

CLAIM SUMMARY / DETERMINATION

Claim Number:	913038-0001
Claimant:	Environmental Safety & Health Consulting Services
Type of Claimant:	US Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$56,022.50

FACTS:

The Incident

At approximately 1140, on or about 26 October 2011, a discharge of approximately five (5) to ten (10) barrels of crude oil was discovered at the James A. Whitson Three Bayou Bay Facility, located in Jefferson Parish, Louisiana. The equipment responsible for the spilled crude oil is owned by [REDACTED] and operated by Rebel Oilfield Production Services, LLC.

This product discharged into the waters of Three Bayou. Three Bayou leads to the Barataria Waterway, which leads to Mud Lake, which leads to Barataria Bay. The release impacted the water's of the Three Bayou Bay, immediately adjacent to the facility. The Bay is a navigable waterway of the United States.

An additional five (5) – ten (10) barrels of crude oil was released but contained within a secondary containment structure of the facility. The discharge came from the 1,000 barrel crude oil storage tank at the facility. The location of the leak was inaccessible and could not be secured. According to the claim submission, the incident was caused by a leak that developed in the bottom of the 1,000 barrel crude oil storage tank at the facility due to corrosion.

This discharge was reported to the NRC, Incident Number 993635, the State Police, Report Number 11-06704, the Louisiana Department of Environmental Quality, the County Parish Emergency Planning Committee, via the Jefferson Parish Fire Department.

The Claim & The Claimant

The Claimant, ES & H, was hired by the Responsible Party (RP), [REDACTED], to respond to the incident and clean up the product. The Claimant provided response services. They submitted their invoice for services rendered to the RP, James A. Whitson, on 21 December 2011 and again on 14 January 2013. In a 14 January 2013 letter, ES&H once again requested payment of the outstanding invoice and informed the RP of their intent to file a claim with the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC). This invoice was not paid and remains unpaid to date. ES & H, now presents its claim to the Oil Spill Liability Trust Fund (OSLTF) via the NPFC for reimbursement of their uncompensated removal costs in the amount of \$56,022.50, on 11 March 2013.

Removal Actions

The Claimant, ES&H, was hired by the owners of the facility. They responded to the spill site with sorbent boom and drum skimmers in order to confine the oil. The response for this incident went from 26 October 2011 through 7 November 2011. Disposal actions took place on 21 November 2011 and 2 again on December 2011.

The Claimant provided Daily Supervisor Logs in support of their claim and to show what actions were taken each day as follows:

10/26/11: This was the first day of the incident, when the Claimant was hired to respond to the incident by the RP. According to the log, personnel arrived on scene and began to deploy boom, pads and other needed equipment. Other personnel went to the platform and began using the suction pump and padded the perimeter of the platform. They pumped off oil from the platform into a storage tank on the platform and recovered five 55 gallon plastic drums. Personnel departed the site at approximately 1900 that day.

10/27/11: On this date, The Louisiana State Department of Environmental Quality (DEQ) arrived on scene. The Claimant met with them to discuss the plan of action. Personnel would be washing out the product that was in the marsh, into the open waters to make it easier to recover. Personnel continued to suck up product on the platform and into storage tanks on the platform facility. Personnel departed the spill sight. They arrived at the office at 1815 and unloaded the barge boat of five (5) barrels full of oil.

10/28/11: Personnel arrived at the facility around 0715. A three man crew was used to continue padding any oil coming out from under the storage tanks. The barge boat skimmers on scene were used to recover barrels from the top off the water. Two men were on wash pumps in the marsh area washing oil out from 55 feet back of grass line and the other pushing oil towards skimmer. Personnel recovered soiled boom and padding. The work day ended around 1745 that evening.

10/31/11: Personnel were at the job site again on this date. A meeting was held with the State DEQ. Personnel began to collect all used absorbent boom and new boom was set out. All bags were placed on a barge boat, hoses pumped and placed on a responder boat. Personnel departed the scene to off load the boats after placing the bags in the roll off box. Personnel headed back to job site. Personnel arrived back at the office at 1500 that day.

11/2/11: Personnel arrived at the spill site at approximately 0725 to survey the area. They found a small pocket of oil under the platform. Another meeting was to be held with RP, USCG, and LA DEQ to discuss the next plan of action. A decision was made to leave boom out for another week until tank cleaning was completed by the RP. Personnel departed spill site around 0920.

11/7/2011: Personnel arrived on the job site to survey the area. No oil was found on the water or coming out of the marsh. Called the RP to report the findings. Personnel began to remove boom, double bagging all bags, untied both ends of containment boom and start to pull up boom. Began the decontamination of boom and stored it back into the storage facility. Personnel departed the job site at approximated 1030.

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].

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. Findings of Fact

1. The Federal On Scene Coordination was provided by the United States Coast Guard (USCG) via e-mail to the NPFC dated 9 May 2013. 33 U.S.C 27102 (b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 2701(23), to navigable waters;
3. In accordance with 33 CFR 136.105(e)(12), the claimant has certified no suit has been filed for this incident;
4. Evidence in the administrative record establishes that [REDACTED] is the Responsible Party for this incident. 33 USC 2701(32)
5. The claim was submitted within the six-year statute of limitations for claims. 33 U.S.C. 2712(h)(1);
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR 136.205, as set forth below;
7. The review of the actual costs, invoices and dailies focused on evaluation of whether such costs qualify as "Compensation Allowable" under 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 203 and 205 (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, to be consistent with the National Contingency Plan (NCP) or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager validated the costs were billed in accordance with the vendor rate schedule at the time services were rendered and the NPFC confirmed that the costs were reasonable and necessary and performed in accordance with the NCP as determined by the Federal On Scene Coordinator (FOSC). The NPFC denied a total of \$120.00 for boom stakes that were not listed on the vendor rate schedule nor did the Claimant provide a third party receipt for such therefore these costs are denied as unsupported.

The Claims Manager has determined that the Claimant did in fact incur \$55,902.50 of uncompensated removal costs in order to remove and further mitigate the substantial threat of a discharge and that this amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC claim number 913038-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident which occurred on or about 26 October 2011.

AMOUNT: \$55,902.50

The NPFC hereby determines that the OSLTF will pay \$55,902.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number 913038-0001. All 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.

Claim Supervisor: 

Date of Supervisor's review: *6/10/13*

Supervisor Action: *Approved*

Supervisor's Comments: