

CLAIM SUMMARY / DETERMINATION

Claim Number:	917026-0001
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,982.10

FACTS:

On June 11, 2013, GoldKing Onshore Operating, LLC experienced a controller malfunction with its Gun Barrel Tank at the Godchaux #3 facility. The tank overflowed resulting in the release of 500 barrels of saltwater and six barrels of crude oil. An unknown portion of the released fluids overflowed from secondary containment and into a nearby ditch. Field personnel shut in the facility to secure the release.¹

CLAIM AND CLAIMANT:

Claimant is the State of Louisiana (LOSCO). LOSCO seeks reimbursement of its alleged uncompensated removal costs in the amount of \$1,982.10 that it expended in response to the Godchaux #3 oil spill incident. The claim consists of personnel costs, vehicle costs and indirect expenses.

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."

¹ See, OSLTF Claim Form sent via email to [REDACTED], NPFC, dated May 30, 2017.

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 Claimant is a State and is not required to present its claim to the responsible party before presenting it to the Fund.
4. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified that no suit has been filed in court for the claimed costs.
5. 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. Analysis:

NPFC CA reviewed the documentation provided. 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 (e.g., actions to prevent, minimize, mitigate the effects of an incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the 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 discharge or substantial threat of a discharge to a navigable waterway 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 they were consistent with the NCP.

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. The Claimant does not even allege that the USCG or EPA was contacted, much less present on scene.

Further, Claimant has not provided evidence that a discharge or a substantial threat of a discharge to a navigable waterway occurred. However, the NPFC requested additional information from the Claimant and it provided that both the Vermillion River and the Intracoastal Waterway were threatened by this incident but the Claimant did not provide the nexus to the navigable waterway or provided evidence that the nexus is subject to the ebb and flow of the tide.²

Additionally, the Claimant has not provided a signed claim form or cover letter in accordance with our governing claims regulations found at 33 CFR 136.105(c) therefore should the Claimant decide to request reconsideration, it will need to provide a valid signed claim form or signed cover letter meeting the regulation.

Upon reviewing the claim documentation, it is important to note that the indirect expenses claimed in the amount of \$838.76 are presently unsubstantiated. Should the Claimant seek reconsideration of these costs, it would need to provide a description/documentation of the costs claimed.

² See email traffic between NPFC and the Claimant dated, June 5, 2017.

Based on the foregoing, this claim is denied. The NPFC hereby determines (1) 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, (2) that the Claimant failed to provide a claim signed in ink in accordance with 33 CFR 136.105(c) therefore the Claimant needs to provide either a signed OSLTF claim form or a signed cover letter presenting its claim to the NPFC, and (3) the Claimant has not substantiated the indirect costs as claimed and as such, it would need to provide a description/documentation of the costs claimed.

Claim Supervisor: 

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

Supervisor Action: *Denial Approved*