

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N15027-0001
Claimant	: Cedar Bayou Towing, LLC
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,632.85

FACTS:

A. *Oil Spill Incident:* The United States Coast Guard Sector Houston/Galveston reports that on April 19, 2015, an unknown sheen from an unknown source was discovered in Cedar Bayou, located in Baytown, TX. Cedar Bayou leads into Tabbs Bay, which flows into both Trinity Bay and Galveston Bay before ultimately draining into the Gulf of Mexico. All of these are navigable waterways of the US.

The Responsible Party (RP) was not initially determined and USCG Sector Houston/Galveston opened a federal project under FPN N15027 in order to pay for the cleanup and removal efforts. During the course of the federal response and investigation, the facility owned by Cedar Bayou Towing, LLC (CBT) (the “Claimant”) was utilized as the primary staging location for clean-up operations and investigation. The Claimant is an MTSA-regulated facility requiring security personnel and access control to be in place.

The CG Marine Safety Laboratory analysis verified the spill as originating from the Crest Chem, LLC property, which was later tagged as the RP for this incident. The incident was reported to the National Response Center on April 19, 2015 via Report # 1114051.

B. *Description of removal actions performed:* During response efforts, the Claimant assisted by using its Kobuta RTVs to haul sludge and waste from the dock to the roll-off containers stored on the property. It also provided security that would not have been necessary during normal operations (as its average traffic was usually only three to four visitors a month). Additionally, the Claimant provided meals for all personnel on its property throughout the response.

Property damage occurred on the property due to a vacuum truck getting stuck near its pier’s bulkhead. The proximity to the bulkhead required immediate attention as not to erode the soil and exacerbate further property damage. The Claimant used heavy equipment to make necessary repairs to its property. After recovery operations had been completed, the Claimant’s facility housed the USCG contractor’s vacuum trucks and roll-off boxes that were unable to move off the facility until approximately April 27, 2015 due to DOT regulations, chemical profile delays, and disposal coordination.

This claim is specifically for the following claimed costs: equipment usage/fuel; waste disposal boxes; crew lunch; assisting with the vacuum truck removal/fixing damages to the yard; and for 5,000 square feet worth of land use. The \$3,600.00 in claimed additional security personnel is claimed in NPFC Claim # N15027-0002.

THE CLAIMANT AND THE CLAIM:

On May 27, 2015, Cedar Bayou Towing, LLC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$4,632.85 for the services provided from April 19-24, 2015. A copy of the vendor rate schedule has been provided in the claim submission.

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].

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 OF LOSS:

A. Findings of Fact:

1. FOSC Coordination has been established via USCG Sector Houston/Galveston. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
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. NPFC 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 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 determined which of the costs incurred were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP). The Claimant states that the costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from April 19-24, 2015.

The Claimant provided a well-documented claim to demonstrate that the related costs/actions performed were OPA-related and that it assisted in mitigating the effects of the oil that was



released into the waterway. For those claimed costs not specified on its rate sheets (i.e. \$500.00 for 5,000 square feet of land use and \$500.00 for assisting in the removal of the stuck vacuum truck/fixing damages to the yard), the Claimant provided quotes accompanied by justifiable explanations for how it arrived at its costs. As such, the NPFC determines these costs reasonable in comparison to that of the area/scope of work and the rates charged are consistent with industry standard rates charged by other contractors for similar items.

Additionally, the USCG Sector Houston/Galveston confirmed the costs/actions performed for this incident. Based on the actions undertaken by the Claimant, the Claims Manager hereby determines that the Claimant incurred \$4,380.00 of uncompensated removal costs and that that amount is payable by the OSLTF for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N15027-0001. The NPFC notes that \$252.85 in claimed crew lunch costs are denied as these are not OPA-compensable costs based on the merits of this particular claim. The Claimant provided the lunches as a gesture of goodwill—it was not contracted by the Coast Guard or its contractor to do so.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer \$4,380.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N15027-0001. All reimbursable costs are for charges paid 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.

C. Determined Amount: \$4,380.00

The NPFC hereby determines that the OSLTF will pay \$4,380.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim N15027-0001.


Claim Supervisor: 
Date of Supervisor's Review: <i>9/23/15</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: