

CLAIM SUMMARY / DETERMINATION

Claim Number:	914028-0001
Claimant:	Anderson Pollution Control, Inc.
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$292,337.14

FACTS:

Oil Spill Incident

On November 14, 2013, the Texas Railroad Commission, State On Scene Coordinator (SOSC), District 03 Office (RRC) received notification of a sheen on the Tres Palacios Creek. It was determined that the source of the sheen was the T.E. Hudson #2 Tank Battery near Clemville, Texas.¹ Reddy Disposal, LLC is the owner of the tank battery/operator of a well located on Railroad Commission of Texas lease No. 02972 located in Matagorda County, Texas.

On November 15, 2013 at 12:30 p.m., Anderson Pollution Control (APC or Claimant) received a call from Mr. [REDACTED] owner, Reddy Disposal, LLC requesting response and cleanup of the oil discharge. Approximately 20 barrels of oil and 70 barrels of saltwater were released from the tank battery. The oil followed a flow path from the tank battery through a culvert under FM 417 along the drainage ditch leading to the Tres Palacios River and through a second culvert under the levee that runs along the Tres Palacios River. The oil then entered the River and flowed approximately 13 miles downriver toward Tres Palacios Bay and Matagorda Bay, navigable waters of the United States.²

Responsible Party

Reddy Disposals, LLC is the Responsible Party. On March 11, 2014, the NPFC Claims Manager sent an RP Notification letter to Mr. [REDACTED] on behalf of Reddy Disposals, LLC. On March 28, 2014, the NPFC Claims Manager received a letter from Mr. [REDACTED] confirming that he has paid \$92,575.25 towards the invoice. Mr. [REDACTED] explained in his letter that the damages were caused by vandals and that his insurance will not cover this incident because his well is not listed with the insurance company. Further, Mr. [REDACTED] offered to pay \$20,000.00 or more a month to the Claimant, depending on the production of his oil well.³

The NPFC Claims Manager advised the Claimant that Mr. [REDACTED] made an offer to pay \$20,000.00 a month. The Claimant advised that the RP had not made that offer to APC and that prior to the Claimant submitting his claim to the Fund, the RP avoided the Claimant's phone

¹ Railroad Commission of Texas, Oil and Gas Division letter dated December 27, 2013.

² Sampling & Mapping Report, Prepared by Anderson Pollution Control, Inc.

³ See, letter from RP to Claims Manager [REDACTED] dated March 28, 2014.

calls and was unreachable. Therefore, the Claimant opted not to pursue the monthly payments and chose to seek reimbursement from the Fund.⁴

Claim and Claimant

The RP contracted with Anderson Pollution Control, Inc. (APC) to provide oil spill removal activities at the T.E. Hudson #2 Tank Battery on November 15, 2013.⁵ On March 6, 2014, APC submitted a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) for reimbursement of their uncompensated removal costs in the amount of \$292,337.14. The sum certain is comprised of four invoices, invoice numbers 7364, 7387, 7475, and 7526. APC's costs include; Personnel, Equipment, Disposal, Roll-Off Box Rental, Analytical, and Consulting.

Description of Removal Activities

Removal actions included remediation of the creek water and creek bed. APC handled staffing, disposal,⁶ and analytical testing of the oil.⁷ Upon arrival, APC immediately began pressure washing the creek and began skimming operations while laying out hard boom. APC had to deploy boats to reach to the 456 Bridge where the APC deployed hard boom. Two 70 bbl vac trucks were used at the 456 Bridge to recover oil.⁸

APC provided several bags of "gator" to spread out upstream of the spill.

At bridges "#2" and "#3", trees had to be cut down in order to access the contaminated area of the creek so that snare boom could be deployed. APC provided a chainsaw and cut down trees to enable them to pass through.⁹

On November 26, 2013, a boat was deployed to 2431 Bridge and the Huffman Bridge to place sorbent pads out and to spread "gator."

APC provided a map, pictures, and GPS coordinates of the sample locations taken for the analytics, dated November 26, 2013. APC provided TPH, BTEX, and Chlorides testing around the firewall, the flow path the oil took before the culvert and three samples were taken along the flow path the fluids took after the culvert.¹⁰

APC continued to clean-up, pressure-wash, change out snare and boom off the creek, creek bed, shoreline, and bridge areas until December 31, 2013. The conditions were cold and muddy¹¹.

While APC personnel did work with the RP to develop a response strategy, ultimately APC's role in the incident was signed off and approved by the Railroad Commission of Texas, Oil and Gas Division in its capacity as the SOSOC.¹²

⁴ See, 2014 03 28 Email between Claimant [REDACTED] and NPFC Claims Manager [REDACTED]

⁵ Signed Emergency Service Contract.

⁶ See, Disposal Manifests dated 11/28/2013 and 01/15/2014.

⁷ Sampling & Mapping Report, January 2014.

⁸ Field notes

⁹ See, Job Summary dated November 21, 2013.

¹⁰ Sampling & Mapping Report, January 2014.

¹¹ Field notes.

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". 33 U.S.C. § 2701(31).

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 -

¹² See, Railroad Commission of Texas, Oil and Gas Division letters dated December 27, 2013 and January 23, 2014 to the Operator of the facility.

- (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 Facts

1. The NPFC determines that the removal actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the NPFC Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved 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 Claimant has 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. Claimant properly presented the claim to the Responsible Party, who has denied payment.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of removal costs presented were for actions accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis

The NPFC Claims Manager 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 costs were adequately documented and reasonable.

Invoices

Invoice 7364

This invoice is for Personnel, Equipment, Trucks, and Mobilization in the initial amount of \$257,198.59 from November 15, 2013 through November 24, 2013. The RP made three payments, via check, toward this invoice in the amount of \$92,575.25,¹³ which left a balance of \$164,623.34. However, during the adjudication of these costs, the NPFC found a \$175.01 discrepancy.

In an email dated May 1, 2014, the Claimant explained that invoice 7364 with a total amount of \$257,198.59 is the amount that was submitted for payment to the RP and that the invoice itself was not adjusted after making presentment to the RP. The Claimant further explained that there is a \$140.00 difference between the submitted invoice and the daily tickets due to a formula error on the Claimant's excel daily ticket that was caught during the invoicing process and adjusted accordingly on the invoice.¹⁴

As a result of the formula errors, the NPFC deducted the \$140.00 from the NPFC's total amount which left a remaining \$35.00 variance that is unsubstantiated by the Claimant. Therefore the NPFC deducted the \$35.00 variance from the subtotal as well, which brought the NPFC's total costs for this invoice to \$164,623.34.¹⁵ The NPFC approved **\$164,583.33** for invoice 7364. The NPFC denied \$40.00 on the air compressor based on the Claimant's published rate schedule of costs.¹⁶ The NPFC also denied \$0.01 as unsubstantiated.

Invoice 7387

This invoice is for Personnel, Equipment, and Vac Truck wash-out in the amount of \$90,787.04. The NPFC has approved **\$90,787.04** based on the published rate schedule of costs in place at the time services were rendered.

Invoice 7475

This invoice is for Personnel, Equipment, Roll-off Box Rental, Disposal, and Analytical in the amount of \$31,929.80. The NPFC has approved **\$31,929.80** based on the published rate schedule of costs in place at the time services were rendered.

¹³ See, Anderson Pollution Control, Inc., Customer Transaction History.

¹⁴ See, "Invoices" email dated 2014 05 01

¹⁵ See, NPFC's Adjudication of costs for further information.

¹⁶ See, NPFC Summary of costs spreadsheet.

Invoice 7526

This invoice is for the Environmental Consultant's costs and equipment in the amount of \$4,996.96. The NPFC denied this invoice in its entirety under the premise that all costs are associated with the Consultant. In an email dated May 05, 2014, the Claimant said that an Environmental Consultant is on their payroll specifically for consulting services however, the Claimant's rate schedule does not address this labor category. Also, the Claimant did not provide a detailed description of specific duties that were performed by the consultant or demonstrated its relevance to the clean up. Therefore, invoice 7526 is denied.

Based on the foregoing, the NPFC performed a review of all costs presented for the invoices associated with this claim and has determined that the rates charged were in accordance with the established rate schedule¹⁷ and that the actions taken by all parties responding to the incident are determined by the NPFC to be consistent with the National Contingency Plan (NCP) and were necessary in order to mitigate and minimize the effects of the spill to the environment. On that basis, the Claims Manager determines that the NPFC will offer \$287,300.17 for this claim as being payable from the Oil Spill Liability Trust Fund, (OSLTF).

C. Determined Amount:

The NPFC hereby determines that the OSLTF will offer **\$287,300.17** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 914028-0001. 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 Claimant.

Claim Supervisor:

Date of Supervisor's review: *6/10/14*

Supervisor Action: *Approved*

Supervisor's Comments:

¹⁷ Anderson Pollution Control Inc. 2013 Emergency Response Rate schedule.