

CLAIM SUMMARY / DETERMINATION

Claim Number:	913081-0001
Claimant:	CITGO Petroleum Corporation
Type of Claimant:	U.S. Claimant (Corporate)
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$10,314.30 [REDACTED]

FACTS:

The Incident:

The incident took place on or about 18 January 2010, and involved a discharge of oil from the tug boat M/V Jenkins (vessel), owned and operated by RDA Construction Company. The oil discharged into the waters of the Weymouth River Harbor, a navigable water of the United States. On 18 January 2010, Sector Boston received a call about the vessel taking on water and sinking along the Weymouth Fore River (River).

The suspected cause of the sinking was determined to be a leak in the shaft and the bilge pumps were not able to keep up, extra pumps were used but did not function properly.

Prior to this incident, the vessel had been breaking ice along the Charles River and that activity may have had something to do with causing the vessel's shaft to leak. Once the vessel sank, an estimated 50 gallons of fuel and other oil discharged into the River causing a sheen/emulsion on the water. The vessel was removed from the water by being hoisted to the water level then pumped out the remaining water. Once pumped out, the vessel was placed on the pier rack.

The incident resulted in a discharge or substantial threat of discharge of oil. See, *U.S. Coast Guard, Report of Investigation into the incident involving Tug Jenkins, Sinking/Pollution on 1/18/2010*.

The owners of the tug M/V Jenkins hired a contractor, Green Environmental, to respond to and oversee the clean up process.

The Claim & The Claimant:

The claim is presented by CITGO Petroleum Corporation (CITGO) via its counsel, Barnes & Thornburg, LLP, seeking reimbursement of their uncompensated removal costs from the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC) in the amount of \$10,314.30. The claim was received at the NPFC on or about 31 July 2013.

According to the submission, CITGO alleges that it incurred costs in the amount of \$10,314.30 while mitigating any threat from this incident. In support of its claim, it included redacted copies of the *Investigation Report*, witness statements and *POL/SITREPs*. Nothing in its submission

included evidence that CITGO's actions were directed by the FOSC, Sector Boston, or were in accordance with the provisions of the National Contingency Plan (NCP).

The Removal Actions:

The incident involved the sinking and ultimate discharge of oil from the tug boat M/V Jenkins in the Weymouth River Harbor. The Responsible Party (RP) for the incident was RDA Construction Company, who owned and operated the tug/vessel. As a result of the discharge, the RP took responsibility for the incident and hired a contractor, Green Environmental, to respond and clean up the oil from the waters of the Harbor.

The Federal On Scene Coordinator for the incident was U.S. Coast Guard, Sector Boston. The Coast Guard initiated an investigation regarding the sinking of the vessel and ultimately the discharge of oil from said vessel. A investigation report was created in the process. See, MISLE Case Number 488045, MISLE Activity Number 3666120.

There was no evidence in the submission that supported the Claimant's position that it responded to the incident. The only reference was that "CITGO Braintree has a vessel that will not be able to move if the waterway is shut down" See, *SITREP/POLREP One*. Additionally, there is no evidence that the waterway was ever "shut down" or that the Claimant suffered any damage associated with a River closure.

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. Overview

1. The Claimant has not provided sufficient evidence that the actions taken by Citgo were coordinated by or with the FOSC or were in accordance with the provisions of the NCP. 33 CFR 136.203 (c) & 33 CFR 136.205
2. The Claimant bears the burden of proving all elements of its claim. 33 CFR 136.105(a) & 136.105(e)(6)
3. The Claimant has properly demonstrated that the incident involved the report of a discharge and substantial threat of a discharge of oil into "navigable waters" as defined in OPA 90, 33 U.S.C. 2701
4. The claim was submitted with the six year statute of limitations. 33 U.S.C. 2712(h)(1)
5. A Responsible Party, namely RDA Construction, was determined for this incident. 33 U.S.C. 2701 (32)
6. The NPFC Claims Manager has thoroughly reviewed all the documentation submitted with the claim and determined that there is not sufficient evidence to establish that the actions taken by the Claimant were coordinated with the FOSC or were in accordance with the provisions of the NCP, nor were the actions reasonable and allowable under OPA and 33 CFR 203 & 205.

B. Analysis

The NPFC CA reviewed the documentation submitted in support of the Claimant's submission for reimbursement of uncompensated removal costs to the Fund. The review focused on whether the incident involved a discharge or substantial discharge of oil into "navigable waters" (2) 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); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

In order to make the proper determination regarding whether the costs incurred by the Claimant should be reimbursed under the Law and the Claims Regulations, the Claims Manager thoroughly reviewed the documentation submitted. Based on this review, it was determined that there is not sufficient evidence in the file regarding whether the actions taken were directed/coordinated by the FOSC or were determined to be consistent with the provisions of the NCP.

In order to make this determination, the Claims Manager made a request for additional information from both the Claimant and Coast Guard personnel. After receiving all documentation, the Claims Manager has determined that based on the preponderance of the evidence, that this claim is denied for failure to demonstrate that the actions taken by Citgo were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. 33 CFR 136.203 & 205.

Although the NPFC received responses from various CG personnel regarding the actions of the Claimant, the NPFC relied most heavily on those statements made by CG personnel who were actually on scene at the time of the incident, who investigated the incident, and who spoke with Claimant personnel at the time of the incident.

The Claims Manager reviewed the documentation provided by the Claimant and did not find anything in that submission which would support its position that the actions it took were directed by the FOSC. The documents provided by the Claimant to include "*Actual Event Reports*" only indicate that the Coast Guard had been notified of the incident and was overseeing the actions of RDA in response to the discharge/incident. There was nothing in this documentation to support Claimant's assertion for reimbursement of the claimed costs.

Furthermore, it is the opinion of the NPFC Claims Manager that based on the information obtained from Coast Guard records and personnel, that the actions undertaken by the Claimant at their facility, appear to be excessive based on the fact that the USCG advises the NPFC that there was no threat of an impact of oil to to the Citgo facility.

Therefore, should the Claimant seek reconsideration under the provisions of the Claim Regulations, it will need to obtain a detailed statement from the U.S. Coast Guard stating that the actions undertaken were appropriate, reasonable and necessary despite the fact that there was no impact in or near the subject facility. This statement should include a statement indicating why the FOSC contends the actions were appropriate.

Based on the foregoing, this claim is denied because the Claimant failed to demonstrate that the actions taken by Citgo were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC in accordance with 33 CFR 136.203 & 205.

AMOUNT: \$0.00

Claim Supervisor:

Date of Supervisor's review: *8/30/13*

Supervisor Action: *Denial approved*

Supervisor's Comments: