

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : 909098-0001  
Claimant : O'Brien's Response Management (OOPS)  
Type of Claimant : OSRO  
Type of Claim : Removal Costs  
Claim Manager : [REDACTED]  
Amount Requested : \$4,203.65

**FACTS:**

1. ***Oil Spill Incident:*** On November 16, 2007, O'Brien Oil Pollution Service, Incorporated (OOPS) reported to the National Response Center (NRC) that one gallon of crude oil was discharged into Trinity Bay, of the Galveston Bay Ship Channel, in Galveston, Texas.<sup>1</sup> They reported that the discharge resulted from a flow line, pressurized for repairs, discharged a mixture of saltwater and oil. The discharge created a dark black sheen that was 60 feet wide and 150 feet long. The Galveston Bay Ship Channel is a navigable waterway of the United States. The pipeline was shut down when the leak was found and the repairs were made. OOPS reported the incident on behalf of the responsible party, TEKOil and Gas Gulf Coast, LLC (TEKOIL) of Woodland, Texas, as TEKOil entered into a contract for oil spill response consultation services with (OOPS) on May 11, 2007.
2. ***Description of Removal Activities for this Claimant:*** OOPS provided supervisory management of the oil spill response. [REDACTED] provided the management on both November 17, 2007 and November 18, 2007. On November 19, 2007, management was provided by [REDACTED]. Boom was placed around the oil; the oil was contained; and absorbents were applied.
3. ***The Claim:*** On June 1, 2009, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of \$4,203.65 for oversight of the oil spill response. On October 1, 2009, the claim was held in abeyance by the NPFC pending the finalization of the TEKOil bankruptcy proceedings when the Claimant informed that it had filed a Proof of Claim on November 4, 2008 regarding the August 29, 2008 bankruptcy proceedings of TEKOil. The NPFC informed the Claimant that the filing of the Proof of Claim constituted an action pending in court which precludes them from adjudicating the claim in accordance Claims Regulations.<sup>2</sup>

On September 18, 2012, the Claimant provided the Post-Confirmation Certificate that evidences that it did not receive compensation from the bankruptcy proceedings. The NPFC resumed the adjudication process of the claim.

<sup>1</sup> See NRC Report #854845.

<sup>2</sup> See Electronic Mail from [REDACTED] to [REDACTED] (OOPS), dated October 1, 2009.

**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 NPFC has determined that the actions undertaken by the claimant are deemed consistent with the National Contingency Plan (NCP). This determination is made in accordance with the Delegation Authority for Determination of Consistency with NCP for the payment of uncompensated removal cost claims under section 1012(a)(4), Oil Pollution Act of 1990.
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2).
4. 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 costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

#### ***B. Analysis:***

The NPFC Claims Manager has 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, and (4) whether the costs were adequately documented and reasonable.

Upon review, the Claims Manager hereby determines that there are discrepancies regarding personnel among OOPS Invoice #17526121 with the Summary Schedule to Support Invoice #17526121, and the rate schedule provided in the OOPS Contract for Oil Spill Response Consultation Services. The Summary Schedule shows a rate of \$1,400.00 per day for both Response Manager [REDACTED] (1 day worked) and [REDACTED] of the Operations Section (1.5 days worked) for a total of \$3,500.00 owed. However, Schedule


A of the contract lists the rate for response management services at \$1,250.00 per day. The Claimant will be compensated at the \$1,250.00 per day for a total of \$3,125.00; denying \$375.00 in personnel costs.

Based on NPFC's denial of \$375.00 for reimbursement of personnel costs, the NPFC determines that the OSLTF will pay \$3,828.65 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #909098-001.

***C. Determined Amount:***

The NPFC determines that the OSLTF will pay \$ 3,828.65 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# 909098-001. 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: \$3,828.65**

Claim Supervisor: 

Date of Supervisor's review: *10/18/12*

Supervisor Action: *Approved*

Supervisor's Comments: