

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E11908-0003
Claimant	: Plains All American Pipeline, L.P.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$587,426.84

FACTS:

- 1. Oil Spill Incident:*** The United States Environmental Protection Agency (EPA) Region IX reports that on or about January 9, 2011, the Los Angeles County Public Works (LACPW) discovered a sheen in the Dominguez channel near the intersection of the channel and 223rd Street in Cason, CA. The Dominguez Channel is a riprap-lined, earthen-bottomed flood control channel that is influenced by the ebb and flow of the Pacific Ocean, a navigable waterway of the US. It drains into the Port of Los Angeles, which is contiguous with the Ocean.¹

When the sheen was discovered, it was determined that the most-likely cause of the discharge came from a Plains All American Pipeline, L.P. (Plains) crude oil pipeline that runs through the middle of the spill site. Plains was issued a verbal Notice of Federal Interest (NOFI) by the EPA Region IX Federal On-Scene Coordinator (FOSC) on January 16, 2011. On January 17, 2011, it was issued a written NOFI by the FOSC.²

On January 20, 2011, Plains conducted an underwater assessment of the floor of the channel using a SCUBA diver. The diver observed multiple seeps in the assessment area releasing fist size globules of oil. A sampled collection system was installed over one of the more prolific seeps to allow for sampling from the surface of the channel by boat. The diver collected numerous samples and video documented the floor of the channel.³

On January 22, 2011, Plains conducted a California State Fire Marshall, Division of Pipeline Safety approved hydrotest of the suspect pipeline. The test documented that the pipeline was holding pressure and not compromised. On January 24, 2011, after Plains hydrotest documented that their pipeline was not leaking, Plains withdrew from the spill. LACPW retained Ocean Blue to takeover and maintain the oil recovery operations.⁴

The FOSC withdrew the NOFI presented to Plains on January 25, 2011. At this time, no Responsible Party (RP) has been determined. This incident was reported to the National Response Center (NRC) on January 10, 2011 via both report # 964198 and # 964223.⁵

- 2. Description of removal actions performed:*** The claimant, Plains, retained West Coast Environmental Services (WCES) to install hard and sorbent booms downstream of the Carson Blvd Bridge. LACPW had previously deployed its contractor to place booms at 223rd Street. On January 11, 2011, WCES replaced the County's contractor at the 223rd

¹ See EPA Region IX POLREP # 1 for FPN E11908, dated 1/17/2011.

² See EPA Region IX POLREP # 1 for FPN E11908, dated 1/17/2011.

³ See EPA Region IX POLREP # 2 for FPN E11908, dated 1/27/2011.

⁴ See EPA Region IX POLREP # 2 for FPN E11908, dated 1/27/2011.

⁵ See NRC Report # 964198, dated 1/10/2011, and 964223, also dated 1/10/2011.

Street boom location. Plains had assumed all oil collection and booming activities. WCES and other contractors under Plains' management maintained the booms in the channel, collecting oil build up against booms and oily debris. An Incident Action Plan (IAP) was initiated on January 18, 2011 with a 24-hour operations period.⁶

- 3. *The Claim:*** On January 30, 2012, Plains submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$587,426.84 for the services provided from January 9 through 24, 2011.

The claim consists of copies of the following: US EPA POLREPS # 1-5 for FPN E11908; NRC Report #s 964198 and 964223; cover letter, dated 1/25/2012; Optional OSLTF Claim Form; Dominguez Channel Leak Notes of John Rifilato; photocopies of business cards from agencies on-scene; Plains Material Data Safety Sheet for this incident; the NOFI, dated 1/16/2011; Email for EPA rescinding the NOFI, dated 1/25/2011; Email from CAL Fire allowing Plains to resume operations with its pipe, dated 1/25/2011; Los Angeles County Flood Control District Permit for this incident; CAL Fire Pig Run/Hydrostatic Test permit for this incident; LACPW permit for WCES; LACPW Standard Flood Control permit for this incident; photos and maps of the spill site; the IAP for this incident; Test America and California State Fire Marshall lab analyses for this incident; Invoicing for Clean Harbors, OC Vacuum, United Site Services, WCES, WGR, KM Industrial, McJunkin, Mistras, Quality Integrated, TechCorr, WARC, AH&S Construction, Baker Corp, DeMenno Kerdoon, Ecology Control, Farwest Corrosion, Inline, J and J Engineering, McMaster-Carr, Praxair, Valley Industrial, Wilson Pipe, Berg Nelson, Goldsmith, Phillips Steel Co. and Wilmington Instrument, as related to this incident; Plains personnel costs for this incident; the Plains in-house breakdown and explanation of Personnel costs spreadsheet; and internal email correspondence

The review of the actual cost invoicing and daily logs 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.

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

⁶ See EPA Region IX POLREP # 1 for FPN E11908, dated 1/17/2011.

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 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].

Under 33 CFR 136.105(e)(8), the claim must include the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with preparation of the claim.

DETERMINATION OF LOSS:

A. Overview:

1. The initial FOSC coordination has been established via EPA Region IX POLREPS # 1-5.⁷ 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. A Responsible Party could not be determined. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 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 has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance

⁷ See EPA POLREPS # 1-5 for FPN E11908.

with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

As it was determined by US EPA Region IX that the Claimant was no longer considered an RP for this incident, it was then necessary to audit costs paid and determine whether or not they were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP). After performing the audit, it was determined that the Claimant incurred \$548,526.84 of uncompensated removal costs. Thus, this amount is payable by the OSLTF as full compensation for the reimbursable removal costs borne by the Claimant and submitted to the NPFC under claim #E11908-0003. Additionally, the Claimant states that all costs claimed are for uncompensated removal costs it incurred during this incident from January 9 through 24, 2011.

Of the original \$587,426.84 in claimed costs, \$38,900.00 has been denied, as the Claimant has not provided documentation to support the Plains personnel costs presented as part of the claim.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$548,526.84 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #E11908-0003. These costs 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. \$38,900.00 in claimed costs are denied.

AMOUNT: \$548,526.84

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: