

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	N12061-0001
<b>Claimant:</b>	World Environmental, LLC and USA Environment as joint claimants
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$77,012.56

### **INCIDENT FACTS:**

On May 31, 2012, the Louisiana Department of Natural Resources (DNR) inspected<sup>1</sup> the oil and gas exploration and production facility owned by TF&B Oil Company LLC (TFB)<sup>2</sup> in the Little Chenier Oil Field in Cameron Parish, LA. The DNR issued a Compliance Order to TFB on June 25, 2012, which states “that the containment provided around the tankage within the production facility in question contains discharges of Exploration & Production (E&P) Waste which presents a fire hazard.” On July 19, 2012, during the Louisiana Department of Environmental Quality (LDEQ) site visit accompanied by World Environmental LLC (World), the conditions of the pollution resulted in a call to the U.S. Coast Guard (USCG). Once the USCG arrived and inspected the property they became concerned that the oil would discharge to the Mermentau River, a navigable water of the United States. The USCG ordered emergency response activities at that point. TFB is the responsible party (RP) as defined by the Oil Pollution Act of 1990.

### **CLAIMANT AND CLAIM:**

The Claimants are World Environmental LLC (World) and USA Environment (USA). World was hired to research, review documents and prepare for a site visit; develop a Health and Safety Plan; develop a RECAP Work Plan; and conduct site visit for an assessment. Once the USCG ordered emergency response, World hired USA to perform the emergency response/pollution removal operation. Claimants seek reimbursement of the costs related to the environmental site assessment and health and safety plan preparations and the emergency response activities.

### **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”.

<sup>1</sup> There were previous inspections in April 2010, June 2010, January 2011, July 2011 and August 2011, which revealed unauthorized discharges from the facility.

<sup>2</sup> The LA Department of Environmental Quality Compliance Order refers to the owner as T & F Oil Company LLC.

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].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

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:**

#### ***A. Overview:***

1. CG MSU Lake Charles personnel provided FOSC coordination.

2. The incident involved the report of a discharge and substantial threat of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the Claimants have certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which 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.

#### ***B. Analysis:***

The Claims Manager reviewed the invoices and associated other documentation and the Claimants’ rate sheets in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether the actions taken were compensable “removal actions” under OPA and its 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 FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager verified that the FOSC directed the Claimants in the emergency response beginning on July 19, 2012, the same day the incident was reported to the National Response Center (NRC). Although it is evident that the site was historically contaminated by oil waste, the evidence shows that the contamination was not determined to be a substantial threat to navigable waters (i.e. an OPA event) until the USCG arrived, assessed the situation, and then designated it such an incident.

The NPFC finds most of World’s and USA’s costs necessary and reasonable for this response after the USCG instructed the RP to perform the oil removal on July 19, 2012. The emergency response activities after that date were under CG direction. The attached spreadsheets detail the NPFC’s adjudication of the invoices and individual costs within those invoices. The claimed and properly documented costs for emergency response that fall within the Claimants’ published rates were approved. Those emergency response costs that were not supported by documentation or the rate schedules were denied.

Additionally, certain claimed costs are not compensable as removal costs under OPA. The NPFC must deny costs for services performed prior to the CG direction on July 19, 2012, including the costs for planning the site investigation and remedial corrective action to comply with preexisting state orders. As evidenced by the World’s July 2, 2012 letter to TFB providing the RECAP Site Investigation Work Plan proposal, the purpose of the plan described in the scope of work section was to confirm or deny the presence of impacted soil and groundwater to comply with the LDEQ compliance order. In no way do the costs encompass costs to removal oil from or prevent the discharge of oil to the navigable waters of the U.S. The evidence shows that oil pollution removal was not contemplated between the parties until World sent its July 23, 2012 emergency response proposal to TFB and the contract between them executed on July 24, 2012.

As detailed in the spreadsheet adjudication, the total amount denied by the NPFC is \$14,808.59. The Claims Manager hereby determines that the OSLTF should pay the amount of \$62,203.97 as full compensation for the uncompensated removal costs incurred by the Claimants and submitted to the NPFC. The approved costs were incurred by the Claimants for removal actions taken, as defined under OPA and payable by the OSLTF as compensable removal costs.

AMOUNT: \$62,203.97

Claim Supervisor:

Date of Supervisor's review: 3/12/13

Supervisor Action: *Approved*

Supervisor's Comments: