

CLAIM SUMMARY / DETERMINATION

Claim Number:	917025-0001
Claimant:	Natchitoches Parish Fire Department
Type of Claimant:	Local Government
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$13,215.00

FACTS:

Oil Spill Incident: On July 16, 2016, a vehicle (vehicle one) traveling northbound collided with a Lott Oil Company Inc., gas truck (vehicle two) that was traveling southbound on LA9 and was loaded with 1600 gallons of gasoline. The collision occurred when the northbound vehicle (vehicle one) entered the curve and crossed the center line and struck the Lott Oil gas truck (vehicle two) in the left front wheel. Impact was made approximately two feet across the center line in the southbound lane of travel. Vehicle one rotated counter clockwise traveling off the northbound shoulder into the ditch. The Lott Oil gas truck (vehicle two) crossed into the northbound travel lane and began to slide and overturn. The Lott Oil gas truck (vehicle two) ultimately rested on its side in the ditch and discharged its contents on the roadway and in the ditch.¹

Description of Response Actions Performed: The Natchitoches Parish Fire Department (Claimant) responded to the scene of the incident and provided a dike to prevent gas from running off and deployed foam to prevent fire. The driver of the Lott Oil gas truck was trapped inside the gas truck therefore the fire department deployed foam to rescue the driver.

Presentment to Responsible Party: July of 2016, the Fire Department presented its removal costs to the Lott Oil Company's insurance company, Federated Insurance Company. On August 10, 2016, Federated Insurance Company denied the Fire Department's claim based on the investigation that proved that the other party (vehicle one) was responsible for the accident and that Federated Insurance Company intends to pursue that individual for damages. Federated Insurance Company recommended that the Fire Department submit its response costs to the fault party.²

Claim and Claimant: Natchitoches Parish Fire Districts provided emergency response services related to the two vehicle crash. Claimant presented its invoices to Lott Oil Company's insurance company, Federated Insurance Company, which totaled \$13,215.00. However, the insurance company denied the claim. The Fire Department was then instructed to file a claim with the fault party's insurance company.

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

¹ See, Officer's Narrative in the file.

² See Email between ██████████ and ██████████ dated, August 12, 2016.

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. Overview:

1. There is no evidence that a Federal On-Scene Coordinator directed the response to this incident, nor did one determine that the actions undertaken by the Claimant were consistent with the National Contingency Plan (NCP). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. There is no evidence that an FOSC determined that an OPA incident occurred, nor has the Claimant proven that the incident involved a discharge or substantial threat of discharge of oil to “navigable waters.”
3. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1).
4. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that no costs are allowable under OPA and 33 CFR § 136.205.

B. NPFC Analysis

The NPFC reviewed the cost invoices and dailies to confirm that the claimant has incurred all costs claimed. The review focused on: (1) whether a discharge or substantial threat of a discharge to a navigable waterway occurred; (2) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136.203; (3) the actions taken were to prevent, minimize, and mitigate the effects of the incident; (4) whether the actions taken were determined by the FOSC to be consistent with the National Contingency Plan (NCP) or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

In this case, the facts and evidence do not support a finding that an OPA-incident occurred. They also do not support a finding that the claimed costs would be compensable under OPA. Though oil did leak into the environment, the Claimant has not provided documentation to demonstrate a substantial threat of a discharge to a navigable waterway occurred, as required under OPA. The evidence also does not demonstrate that the Claimant’s actions were directed by an FOSC or that an FOSC determined that the actions performed by the Claimant were consistent with the NCP.

Even if the circumstances gave rise to an OPA incident, the evidence provided does not support a finding that the claimed costs would be compensable under OPA. Under 33 CFR 136.203, a claimant must establish that the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. The Claimant provided no documentation that shows any involvement by an FOSC, much less that Claimant’s actions were directed by an FOSC or that an FOSC determined that they were consistent with the NCP. Additionally, it is worth noting that the Claimant provided an email on June 05, 2017, stating that he did not see anyone from EPA on scene.³

The Claimant asserts that the waterway that may be affected would be the Saline Creek Bayou located on U.S. Forest Service Land, which is a canoe area that flows into Saline Lake and then into the Red River.⁴ However, the Claimant has not established a nexus to the navigable waterway.

Should the Claimant decide to submit an official request for Reconsideration, it must first, provide FOSC coordination, which in this case could be after the fact coordination by way of the United States Environmental Protection Agency (USEPA) in its capacity as the Federal On Scene Coordinator (FOSC) for the incident. Additionally, the Claimant would need to establish the nexus to the navigable waterway by mapping the nexus from the point of the incident to the navigable waterway along with demonstrating that the identified nexus is subject to the ebb and flow of the tide.

Following are terms used by the NPFC along with an explanation in order to provide guidance to the Claimant if it were to request reconsideration of this claim.

³ See email from Claimant to the NPFC dated, June 05, 2017.

⁴ Email between Claimant and NPFC dated, June 05, 2017

- An FOSC is a representative of a Federal agency such as the United States Coast Guard (USCG) or the United States Environmental Protection Agency (U.S. EPA). The FOSC oversees the oil spill response effort and determines if the efforts were conducted in accordance with the NCP;
- The NCP provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. These regulations are found at 40 C.F.R. § 300; and
- The term navigable waters encompasses more than bodies of water large enough to accommodate a boat. The term may also include streams, creeks, and wetlands that empty into larger rivers and lakes as well as their adjoining shorelines. However, ground water is not considered navigable water; therefore, a spill that impacts or potentially impacts ground water but not the navigable water of the U.S. is not an OPA spill.

Based on the foregoing, the NPFC hereby determines that the evidence presented does not demonstrate that there was a substantial threat of discharge of oil into navigable waters of the U.S., and there is no evidence that the actions taken were directed by an FOSC. Should the Claimant request reconsideration, it must provide evidence that a substantial threat of discharge of oil into or upon the navigable waters of the U.S. occurred and it must obtain an FOSC's concurrence that an incident occurred and the FOSC's determination that the actions taken were consistent with the NCP.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *6/7/17*

Supervisor Action: *Denial Approved*