

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912020-0001
Claimant	: W&T Offshore, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$284,268.82

INCIDENT:

On 19 July 2011, at approximately 0600 hours local time, W&T Offshore, Inc. (W&T) responded to a sheen about 200 yards from its East Cameron 321 facility in the Gulf of Mexico. The sheen was timely reported to the National Response Center via NRC Report # 983105.¹ The sheen continued to be observed in the same area the morning of 20 July 2011. W&T claims that the BOEMRE was also notified and was kept informed as the incident progressed. W&T asserts that, after evaluating and testing its facility equipment and associated pipeline, the oil did not come from its facility. Marathon Oil Company, which operates pipelines in the same area, reported to W&T that it also tested its equipment and determined that it was not the source of the release, either.²

No Responsible Party could be identified.

CLAIM AND CLAIMANT:

It appears that the claimant, W&T, hired Pegasus International, Inc. and Global Industries Offshore, LLC. to inspect and remove the tank from the water. A response vessel arrived at the scene about 2300 hours, 21 July 2011 and deployed an ROV, which identified the likely source of the release as a tote tank on the sea floor. The tank was encrusted and partially buried with no clear markings. The oil leak was related to stainless steel tubing associated with the tank. The dive vessel, M/V Global Pioneer, deployed divers and equipment to retrieve the tank. The tote tank was removed at about 2330 hours, 22 July 2011. The tank was subsequently lifted onto the EC-321 platform. After recovery of the source of the leak, the sheen dissipated.³

W&T's claim to the NPFC includes copies of the following: NRC Report # 983105; a claim cover letter, dated 12/13/2011; Optional OSLTF Claim Form, dated 12/13/2011; W&T Spill Report Form for this incident; photographs and internal email correspondence; invoices from Pegasus International, Inc. for this incident; claim A.I. letter, dated 1/18/2012; amended OSLTF form, received 1/18/2012; invoices for Global Industries Offshore, LLC; and the Rate Schedule for Pegasus International, Inc.⁴

The NPFC's review of the actual cost invoice and related documents focused on: (1) whether the actions taken were compensable removal actions under OPA and the claims regulations at 33 CFR Part 136 (e.g. whether the actions were taken to prevent, minimize, and mitigate the effects of the incident; (2) whether the costs were incurred as a result of these actions; (3)

¹ See NRC Report # 983105, dated 7/19/2011.

² See OSLTF Claim Form Amendment A, submitted to the NPFC with the claim by the claimant on 12/16/2011.

³ *Ibid.*

⁴ *Id.*

whether the actions taken are determined to be consistent with the National Contingency Plan (NCP) or directed by the FOSC; (4) whether the costs were adequately documented and reasonable, and (5) whether the Claimant's submitted costs were uncompensated.

APPLICABLE LAW:

"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".

"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". 33 USC § 2701(31).

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

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. § 2713(c)(2).

"Claimant" means "any person or government who presents a claim for compensation under this subchapter." 33 USC § 2701(4).

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 136.203, the claimant bears the burden to prove the removal costs 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. No FOSC coordination has been provided by the USCG for the actions undertaken by the Claimant on a daily basis;
2. The incident involved the report of a discharge and a substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. No RP has been identified. 33 U.S.C. § 2701(32);
4. The claim was submitted within the six year period of limitations for removal costs claims to the Fund. 33 U.S.C. § 2712(h)(2);
5. 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;
6. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim as well as other information obtained during the course of the adjudication and has determined this claim is denied for the reasons set forth below.

B. NPFC Analysis:

W&T states in its claim that all costs claimed are for uncompensated removal costs incurred for this incident. It represents that all costs presented to the Fund are compensable removal costs, payable by the OSLTF.

The NPFC Claims Manager reviewed W&T’s actual cost invoicing and dailies to ensure that the Claimant had incurred all costs claimed and that the costs were adequately documented and reasonable. Pursuant to 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.

Based on the preponderance of the evidence, the claim is denied because (1) the response has not been coordinated with a Federal On-Scene Coordinator (FOSC) in accordance with 33 CFR 136.203 (the Claimant stated that it kept local agencies informed of the status and progress of the response,⁵ but has not provided any documentation to show this); (2) no FOSC has determined that the actions undertaken by the Claimant were deemed consistent with the National Contingency Plan in accordance with 33 CFR 136.205, nor were the actions by the Claimant directed by the FOSC; and (3) the Claimant has failed to meet its burden to demonstrate that a substantial threat of discharge oil into or upon a navigable waterway existed, as there is no evidence as to the amount of oil released, or whether or not the sheen observed in the water was an OPA oil that did not originate at its own facility (as no lab analyses or fingerprinting results have been provided to the NPFC).

Additionally, the Claimant has not supplied dailies to substantiate its claim (as it appears that a large amount of the claim may be salvage costs). Furthermore, the Claimant has also not provided proof of payment to its contractors/subcontractors, nor has it performed proper disposal of the waste, as required by the NCP.

⁵ See Claim A.I. Response letter, dated 1/18/2012, sent via email to the NPFC by the claimant on 1/18/2012.

Should W&T choose to request reconsideration of its claim, it would need to coordinate its response efforts and receive a written statement from the FOSC of the affected USCG District. It would also need to provide: written dailies for all work performed for this incident, proof of payment of all invoicing, copies of the disposal manifests to show the product was properly disposed of, proof that the product involved was an OPA oil, and lab analysis that demonstrates the product as an OPA oil, and evidence that the product did not originate from its own facility. Accordingly, this claim is denied.

C. Determined Amount: \$0.00

The NPFC hereby determines this claim is denied because (1) the Claimant failed to provide FOSC coordination pursuant to 33 CFR §§136.203 & 205, (2) the Claimant failed to produce all evidence, information, and documentation deemed necessary to support the claim pursuant to 33 CFR 136.105(a) and 136.105(e)(6), (3) the Claimant failed to produce evidence of proper disposal in accordance with the National Contingency Plan (NCP), and (4) the Claimant failed to produce evidence that the product was an OPA oil.

Claim Supervisor 

Date of Supervisor's review: 1/24/12

Supervisor Action: *Denial approved*

Supervisor's Comments: