

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/3/2010
Claim Number	: E04902-001
Claimant	: Cannery Hamilton Properties, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: (b) (6)
Amount Requested	: \$872,166.38

FACTS:

1. Krik Well and Its History: This incident arose from a blowout of the Krik Well, which was located near the intersection of Magnolia and Hamilton Streets in Huntington Beach, California. The well was located on a 38-acre parcel of land that was formerly used as both a landfill and a oil field waste disposal site. Various owners operated the site from approximately 1938 until 1984. Numerous surface impoundments and pits were located on the site. From 1957 until 1971, the impoundments and pits were used to dispose of oil field wastes that included chromic acid, sulfuric acid, aluminum slag, fuel oils, and styrene. From 1971 to 1984, the site became a landfill for disposal of solid wastes like concrete, asphalt, wood, metal and abandoned vehicles.

After the landfill stopped operating in 1984, several businesses purchased the property with the intention of developing it. Despite these intentions, these owners were unable to clean up the property and eventually declared bankruptcy. As the previous owners could not afford to clean up the property, the California Environmental Protection Agency ordered generators of hazardous wastes disposed of at the site to clean it up. These companies included Atlantic Richfield, Co., Chevron, U.S.A., Chevron Pipeline Co., Texaco, Inc., Conoco Inc., Phillips Petroleum Co., Dow Chemical Co., Exxon Mobil Corp., Shell Oil Co., Southern California Edison Co., and Northrop Grumman. These companies eventually formed Cannery Hamilton Properties, LLC ("Cannery Hamilton") and Cannery Hamilton purchased the property's surface estate to clean up the site.

Production records identify Krik Company as the well's last operator. The Krik Company operated the well under an assignment of an oil and gas lease that was initially executed in 1946. The lease gave the lessee the right to place an oil well and production equipment on the property. The lease also gave the lessee the right to remove these items within a reasonable time after the lease's termination. In 1950, the mineral estate covering the well's location was severed from the surface estate.

After obtaining the lease and the well in 1990, the Krik Company produced oil from the well. State production records show that oil was produced from the well until at least March 1996. In 2002, the State Oil and Gas Supervisor ordered the Krik Company to plug and abandon the well as it was the last operator of the well. Despite this order, the well was not properly plugged and abandoned.

On October 31, 1995, the Krik Company transferred to (b) (6), Sr. and (b) (6) all the company's interest in the lease along with "all appurtenances situated on the premises and/or inventory owned by [Krik Company] and located thereon or used in connection with the operation thereof, including tubing, rods, casings or other equipment used in connection with the existing oil well located on said property." (b) (6) allowed Myles Equipment to park equipment and vehicles on the property nearby the

well. Representatives of Myles Equipment used a combination lock to enter the facility. Myles Equipment was using the property on the day when this incident occurred.

2. Oil Spill Incident: On the morning of March 17, 2004, a blowout occurred at the Krik Well. When it blew, the well shot up a mixture of oil, gas, and produced water approximately 40 feet into the air for several hours. An unknown quantity of crude oil was released from the well. The oil spill impacted the area around the oil lease site, Magnolia Street and the adjacent sidewalk and an estimated 360 residential properties situated around the site. The impacted area was in close proximity to the Bolsa Chica Wetlands and the Pacific Ocean, a navigable waterway of the US. All drainage from the site leads directly to the ocean. The Orange County Health Care Agency advised that there was a high probability that oil had impacted the wetlands. The oil spill resulted in the closure of Magnolia Street between Hamilton and Bermuda Streets.

Agencies that responded to the spill were Huntington Beach Fire Department, Huntington Beach Police Department, Huntington Beach Public Works, the California Department of Oil and Gas, the California Department of Toxic Substance Control, the California Department of Fish and Game, South Coast Air Quality Management District, the United States Coast Guard (USCG), Orange County Health Care Agency, and the United States Environmental Protection Agency (USEPA). Mr. (b) (6) of USEPA was the Federal On Scene Coordinator (FOSC) for this oil spill incident.

The FOSC, Mr. (b) (6), was notified of the oil spill incident by the Emergency and Rapid Removal Service contractor. At approximately 1230 hours PST, the Department of Oil and Gas's (DOG) contractor arrived on site and initiated closure of the well and cleanup of the area around the well. After the FOSC advised the landowner, Cannery Hamilton of their potential liability, the Unified Command requested a commitment to cleanup the release including all of the impacted properties with a deadline of 1700 hours that day. Cannery Hamilton stated that they were unwilling to meet the deadline so FOSC Wise issued a Notice of Federal Interest (NOFI) to Cannery Hamilton.

Subsequently, (b) (6) arrived on scene and was also issued a NOFI. (b) (6) committed to conduct cleanup at that time. However, he later denied responsibility for the incident under the theory that ownership of the well and equipment had passed to the landowner after the lease terminated due to non-production.

3. Description of removal actions performed: The claimant provided 3 binders of invoices and supporting documentation to support the \$872,166.38 in response costs claimed. The NPFC claims manager reviewed each and every submitted invoice as well as every "daily" sheet submitted to substantiate the invoices. The review of the actual costs, invoices and dailies focused on (1) whether the actions were taken to prevent, minimize or 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. The claims manager reviewed the payment record against the claimed costs for each contractor/subcontractor. See Enclosure (1) for the summary spreadsheet of vendors that make up this determination and amount allowed for each invoice submitted.

On March 18, 2004 in response to the Notice of Federal Interest (NOFI), Cannery Hamilton retained Advanced Cleanup Technologies (ACTI) and decontaminated the contaminated portion of Magnolia Street and its adjacent sidewalks. Cannery Hamilton

responded to the NOFI promptly and agreed to fund all mitigation costs for both the well site and the nearby neighborhood that was directly impacted by the oil spill.

Additional air samples were collected and submitted for volatile organic analysis. The tank farm associated with the well was also sampled. Several local residents and one local oil lease operator informed the Unified Command that substances other than oil may have been stored in the tanks. DOG completed the removal of pooled crude oil from the soil around the well.

On March 19, 2004, Cannery Hamilton initiated a public assistance line in order to provide claim assistance to the community. Cannery Hamilton had the phone lines manned by claims adjusters. They also deployed claims adjusters to the field in order to evaluate the damage to the individual homes in order to determine the site cleanup that was necessary. Cannery Hamilton provided the FOSC with two interim work plans to address removal of contaminated soil from the well site and to allow for well abandonment equipment to be moved into place and to implement a program to wash the residents' cars. The FOSC approved both plans. Cannery Hamilton prepared the well site so that it could accept the well abandonment rig including: scraping the site, stockpiling contaminated soil on site and covering the site with clean fill.

Sample analysis indicated no contaminants above the detection limit and the samples for the tanks indicated that the tanks did not contain pure crude oil. The analysis revealed that the tanks contained diesel, gasoline, and motor oil, chlorinated and non-chlorinated solvents. Additional sampling was scheduled to further define the contents in the tanks. On March 20, 2004, Cannery Hamilton began to deploy their claims adjusters to the impacted neighborhood. An automobile decontamination program was instituted at a local carwash.

On March 22, 2004, Cannery Hamilton completed the gross decontamination of the neighborhood. Claims adjusters continued to assess individual homeowner damage claims. Removal of contaminated vegetation at the well site continued. On March 24, 2004, the Unified Command at the Edison Community Center was demobilized. A project office for cleanup and management of the residential claims was setup at the Pacific Pipeline facility. DOG continued the process of abandoning the well and on March 29, 2004 the plugging and abandonment of the well was completed. By April 9, 2004, the profiling of contaminated soil and vegetation was completed. On April 12, 2004, traffic control equipment that had been provided by the City was replaced with equipment from Cannery Hamilton.

On April 15, 2004, crude oil impacted soil and vegetation from the site area was loaded into rolloff bins and end-dump semi trailers for hauling and disposal as non-hazardous waste. 31 loads were shipped off site for disposal. The shipment of all oil impacted soil and vegetation was completed on April 19, 2004. A sample of the carbon from a drum used on the exhaust of a vacuum truck was submitted for analysis profiling and off site disposal. Air monitoring continued and the results of total VOC monitoring along the fence indicated that the total VOC levels were similar to background concentrations. Cleanup of impacted residences continued.

On April 27, 2004, the FOSC issued a Notice of Completion to Cannery Hamilton advising them that the scope of work that USEPA required through the Unilateral Administrative Order that he issued has been determined complete.

4. The Claim: Cannery Hamilton submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$872,166.38 for the services provided as ordered by the FOSC. This claim is for removal costs based on the rate schedule in place at the time services were provided.

This claim consists of copies of the invoicing and associated dailies, disposal manifests; NRC report, EPA Pollution Reports, internal email correspondence and proof of payment. The review of the actual cost invoicing and dailies focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

Cannery Hamilton's original claim included a request for compensation of both removal costs and property damages. After NPFC's initial review of the claim, the removal costs were separated from the costs incurred to decontaminate property belonging to third-parties living near the site. After Cannery Hamilton was advised that most of its property damage claim was not compensable as "up-stream" damage, it withdrew that portion of its claim. Despite its withdrawal of property damages, Cannery Hamilton resubmitted its proof underlying the property damage claim and requested that its sum certain for removal costs be adjusted to reflect its claim for these costs. As a result of this history, the claimant's property damage claim was adjudicated separately from its removal cost claim even though both claims have been included in this determination.

5. The USEPA Administrative Order: The FOSC, Mr. (b) (6) issued an Order for removal mitigation or prevention of a substantial threat of oil discharge on March 18, 2004. In summary, all interested parties were ordered to perform the following removal actions: ensure that oil from the site does not enter into navigable waters; all necessary steps were to be taken in order to remove the discharge or threat of discharge of oil into waters or adjacent shorelines to the site, including the removal of soils contaminated with petroleum hydrocarbons; remove and properly dispose of all oil discharged from the Krik Well ; decontaminate Magnolia Street adjacent to the site and properly dispose of any and all wash water; survey all contaminated real and/or personal property, both public and private, that is impacted or contaminated by the release of oil from the Krik Well, and appropriately clean the oil contaminated properties; and decontaminate all public vehicles.

6. Initial Determination and Reconsideration Request: NPFC's original determination of \$625,385.77 was completed and emailed to the claimant on February 18, 2010, with disallowances for costs that were either missing documentation, determined to be non-OPA compensable, or some costs were denied because the claimant failed to meet their burden in substantiating the costs.

The NPFC received the Claimant's request for reconsideration letter on April 16, 2010 via email and the hard copy letter was received on April 19, 2010. The Claimant's assertions in support of reconsideration consist of the following:

- Crawford & Company - \$57,467.26 – claimant states that Crawford provided personnel to assess damages for third party claims related to the spill. Time and labor charges for each individual performing damage assessment are included in the invoice on reconsideration.

- Geosyntec Consultants - \$14,165.33 – claimant states that Geosyntec provided environmental and technical consulting, environmental and industrial hygiene monitoring and related services for cleanup. Backup documentation for reimbursable expenses is enclosed on reconsideration.
- Marine Spill Response Corporation (MSRC) - \$29,410.94 – claimant states MSRC provided staff, equipment, communications, mobile command center, and logistics for cleanup. The MSRC invoice and backup documentation is enclosed on reconsideration.
- McKittrick Waste - \$5,893.78 – claimant states that McKittrick Waste Disposal Facility was the destination for solid and liquid waste generated from the oil-spill. The material covered under this invoice included oil-contaminated water removed from a small plastic-lined pit adjacent to the well. The Coast Guard indicated that the invoice originally submitted was not legible. Accordingly, a more legible copy of the invoice is enclosed on reconsideration.
- McDaniel Lambert - \$8,350.00 – claimant states that McDaniel Lambert provided industrial hygiene and spill impact assessments which were performed specifically to assess the impacts and implications of the incident so that appropriate response activities could be performed and support services to those affected. Two invoices for McDaniel Lambert were submitted and invoice 942 was denied. McDaniel Lambert's work for Cannery Hamilton was specific to the spill and not properly categorized by the NPFC as "CERCLA". Therefore, we request that the denial of invoice 942 be reconsidered.

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. The FOSC coordination has been established under the Federal Project by way of EPA Pollution Reports and the Administrative Order issued by USEPA.
2. The incident involved the discharge and continuing substantial threat of 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. Presentment of costs to the RP, (b) (6) was made by the claimant, prior to the submission of the claim.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim, request for reconsideration and has determined some of 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 with the exception of denied costs itemized in the attached Summary of Vendors spreadsheet: (See, Enclosure 1 – Summary of Vendors).

B. Reconsideration Determination:

NPFC CA has reviewed the documentation provided by the claimant on reconsideration under cover dated April 16, 2010. The NPFC has performed a *de novo* review upon reconsideration. The NPFC has determined that the new arguments and documentation presented on reconsideration for the Crawford & Company costs provided by the claimant on reconsideration in the amount of \$57,467.26 remain denied. Third party claims adjudication/assessment costs are not OPA-compensable costs.

The NPFC has determined that the new arguments and documentation presented on reconsideration for the Geosyntec Consultant costs provided by the claimant on reconsideration in the amount of \$14,165.33 are compensable in part. The NPFC has determined that \$2,696.75 of invoice #234077 and \$1,799.95 of invoice #234084 remains denied for a total denied amount of \$4,496.70 and the NPFC has determined \$9,668.63 of the costs are determined compensable. See the enclosed spreadsheet of costs for an itemization of approved and denied costs for this vendor.

The NPFC has determined that the new arguments and documents presented on reconsideration for Marine Spill Response Corporation (MSRC) provided by the claimant on reconsideration in the amount of \$29,410.94 remains denied. Based on the invoicing and daily field logs in support of the invoicing, the daily field logs fail to address in detail what work specifically was being performed and under whose direction. The NPFC tried to cross check the information against EPA Pollution Reports and Weekly Status Reports but found those documents to be absent of information regarding MSRC and their response activities as reported by the claimant therefore the NPFC has determined that the claimant has not met its burden to establish what response tasks were being performed, on a given day and at given locations and at whose direction.

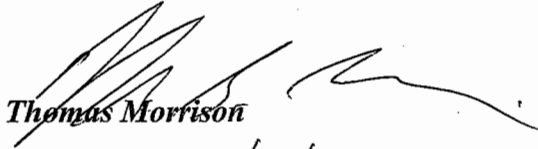
The NPFC has determined that the new arguments and documentation presented on reconsideration for McKittrick Waste in the amount of \$5,893.78 are determined compensable. The NPFC has reviewed the documentation presented and has determined that the disposal costs claimed are supported by the backup documentation as valid disposal costs resulting from valid response actions as determined by the FOSC.

The NPFC has determined that the new arguments and documentation presented on reconsideration for McDaniel Lambert in the amount of \$8,350.00 are determined compensable. The NPFC has reviewed the documentation presented and has determined that the services provided in association with oil spill response for residential homes resulted from the response actions determined by the FOSC to be consistent with the NCP.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$671,029.99 (\$649,298.18 from the removal cost claim + \$21,731.81 from the property damage claim) as full compensation for the reimbursable removal costs and damages incurred by the claimant as a result of this incident. All costs claimed are for charges paid for by the claimant for removal actions or damages under the OPA and, are compensable by the OSLTF as presented by the claimant.

DETERMINED AMOUNT: \$649,298.18

Claim Supervisor:  **Thomas Morrison**

Date of Supervisor's Review: 5/4/10

Supervisor Action: APPROVED

Supervisor's Comments: