

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914128-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$935.74

FACTS:

A. Oil Spill Incident:

On February 2, 2014, the CG National Response Center (NRC) received notification that tar balls were discovered washing up on Elmer's Island, located in the Gulf of Mexico, a navigable waterway in Grand Isle, LA.¹ Tar balls were located within the Deepwater Horizon oil spill zones 2-3. The Coast Guard Gulf Coast Incident Management Team (CG GCIMT) was notified and responded to the incident.

The CG GCIMT directed the response and removal activities for this incident, using BP-contracted resources. The United States Coast Guard (USCG) sampled and sent the samples of the oil to its Marine Safety Laboratory (MSL), where it was determined that the oil was not derived from a common source of petroleum contamination.²

B. Description of removal actions performed:

On February 2, 2014, Danos & Curole Marine Contractors (BP's Oil Spill Response Organization (OSRO)) and USCG personnel arrived on-scene where it was determined that, until further analysis, BP was responsible for cleanup and removal activities. Danos & Curole Marine Contractors (Danos) removed the tar balls from the beach. Danos personnel (one driver and one technician) provided transport, cleaned the affected area and sent the non-hazardous waste for disposal in accordance with both the NCP and the USCG FOSC Recovered Waste Management Plan.

C. Sample Analysis: The United States Coast Guard (USCG) sampled the tarballs and forwarded the samples to the Coast Guard Marine Safety Laboratory (MSL) on February 7, 2014 (MSL Case Number 14-078). In an Oil Sample Analysis Report dated February 19, 2014, the MSL determined that sample 14-078-1 contained heavy petroleum oil with characteristics different from those samples of MC 252 oil. The MSL concluded that the sample was not derived from Deepwater Horizon oil.³

Further analysis of the oil sample was performed by the MSL at the request of the NPFC.⁴ In a follow-up memorandum dated October 10, 2014, the MSL clarified that sample 14-078-1 was analyzed using gas chromatography (ASTM Standard Test Method D 3328) and gas

¹ See NRC Report # 1072749, opened on 2/2/2014.

² See MSL Case # 14-078, determined 2/19/2014.

³ See MSL Case # 14-078, determined 2/19/2014.

⁴ See email from Ms. [REDACTED] NPFC, to Ms. [REDACTED] USCG MSL, dated 9/4/2014.

chromatography-mass spectrometry (ASTM Standard Practice D 5739). The analysis included a review of multiple polycyclic aromatic hydrocarbons (PAHs) and biomarker compounds that are source-specific and relatively resistant to weathering on normal environmental time scales. Further, the sample was compared against source oil collected during the Deepwater Horizon oil spill and response. Qualitative review of the PAHs and biomarker profiles for the samples indicated that there were no similarities to suggest a possible relationship between these samples and Deepwater Horizon oil.⁵

D. The Claim: On September 3, 2014, BP submitted a removal cost claim to the National Pollution Funds Center (NPFC), asserting that the oil was not Deepwater Horizon oil and sought reimbursement of its uncompensated removal costs in the amount of \$935.74 for services provided on February 2, 2014, which include personnel, vehicle, and equipment use. The claimed removal costs are based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

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".

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 USC § 2701(31).

Removal costs include any 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).

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.

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;

⁵ See MSL Memorandum, dated October 10, 2014.

(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. CG GCIMT as the Federal On-Scene Coordinator for this incident, oversaw the removal actions and determined that the actions undertaken by BP’s contracted OSRO were consistent with the NCP as reported in NRC Report # 1072749; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁶
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. 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 thoroughly reviewed all documentation submitted with the claim and determined the 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:

As a result of the MSL analysis determining that the tar balls were not derived from MC 252 oil, BP seeks reimbursement of its removal costs. The Claimant states that all costs claimed are for uncompensated removal costs incurred for this incident on February 2, 2014. BP represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant.

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 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 presented to support the actions is reasonable, necessary and in accordance with the response objectives as determined by the CG GCIMT and that the actions were also monitored by CG personnel.

⁶ See NRC Tracker Spreadsheet for NRC Report # 1072749.

C. Determined Amount: \$935.74

The NPFC hereby determines that the OSLTF will offer to pay \$935.74 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 914128-0001. 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: **10/17/14**

Supervisor Action: ***Approved***

Supervisor's Comments: