

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/14/2012
Claim Number	: 912017-0001
Claimant	: American Pollution Control, Corp. (AMPOL)
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$87,501.00

### **Facts:**

On or about May 24, 2011, a discharge of oil into the water from an unknown source was discovered on the Crocodile Bayou. Crocodile Bayou empties into the Atchafalaya Basin in St. Martin Parish<sup>1</sup>. Atchafalaya Basin is a navigable waterway of the United States.

The unknown spill was located in the vicinity of a WLE Inc. platform. At the time of the spill, it was believed that WLE Inc. was the Responsible Party. Further investigation by the United States Coast Guard indicates that the spill did not emanate from their facility and the tests results are inconclusive. Local Coast Guard personnel were unable to positively link the discharge to a Responsible Party<sup>2</sup>. WLE Inc.'s pollution insurer denied their claim.

Federal on-Scene Coordination was made with the United States Coast Guard, Marine Safety Unit, in Morgan City.

The National Response Center was contacted via Incident Report # 977349<sup>3</sup>.

### **Responsible Party:**

To date, an RP has not been determined.

### **The Removal Actions:**

Claimant, American Pollution Control, AMPOL, responded on May 24, 2011. The response lasted from May 24, 2011 through June 13, 2011.

AMPOL personnel deployed oil spill containment booms around the area in order to contain the oil-spill. AMPOL used suction pumps to suck up the remaining oil. Sorbent pads were used and changed out every day.

AMPOL removed oily water from around the platform. Monitoring and clean-up activities continued by AMPOL and the USCG personnel until June 13, 2011.<sup>4</sup>

The oily debris, water, and sorbents were taken for disposal to American Recovery, LLC for proper disposal.<sup>5</sup>

<sup>1</sup> Maps

<sup>2</sup> Oil Sample Analysis Report, Marine Safety Laboratory, Case Number 11-251

<sup>3</sup> NRC Report 977349

<sup>4</sup> Disk with pictures of the clean-up efforts.

**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. FOSC coordination was made with United States Coast Guard Morgan City.
2. The incident involved the discharge and continuing substantial threat of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701 (23), to navigable waters.
3. In accordance with 22 CFR § 136.105(e)(12), the claimant certified that it has filed no suit in court for the claimed uncompensated removal costs.
4. The claim was submitted within six years after the date of completion of all removal actions for this incident as determined by the Federal on Scene Coordinator (FOSC).
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA 33 CFR § 136.205.<sup>6</sup>

#### **B. Analysis**

The NPFC finds that the evidence presented by the Claimant demonstrated that the Claimant is not the responsible party but did assume the responsibility of immediate action to mitigate the oil from discharging into the navigable waterways.

Claimant stated in its claim, that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of May 24, 2011 through June 13, 2011. Claimant acted as good Samaritan and has incurred substantial costs associated with this incident.

The NPFC Claims Manager reviewed Claimant’s actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed, that the costs were uncompensated, and that the costs were adequately documented and reasonable based on the rate schedule that was in place at the time services were rendered.

The Claims Manager also confirmed that the removal costs were (1) compensable “removal actions” under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) incurred as a result of these actions; (3) incurred for removal actions that were determined by the FOSC to be consistent with NCP or directed by the FOSC.

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<sup>6</sup> Spreadsheet with NPFC adjudication.

**Determined Amount:**

The NPFC Claims Manager hereby determines that claimant incurred \$87,501.00 of uncompensated OPA compensable removal costs that are supported by the evidence. This amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and adjudicated by the NPFC under claim # 912017-0001.

Claim Supervisor

Date of Supervisor's review: *3/15/12*

Supervisor Action: *Approved*

Supervisor's Comments: