

CLAIM SUMMARY / DETERMINATION

Claim Number:	914011-0001
Claimant:	BP Exploration & Production Inc.
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$27,151.46

FACTS: Oil Spill Incident: On 16 Jul 2013, the CG National Response Center (NRC) received notification of surface residual tar balls (SRBs) that washed up on the shore of Fourchon Beach, Port Fourchon, LA.¹ The SRBs were directly impacting the Gulf of Mexico, a navigable waterway of the United States. The CG Gulf Coast Incident Management Team (CG GCIMT) was notified. On 18 Jul 2013, CG GCIMT issued an email directive to BP Exploration & Production (BP) to activate an oil spill response organization (OSRO) and respond for cleanup operations on Fourchon Beach as directed.²

Description of Removal Activities for this Claimant: On 19 Jul 2013, Danos & Curole Marine Contractors (BP's OSRO), Mr. [REDACTED] NextSource, Inc and a Shoreline Cleanup Assessment Team (SCAT) operations liaison and one active duty CG person attempted to respond to the report of SRBs that washed up on Fourchon Beach, but had to turn around and return to base due of bad weather.

On 20 Jul 2013, Danos & Curole Marine Contractors (BP's OSRO), Mr. [REDACTED] NextSource, Inc and SCAT operations liaison and one active duty CG person responded to the report of SRBs that washed up on Fourchon Beach, Port Fourchon, LA. Once on-scene, they discovered SRBs ranging in size from 3cm to 16 cm in Zone 6 of the beach and SRBs ranging in size from 3cm to 18 cm in Zone 7 of the beach. While the SRBs recovered in Zone 6 had the outward appearance and characteristics of MC252, the SRBs recovered in Zone 7 were inconsistent with the characteristics of MC252 as the product had a gummy like consistency when cut in half and was black in color. As such, sample analysis of the SRBs recovered in Zone 7 was conducted by both CG personnel and BP personnel.

A total a 1 pound of SRBs was recovered from Zone 6 and and 3.5 pounds of SRBs was recovered in Zone 7. The SRBs collected from Zone 6 and Zone 7 were combined and disposed of properly at River Birch Landfill, Avondale, LA. On 24 Jul 13, sample analysis conducted by the CG MSL under Report 13-190 revealed that that the 3 SRBs sampled from Zone 7 on 20 Jul 2013 were not derived from the Deepwater Horizon oil spill.³ As discussed above, MC252 and non MC252 SRBs were disposed of together. However, as there were no charges from BP for the disposal of the SRBs, all of the costs associated with this claim have been deemed appropriate.

¹ See NRC Report #1053987 dated 16 Jul 2013

² See email directive to BP dated 18 Jul 2013

³ See MSL Oil Sample Analysis Report 13-217 dated 24 Jul 2013

The Claim: On 18 Dec 2013, BP presented a removal cost claim to the CG National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the total amount of \$27,151.46.⁴ This claim is a direct result of the MSL Lab analysis indicating that the SRBs sampled on Fourchon Beach were not derived from the BP Deepwater Horizon oil spill.

APPLICABLE LAW:

"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].

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

⁴ See Optional OSLTF Claim Form from BP dated 18 Dec 2013

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. CG GCIMT as the Federal On-Scene Coordinator for this incident, determined that the actions undertaken by BP were consistent with the NCP as demonstrated by the FOSC’s requirement for BP to activate an OSRO for response to the SRBs washed up on the shore of Fourchon Beach as reported by NRC Report # 1053987 and subsequent email from the FOSCR attesting to the fact that the cleanup had been conducted iaw the criteria established in the SCCP endpoints.⁵
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 to “navigable waters.”
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed costs.
4. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined what costs presented were for actions in accordance with the NCP and that the costs for these actions were 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

⁵ See email from MKC [REDACTED] attesting that the cleanup was complete dated 20 Jul 2013.

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.

Upon review of the claim submission, the NPFC has determined that the documentation to support the actions is reasonable, necessary and in accordance with the response objectives as determined by the CG IMT and that the actions were also monitored by CG personnel.

The NPFC hereby determines that the OSLTF will pay \$27,151.46 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #914011-0001. All costs claimed 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 Claimants.

AMOUNT: 27,151.46

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/18/2014*

Supervisor Action: *Approved*