

CLAIM SUMMARY / DETERMINATION

Claim Number:	915087-0001
Claimant:	Environmental Safety & Health Consulting Services, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$24,295.75

FACTS:

Background

On May 11, 2014, a pickup truck driver struck the concrete wall surrounding gasoline tanks at Boudreaux's Marina, in Chauvin, Louisiana. The vehicle broke a valve, causing gasoline to spill onto the surrounding pavement and into Bayou Grand Caillou, a navigable waterway of the United States. As owner of the gasoline facility, Boudreaux's Marina is the responsible party (RP) for the incident. The National Pollution Funds Center (NPFC) issued an RP Notification Letter to Boudreaux's Marina via a letter dated May 26, 2015.

Claim & Claimant

Claimant is an oil spill response organization (OSRO). Environmental Safety & Health Consulting Services, Inc. (ESH) was hired by the RP to remove the discharge. ESH seeks reimbursement of \$24,294.75 in costs associated with containing the discharge and removing the spilled oil from the parking lot and the water.

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:

A. Overview:

1. The NPFC has determined that the actions undertaken by the Claimant are consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The Claimant presented its claim to the responsible party before presenting it to the Fund.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified that no suit has been filed in court for the claimed costs.
4. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.

5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that most of the costs are allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the documentation provided. The review focused on: (1) whether a discharge or substantial threat of a discharge to a navigable waterway occurred; (2) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of an incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

In this case, the facts and evidence support a finding that an OPA-incident occurred. The facts and evidence presented to the Fund demonstrate that a pollution response was necessitated by the OPA-incident. The NPFC finds that the activities performed by ESH were necessary and the costs were reasonable to mitigate/minimize the effects and remove the oil discharge from the navigable water it affected. NPFC finds that \$24,220.75 in claimed removal costs have been demonstrated to be the compensable amount of valid removal costs incurred by the Claimant that was billed in accordance with the rate schedule in place at the time services were rendered.

The NPFC has denied \$75.00 of the charges associated with washout fee for the vac truck. The ES&H rate schedule indicates that the amount of decontamination is the full day rate associated with the equipment it pertains to. The vac truck charge this date was \$75.00 therefore the NPFC has allowed \$75.00 vice the \$150.00 charge since the rate schedule does not specifically address a daily washout charge of \$150.00 per day per asset.

Claim Supervisor: 

Date of Supervisor's review: *6/3/15*

Supervisor Action: *Approved*

Supervisor's Comments: