger. The request is for "a list of all claims presented to the Oil Spill Liability Trust Fund for any incidents occurring in the Gulf of Mexico from 1/1/1990 to present. This request does not include information covered by the Privacy Act or other FOIA exempt information."

The request further requests the following: "the final determination memoranda for any claims presented to the Oil Spill Liability Trust Fund for any incidents occurring in the Gulf of Mexico from 1/1/1990 to the present. This request does not include information covered by the Privacy Act or other FOIA exempt information."

This memorandum provides a response for documents that are in the possession of the Claims Adjudication Division (CA) at the NPFC, Arlington, Virginia. The CA Division conducted a detailed search of its database and is providing a list of claims as follows: 906097-001, 908088-001, 903050-001, 903078-001, 904031-001, 904078-001, 906077-001, 906074-001, 903011-001, 902177-001, M02045-001, 902033-001, N01357-001, 902028-001, 902025-001, N01360-001, 902008-001, N01361-002, N01361-001, 907087-001, 901088-001, 086075-004, 901047-001, 901047-002, 900409-001, 900318-001, 900298-001, 9C8309-001, 900172-001, 900207-001, 900297-001, 9C8002-002, 9C8002-001, 9D7249-001, 9D7237-001, 9D7241-001, 9D9234-001, 9D7207-001, 903137-001, N04080-002. The total is 38 claims.

The CA division is providing the determination memorandum as requested for the above listed claims. This record consists of 63 pages, all of which are being released. Information was properly redacted on pages 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 62 and 63 because they include individual names, addresses, phone numbers, invoice numbers, the release of which would constitute a clearly unwarranted invasion of privacy under FOIA exemption (b)(6).

FOIA FEE WORKSHEET

Search Cost	Time (Hours)	Hourly Rate	Total*
Employee1	2	\$49.94	\$99.88
Employee2			\$0.00
Employee3			\$0.00
Computer Search			\$0.00
Total Search Cost			\$99.88
Review Cost			Total**
Employee1			\$0.00
Employee2			\$0.00
Employee3			\$0.00
Total Review Cost			\$0.00
Duplication	# of Pages/Disks	Cost per page	Total***
Standard copies	63	0.1	\$0.00
Special copies			
CD copies			
DVD copies			
Total Duplication Costs			\$0.00
Total Costs			\$99.88

*First 2 hours free

**No Charge

***First 100 pages free