

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : E10201-0002
Claimant : Chemical Cleaning Engineering Specialists, Inc.
Type of Claimant : OSRO
Type of Claim : Removal Costs
Claim Manager : [REDACTED]
Amount Requested : \$398,864.09

INCIDENT:

On October 23, 2009, a fire/explosion occurred at the Gulf Caribbean Petroleum Refining L.P. facility located in Bayamon, Puerto Rico (hereinafter the CAPECO facility). The CAPECO facility, a major petroleum products supplier for Puerto Rico, imports, off loads, stores and distributes petroleum products. As a result of the explosion and fire that occurred, an unknown amount of oil was discharged from the some of the tanks at the facility. Product was found in the storm water channels, on-site streams and creeks, neighboring wetlands, and off-site waters leading to San Juan Bay. The Federal on Scene Coordinator (FOSC) determined that the deteriorating conditions of the remaining tanks posed a substantial threat of discharge to navigable waters. The responsible party (RP) for this incident is Gulf Caribbean Petroleum Refining LP.

CLAIM AND CLAIMANT:

The Claimant, Chemical Cleaning Engineering Specialists, Inc. (CHCL or Claimant) provided removal support to the RP for this incident. On February 2, 2011, Claimant presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs in the original amount of \$399,864.10. The NPFC sent a RP notification letter, dated February 18, 2011, to Mr. [REDACTED] CAPECO, advising that the Claimant presented a claim to the NPFC for certain uncompensated removal costs.¹

The Claimant submitted the following documents in support of its claim: Cover letter, a copy of the Optional OSLTF Claim Form (in Spanish), copies of all invoices and dailies associated with this claim, a copy of the CHCL Invoice Report for this incident, a copy of the Accounts Payable Aged Invoice Report, a copy of the US Bankruptcy Court District of Delaware Proof of Claim for Case # 10-12554, a copy of the US Bankruptcy Court District of Delaware Case File # 10-12553 (in Spanish), a copy of the list of creditors for Case # 2010-12533 (in Spanish), a copy of the Summary of Debt, a copy of the CHCL/AIMM Payroll sheet for this incident, and a copy of Proposal # E-1008, which includes the Rate Schedule and internal email correspondence.

CHCL's claim to the NPFC includes removal costs incurred by AIMM, its partner and subcontractor for the incident. Claimant has not paid AIMM's costs, which according to submitted invoices total \$296,849.90. CHCL and AIMM executed a Subrogation and Assignment of Rights Agreement whereby AIMM agreed to subrogate to CHCL its claim

¹ See NPFC RP Notification letter to CAPECO, both sent via email on and dated 2/18/2011.

for \$296,849.90 in uncompensated removal costs in connection with the CAPECO incident and to waive any independent right it might have to pursue such a claim against the NPFC. AIMM also agreed that it shall be entitled to payment from the NPFC in only such amount as paid by the NPFC for this claim. . The NPFC received this agreement on December 1, 2011.

The NPFC relied on additional information found through USCG Sector San Juan Case Report # 479314, US EPA Region II POLREPS #1-58 and NRC Report # 921401 to adjudicate this claim.

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) 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.

CAPECO (RP) BANKRUPTCY:

On August 12, 2010, Caribbean Petroleum Refining L.P. and two affiliated companies, Caribbean Petroleum Corporation and Gulf Petroleum Refining (Puerto Rico) Corporation, filed with the United States Bankruptcy Court for the District of Delaware voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, Case No. 10-12553 (KG) (CAPECO bankruptcy proceedings).

On March 29, 2011, the NPFC contacted the Claimant and advised that a copy of a Proof of Claim (unexecuted) accompanied the claim submission. The NPFC specifically asked if the Claimant executed a Proof of Claim in the RP's Bankruptcy and the Claimant replied on March 29, 2011 stating that they did not sign and return a Proof of Claim even though the RP listed the Claimant as a creditor and was listed as part of the bankruptcy proceedings.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

"Facility" means "any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing or transporting oil...." 33 USC § 2701(9).

"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).

33 USC § 2712(f), which is entitled "Rights of Subrogation," provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

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. FOSC coordination has been established via US EPA Region II.²
2. The incident involved the report of a substantial threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. Presentment of costs to the RP was made by the Claimant, prior to the submission of the claim to the Fund. 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 obtain during the course of the adjudication and determined what removal costs presented were for actions in accordance with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. NPFC Analysis:

CHCL states in its claim that all costs claimed are for uncompensated removal costs incurred for this incident. The Claimant represents that all costs presented by the Claimant to the Fund are compensable removal costs, payable by the OSLTF.

The NPFC Claims Manager reviewed the Claimant's actual cost invoices and dailies to ensure that the Claimant had incurred all costs claimed and that the costs were adequately documented and reasonable. CAPECO appointed Mr. [REDACTED] as the Qualified Individual (QI) representative for CAPECO. The NPFC Claims Manager determined that the response activities performed by the Claimant were signed off by Mr. [REDACTED] on the dailies provided by NRC affirming that the personnel, materials and equipment listed were present as billed. The Claims Manager also confirmed that the removal costs adjudicated and approved by the NPFC were: compensable "removal actions" under OPA and the claims regulations at 33 CFR 136.203(a)-(c) (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 determined by the FOSC to be consistent with the NCP or directed by the FOSC. The Claims Manager reviewed the Pollution Reports to corroborate actions that were taking place in the field and were relied upon as part of the adjudication process.

The NPFC's adjudication is broken down into two (2) categories: Approved and Denied³. The itemization of the approved costs by the NPFC is as follows:

CHCL Invoice # 1609 – The NPFC approves \$888.29 in personnel, materials and equipment;

CHCL Invoice # 1610 – The NPFC approves \$5,880.00 in personnel, materials and equipment;

CHCL Invoice # 1611 – The NPFC approves \$74.34 in personnel, materials and equipment;

² See US EPA Region II POLREPS # 1-58 for this incident.

³ See, Enclosure 1 – NPFC spreadsheet.

CHCL Invoice # 1616 – The NPFC approves \$3,780.00 in personnel, materials and equipment;
CHCL Invoice # 1617 – The NPFC approves \$956.62 in personnel, materials and equipment;
CHCL Invoice # 1635 – The NPFC approves \$7,543.57 in personnel, materials and equipment;
CHCL Invoice # 1640 – The NPFC approves \$3,161.69 in personnel, materials and equipment;
CHCL Invoice # 1646 – The NPFC approves \$956.62 in personnel, materials and equipment;
CHCL Invoice # 1647 – The NPFC approves \$980.00 in personnel, materials and equipment;
CHCL Invoice # 1648 – The NPFC approves \$2,525.85 in personnel, materials and equipment;
CHCL Invoice # 1649 – The NPFC approves \$13,500.00 in personnel, materials and equipment;
CHCL Invoice # 1650 – The NPFC approves \$3,825.00 in personnel, materials and equipment;
CHCL Invoice # 1651 – The NPFC approves \$1,890.00 in personnel, materials and equipment;
CHCL Invoice # 1652 – The NPFC approves \$955.62 in personnel, materials and equipment;
CHCL Invoice # 1653 – The NPFC approves \$980.00 in personnel, materials and equipment;
CHCL Invoice # 1654 – The NPFC approves \$1,144.28 in personnel, materials and equipment;
CHCL Invoice # 1655 – The NPFC approves \$14,175.00 in personnel, materials and equipment;
CHCL Invoice # 1656 – The NPFC approves \$42,975.20 in personnel, materials and equipment;
CHCL Invoice # 1657 – The NPFC approves \$2,550.00 in personnel, materials and equipment;
CHCL Invoice # 1658 – The NPFC approves \$2,520.00 in personnel, materials and equipment;
CHCL Invoice # 1659 – The NPFC approves \$956.62 in personnel, materials and equipment;
CHCL Invoice # 1660 – The NPFC approves \$980.00 in personnel, materials and equipment;
CHCL Invoice # 1662 – The NPFC approves \$56,329.50 in personnel, materials and equipment;
CHCL Invoice # 1663 – The NPFC approves \$18,900.00 in personnel, materials and equipment;
CHCL Invoice # 1664 – The NPFC approves \$2,550.00 in personnel, materials and equipment;
CHCL Invoice # 1665 – The NPFC approves \$2,520.00 in personnel, materials and equipment;
CHCL Invoice # 1666 – The NPFC approves \$956.62 in personnel, materials and equipment;
CHCL Invoice # 1667 – The NPFC approves \$980.00 in personnel, materials and equipment;
CHCL Invoice # 1668 – The NPFC approves \$6,795.27 in personnel, materials and equipment;

CHCL Invoice # 1669 – The NPFC approves \$1,642.50 in personnel, materials and equipment;
CHCL Invoice # 1671 – The NPFC approves \$6,143.70 in personnel, materials and equipment;
CHCL Invoice # 1674 – The NPFC approves \$6,825.00 in personnel, materials and equipment;
CHCL Invoice # 1675 – The NPFC approves \$3,584.84 in personnel, materials and equipment;
CHCL Invoice # 1676 – The NPFC approves \$21,600.00 in personnel, materials and equipment;
CHCL Invoice # 1677 – The NPFC approves \$2,520.00 in personnel, materials and equipment;
CHCL Invoice # 1678 – The NPFC approves \$956.62 in personnel, materials and equipment;
CHCL Invoice # 1679 – The NPFC approves \$980.00 in personnel, materials and equipment;
CHCL Invoice # 1680 – The NPFC approves \$1,213.31 in personnel, materials and equipment;
CHCL Invoice # 1681 – The NPFC approves \$3,900.00 in personnel, materials and equipment;
CHCL Invoice # 1682 – The NPFC approves \$37,747.00 in personnel, materials and equipment;
CHCL Invoice # 1683 – The NPFC approves \$16,875.00 in personnel, materials and equipment;
CHCL Invoice # 1684 – The NPFC approves \$2,520.00 in personnel, materials and equipment;
CHCL Invoice # 1685 – The NPFC approves \$956.62 in personnel, materials and equipment;
CHCL Invoice # 1687 – The NPFC approves \$980.00 in personnel, materials and equipment;
CHCL Invoice # 1688 – The NPFC approves \$12,230.00 in personnel, materials and equipment;
CHCL Invoice # 1689 – The NPFC approves \$12,825.00 in personnel, materials and equipment;
CHCL Invoice # 1690 – The NPFC approves \$2,520.00 in personnel, materials and equipment;
CHCL Invoice # 1691 – The NPFC approves \$956.62 in personnel, materials and equipment;
CHCL Invoice # 1692 – The NPFC approves \$980.00 in personnel, materials and equipment;
CHCL Invoice # 1693 – The NPFC approves \$5,131.50 in personnel, materials and equipment;
CHCL Invoice # 1694 – The NPFC approves \$4,725.00 in personnel, materials and equipment;
CHCL Invoice # 1695 – The NPFC approves \$1,260.00 in personnel, materials and equipment;
CHCL Invoice # 1696 – The NPFC approves \$956.62 in personnel, materials and equipment;
CHCL Invoice # 1697 – The NPFC approves \$980.00 in personnel, materials and equipment;
CHCL Invoice # 1698 – The NPFC approves \$1,041.12 in personnel, materials and equipment;

CHCL Invoice # 1700 – The NPFC approves \$9,450.00 in personnel, materials and equipment;
CHCL Invoice # 1702 – The NPFC approves \$4,725.00 in personnel, materials and equipment;
CHCL Invoice # 1704 – The NPFC approves \$9,450.00 in personnel, materials and equipment;
CHCL Invoice # 1713 – The NPFC approves \$17,649.65 in personnel, materials and equipment;

Total NPFC approved uncompensated removal costs based on above invoices = \$395,556.19

The itemization of the denied costs by the NPFC is as follows:

CHCL Invoice # 1609 – The NPFC denies \$0.04
CHCL Invoice # 1611 – The NPFC denies \$1.80
CHCL Invoice # 1617 – The NPFC denies \$0.04
CHCL Invoice # 1646 – The NPFC denies \$0.04
CHCL Invoice # 1652 – The NPFC denies \$0.04
CHCL Invoice # 1654 – The NPFC denies \$719.85
CHCL Invoice # 1659 – The NPFC denies \$0.04
CHCL Invoice # 1662 – The NPFC denies \$0.50
CHCL Invoice # 1666 – The NPFC denies \$0.04
CHCL Invoice # 1668 – The NPFC denies \$461.29
CHCL Invoice # 1669 – The NPFC denies \$98.83
CHCL Invoice # 1671 – The NPFC denies \$337.90
CHCL Invoice # 1678 – The NPFC denies \$0.04
CHCL Invoice # 1680 – The NPFC denies \$66.73
CHCL Invoice # 1685 – The NPFC denies \$0.04
CHCL Invoice # 1691 – The NPFC denies \$0.04
CHCL Invoice # 1696 – The NPFC denies \$1563.38
CHCL Invoice # 1698 – The NPFC denies \$57.26

Total NPFC denied removal costs based on the above invoices = \$3,307.90

The Claimant bears the burden of proving all elements of its claim to the Fund. 33 CFR §136.105(a). The Claimant has failed to provide sufficient evidence to support the denied amounts identified above⁴, and thus failed to prove its entitlement to reimbursement of uncompensated removal costs in the amount of \$3,307.90. 33 CFR §136.105(e)(6).

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$395,556.19** as full compensation for the reimbursable removal costs incurred by Claimant and its partner and subcontractor, AIMM, and submitted to the NPFC under claim # E10201-0002. All costs claimed are for charges incurred for “removal actions” as that term is defined in OPA and, are compensable costs, payable by the OSLTF as presented by the claimant. The NPFC denies **\$3,307.90** in claimed removal costs. An audit of the claimed costs was performed and the claims manager

⁴ See Enclosure 1 – Summary of Costs spreadsheet

discovered a number of non-OPA compensable costs and mathematical errors (See included NPFC Summary of Costs spreadsheet for a complete description of denied costs).

AMOUNT: \$396,556.19

Claim Supervisor:

Date of Supervisor's review: *12/28/11*

Supervisor Action: *Approved*