

CLAIM SUMMARY / DETERMINATION

Claim Number:	917030-0001
Claimant:	Phoenix Pollution Control & Environmental Services, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$33,548.41

I. INTRODUCTION:

1. Oil Spill Incident:

On December 06, 2016, at approximately 1400, Phoenix Pollution Control (Claimant or PPC) received a call from [REDACTED] Siempre Energy Operating (Responsible Party or RP). Mr. [REDACTED] stated that a rig overflowed a tank on the platform and the crude oil ran into Tabbs Bay, a navigable waterway of the US. An estimated 1.5 to 2 barrels of crude oil was released. The prevailing winds and outgoing tide took the oil to the bank of the island.¹

Texas General Land Office (TGLO) was contacted and sent a Primary Response Officer to the oil spill incident where an on-site investigation was conducted.² The National Response Center was contacted and report number 1165717 was generated.³

Phoenix Pollution Control and Environmental Services, Inc. (Claimant or PPC) responded to the oil spill incident with personnel and equipment for immediate response and cleanup and deployed boom in the ship channel across from the well head. Phoenix also performed disposal for all petroleum contaminated solids and debris.⁴

2. The Responsible Party.

The Responsible Party (RP) is identified as Siempre Energy Operating, LLC, owner of the well pumping unit located 20 miles offshore and located in Tabbs Bay near the Houston Ship Channel. The well's latitude and longitude is identified in the Coast Guard's Marine Information for Safety & Law Enforcement system (MISLE) as latitude of 29°42.602'N and longitude of 094°57.054W.⁵ The [REDACTED] (RP) called out the Claimant on December 6, 2017 to handle cleanup and disposal of the oil spill incident. The Claimant presented its invoice to the RP on or about December 30, 2017 and states that the RP has declined payment based on its current financial instability.⁸

Upon receipt of the claim submission, the National Pollution Funds Center (NPFC) issued an RP Notification Letter to Siempre Energy dated June 23, 2017.⁹ To date, the NPFC has received no response from the RP.

3. The Claim and Claimant:

On June 22, 2017, Phoenix Pollution Control and Environmental Services, Inc. (PPC) submitted a removal cost claim to the National Pollution Fund Center ("NPFC" or "Fund") for reimbursement of its uncompensated removal costs in the total amount of \$33,548.41. The claim is for its unpaid response personnel, equipment,

¹ See, Phoenix Pollution Control (PPC) Crude Oil Spill Report, approval date January 10, 2017.

² See, Texas General Land Office Incident Report # 2016-3723.

³ See, NRC report in claim file that was submitted by TGLO.

⁴ See, Phoenix Pollution Control (PPC) Crude Oil Spill Report, approval date January 10, 2017.

⁵ See, CG MISLE Case ID # 1062494; Activity ID # 6054515, opened December 8, 2016.

⁶ See, Phoenix Pollution Control (PPC) Crude Oil Spill Report, approval date January 10, 2017.

⁷ See, Phoenix Pollution Control (PPC) Statement of Facts of response and associated cleanup efforts.

⁸⁸ See, Email from [REDACTED] of PPC to [REDACTED], NPFC dated August 7, 2017.

⁹ See, NPFC RP Notification Letter to Siempre Energy dated June 23, 2017.

materials, and third party costs.¹⁰ The claimant provided the following documentation with its initial claim submission: OSLTF Claim Form, Texas General Land Office (TGLO) Incident Report, PPC Invoice # 9363, PPC daily field logs, A&B Chain of Custody Form (illegible), PPC Driver trip tickets for both 12/21/16 and 12/27/16, Disposal Manifest # 014557121JJK (illegible), PPC Crude Oil Release Report for Siempre Energy dated January 10, 2017, and PPC Master Service Agreement between PPC and Siempre Energy dated May 29, 2015.¹¹

4. Request for Reconsideration:

On August 7, 2017, the Claimant contacted the NPFC via email officially requesting reconsideration of the denied claim. The NPFC denied the claim on the basis that the Claimant failed to obtain FOSC coordination in accordance with the NPFC's governing claims regulations found at 33 CFR §136.203.¹² The Claimant officially requested reconsideration of the claim stating that it would produce all documentation not previously presented along with a detailed description of all work performed along with an accounting of the SOSC's oversight monitoring the response actions of the Claimant.

II. FACTS

1. Response Activities.

Following the discovery of the oil spill on December 6, 2016, Siempre Energy (RP) engaged PPC to assist with response and disposal. PPC's work commenced on December 6th and focused primarily on deploying boom and containment materials and performing disposal of all petroleum contaminated materials.¹³

The Texas General Land Office ("TGLO") also responded to the incident upon receiving the report from the National Response Center ("NRC").¹⁴ The Claimant provided the following detailed narrative by date for all response actions undertaken as the facility Oil Spill Response Organization (OSRO):¹⁵

DATE: 12/06/16

- At approximately 14:00 hrs. Phoenix Pollution Control & Environmental Services, Inc., (██████████) received a telephone call from ██████████ of Siempre Energy advising that they had experienced a crude oil release due to a tank overflow at one of their well sites located in Tabs Bay near the Houston Ship Channel. ██████████ was unsure of the amount of product that had been released at this time but stated that he felt that they may have lost at least (2) barrels of crude oil to the environment but was unsure at this time. ██████████ stated that he had made the necessary regulatory notifications as identified in his Facility Response Plan.
- NRC Case No.: 1165717
- TGLO Case No.: 2016-3723
- Phoenix dispatched a (4) man crew to the municipal boat launch located at State Highway 146 in Baytown, Texas and arrived at approximately 14:25 hrs.
- Phoenix response crew met ██████████ (Responsible Party/ IC) at the boat launch and transited out to well site and conducted a visual inspection of the well site/production platform and adjacent island. Upon arrival to the well site/production platform the crew found that there was approximately 1" of crude oil inside the containment area of the production platform that would require cleanup and additional shoreline oil impact on the North and Northwest side of the island.
- At approximately 16:45, Phoenix personnel deployed approximately 600 linear feet of oil spill 18" containment boom in a half moon configuration in an effort to contain the oil along the shoreline and prevent additional migration.
- NOTE: Strong North winds, rough bay waters, outgoing tide and approaching nightfall limited the response crew's ability to safely conduct any additional response or cleanup activities on this day.

¹⁰ See, NPFC claim file.

¹¹ See, PPC Claim submission package.

¹² See, NPFC Determination to deny dated July 6, 2017.

¹³ See, PPC claim submission package.

¹⁴ See, TGLO Incident Spill Report.

¹⁵ See, Statement of Facts provided by Claimant on reconsideration regarding oil spill and cleanup efforts.

- At approximately 19:30, Phoenix response crew suspended cleanup operations and returned to the dock. Personnel and equipment were secured for the evening.
- There was NO representative from either the USCG or the Texas General Land Office on location during the initial site assessment and protective booming operations.
- At approximately 19:45, [REDACTED] (RP IC) met with [REDACTED] (Texas General Land Office Response Officer/SOSC) at the Siempre Energy field office which is located approximately (1) mile from the municipal boat launch to address the particulars of the incident and response/corrective actions taken to mitigate any additional oil release or migration of oil stranded on the adjacent island shoreline. [REDACTED] advised [REDACTED] that cleanup operations would resume at first light on Wednesday, December 7, 2016.

DATE: 12/07/16

- At approximately 07:30 Phoenix personnel and equipment arrived at the Baytown, Texas municipal boat ramp and transited to the well site and deployed (2) rows of sorbent boom around the platform and commenced cleanup operations on the deck of the platform utilizing adsorbent pads to recover the oil remaining in the containment area as directed.
- The RP/IC, [REDACTED] and SOSC, [REDACTED] were on location and utilized one of the Texas General Land Office boats to inspect the cleanup operations at the well site and conducted additional site survey around the well site and oil impacted shorelines on the adjacent island.
- RP IC , TGLO SOSC and OSRO Field Supervisor discussed cleanup operations and all were in agreement in said plan and proceeded accordingly.
- Contaminated adsorbent materials were transported to the Baytown municipal dock and placed in roll-off box for temporary storage.
- Deploy sorbent pads and sorbent booms in areas of oil trapped under old bridge debris and recovered contaminated sorbent material placed along shoreline of the island to prevent future oil migration as directed by the RP IC/SOSC.
- Operations were terminated at approximately 14:00 due to low tides and inability to access the island shoreline.
- RP IC/SOSC were notified of such and all were in agreement.
- Cleanup site was not assessable for several days due to heavy fog and low tides.
- TGLO representative, [REDACTED], TGLO Supervising Senior Response Officer was apprised of cleanup delay due to weather and site access.
- NOTE: (Please find date and times of supporting telephone records attached).

DATE: 12/12/16

- Transport sample of contaminated sorbent to A&B Labs for waste analysis.
- Cleanup operations resumed at approximately 08:00 on the adjacent island with the removal of contaminated adsorbent material, recovery of pockets of oil at the old bridge and tidal pools located on the island. Deploy additional sorbents as required along shoreline and tidal pools and transport contaminated adsorbent material ashore and place in roll-off box for disposal.

DATE: 12/14/16

- Placed crew on the shoreline and utilize sorbent materials to recover oil from tide pools and areas that had been flushed out from underneath old bridge. Cleanup operations were only (4) hours in duration due to low tides and inability to access the shoreline.
- Retrieved (300) linear feet of oil spill 18" containment boom from initial deployment. Unable to access the remaining 300 linear feet due to low tide.
- RP IC and TGLO SOSC were advised of low tides and limited site accessibility.

DATE: 12/15/16

- Removed contaminated adsorbent materials from the shoreline, bagged and transported ashore and placed in roll-off box for temporary storage.
- RP IC/SOSC were advised of recovery efforts and the short amount of time available to access the shoreline due to low tides.

DATE: 12/16/16

- Removed balance of oil contaminated adsorbent material from shoreline, bagged and transported ashore for temporary storage in roll-off box.
- Advised RP IC/SOSC that cleanup operations on the island shoreline were complete and ready for inspection.
- Advised that roll-off box containing recovered contaminated adsorbent waste profile had been submitted and anticipated transporting such for disposal sometime next week.

DATE: 12/21/16

- Roll-off box was transported to TSD facility for disposal. (See waste manifest 014557121JJK)
- Roll-off box taken to washout upon completion of off-loading at TSD facility.

DATE: 12/22/16

- RP IC, [REDACTED] & SOSC, [REDACTED] inspected the well site and impacted shoreline cleanup efforts utilizing a TGLO boat and advised that the cleanup efforts were satisfactory and no other cleanup efforts were required.

DATE: 12/27/16

- Pick up roll-off box from washout facility and return to Phoenix yard.
- Project complete, no additional response activities required.

NOTE: All cleanup activities were completed under the direction and guidance of the RP IC and the TGLO SOSC and regular communications from the OSRO Field Supervisor regarding the cleanup progress was communicated to the RP and TGLO SOSC.

APPLICABLE LAW:

1. The OPA and Claims Procedure.

Under the Oil Pollution Act of 1990 (OPA 90), at 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or that poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for removal costs and damages resulting from the incident, as described in Section 2702(b) of OPA 90. In the case of an “onshore facility”, the responsible party is “anyone owning or operating the facility”. 33 USC §2701(32)(B). A responsible party’s liability includes “removal costs incurred by any person for acts taken by the person that are consistent with the National Contingency Plan”. 33 USC § 2702(b)(1)(B). 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).

It is this statutory scheme of the OPA that provides a procedure for submission, consideration, and payment of cleanup expenses by the Oil Spill Liability Fund (the “Fund”) when the responsible party fails to settle such claims within 90 days. *United States v. Am. Commercial Lines, L.L.C.*, 759 F.3d 420, 426 (5th Cir. 2014). The Fund, which is administered by the NPFC, is available to pay claims for damages and uncompensated removal costs that are determined to be consistent with the National Contingency Plan pursuant to 33 USC §§ 2712(a)(4) and 2713, and 33 CFR Part 136, the corresponding Fund claims adjudication regulations. All claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party. 33 USC §2713(a). If the responsible party denies liability or does not settle the claim, the claimant may then commence an action in court or file a claim against the Fund. *Id.* at §2713(c), (d).

Through its authority as a command within the U.S. Coast Guard, the NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims. 33 USC §2713(e). Title 33 CFR Part 136, Subparts A and B set forth the general requirements of presentment and filing and establishes, among other things, that it is the claimant’s burden to “provide all evidence, information, and documentation deemed necessary to support the claim”. 33 CFR 136.105(a),(e)(6); *see also Smith*

Property Holdings, 4411 Connecticut LLC v. U.S., 311 F. Supp. 2d 69 (D.D.C. 2004). It also establishes that NPFC has the “discretion” to determine whether any other information is “relevant and necessary to properly process the claim”. 33 CFR §136.105(e)(13). Subpart C sets forth requirements for particular claims, including those for removal costs. While a claim for removal costs may be presented by any claimant (*Id.* at §136.201), the 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.

33 CFR § 136.203. The amount of compensation allowable for removal costs is:

[t]he 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.

33 CFR §136.205 (emphasis added). The claimant has 60 days in which to accept any offer of settlement from the Fund; the failure to do so automatically voids the offer. 33 CFR §136.115(b). The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.¹⁶

DETERMINATION OF LOSS:

A. Overview:

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the 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 the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 which of the costs claimed were associated with OPA compensable removal actions in accordance with the NCP and that costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

The NPFC originally determined that the claim was denied because the Claimant failed to provide all the necessary claim supporting documentation as well as information as it pertains to the oversight being provided by the Federal On Scene Coordinator (FOSC) or details associated with oversight being provided by the State On Scene Coordinator (SOSC), Texas General Land Office (TGLO). On August 7, 2017, the Claimant requested reconsideration of the denied costs in the total amount of \$33,548.41 associated with PPC’s personnel, materials, equipment and disposal. On reconsideration, the Claimant provided the following new and/or additional information:

- Legible copy of A & B Env. Chain of Custody form for samples taken;
- A & B Env. Invoice 241200 along with proof of payment;
- OMI Invoice N1702-133 and proof of payment;
- Waste management Invoice 0043274-1073-6 and proof of payment;
- Final full sample analysis report;
- Legible copy of Disposal manifest 014557121;
- Slick Response Invoice 2969 and proof of payment;

¹⁶ See, *Smith Property Holdings v. United States*, 311 F.Supp.2d 69, 83 (D.D.C. 2004).

- Intra Services Invoice 12-16-285;
- Phone records for the dates response could not be performed due to weather conditions; and
- PPC Statement of Facts that provides dates and actions performed, who oversight was performed by on given dates, and response decisions made along the way.

Based on the new information and detailed description of oversight and actions being done each date billed, the NPFC has overturned its original denial on the following basis:

- Claimant provided a fully documented claim submission with support for the charges it invoiced the RP, and
- Claimant provided a more detailed accounting of the work performed daily along with identification of who monitored and directed the actions of the Claimant.

The NPFC was also able to obtain information from Coast Guardsystems which provided evidence of an OPA event, information on the RP, Siempre Energy Operating, LLC, NRC Report Number, waterway affected by the incident, and well locations with a brief narrative of the incident circumstances.

Based on a preponderance of the evidence, the NPFC is able to use its Delegation of Authority in order to determine that the actions undertaken in response to the oil spill incident are consistent with the National Contingency Plan (NCP).

It is important to note that should the Claimant decide to use the Fund again for its uncompensated removal costs, it is recommended and in the best interest of the Claimant to obtain FOSC accordance in order to comply with the governing claims regulations as it pertains to compensation allowable.¹⁷ Under the claims regulation it states at 33 CFR §136.203, the amount of compensation allowable for removal costs is:

[t]he 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.

The NPFC has determined that all of the costs contained in this claim submission qualified as OPA-compensable removal costs, with the exception of the following:¹⁸

- December 6, 2017 – The NPFC has denied a total of \$60.75 in personnel costs not properly charged in accordance with the Claimant’s rate schedule. It is also important to note the Claimant’s rate schedule outlines that a normal work day is 8am – 4pm and any hours before or after that time period constitutes overtime. The Claimant failed to properly invoice the personnel time for straight time and overtime and as such, the NPFC approved the amounts accordingly;
- December 7, 2016 – The NPFC has denied a total of \$45.00 associated with the PPE charged per person. There were only nine (9) response personnel this date but the Claimant invoiced for ten (10) and as such, the NPFC has denied one set of PPE. Additionally the Claimant charged the rate for ¼” poly rope per roll and drum liners and as such, the amount billed in accordance with the rate schedule is approved and all overages are denied. The NPFC denied a total of \$83.00 for this date under Equipment/materials;
- December 12, 2016 – The NPFC has denied \$31.00 in markup associated with the A & B invoice. The Claimant’s rate schedule does not specify that administrative markup applies to this third party service provider and as such, the markup is denied. Additionally, the NPFC has reduced the charge for drum liners in accordance with its rate schedule, therefore \$15.00 is denied as an overcharge not supported by the rate schedule;
- December 15, 2016 – The NPFC has denied \$15.00 in charges for drum liners in accordance with its rate schedule pricing for this item, therefore \$15.00 is denied as an overcharge not supported by the rate schedule;
- December 21, 2016 – The NPFC denied a total of \$61.36 in charges associated with Waste Management costs. The invoice provided charged different amounts than what the Claimant invoiced for and as such, the NPFC denied all amounts in excess of the third party vendor invoicing; and

¹⁷ See, Governing claims regulations found at 33 CFR §136.203 and 205.

¹⁸ See, NPFC Summary of Costs on reconsideration.

- December 27, 2016 – The NPFC denied \$7.50 associated with the markup charged by the Claimant for washout charges. The Claimant’s rate schedule states that it will charge for washout plus a 20% administrative markup yet the Claimant’s invoice charged for the washout and 25% administrative markup therefore the NPFC reduced the amount of eligible markup based on the Claimant’s rate schedule.

TOTAL AMOUNT DENIED: \$273.61¹⁹

Based on the foregoing and new information provided on reconsideration, the NPFC hereby determines that the OSLTF will offer **\$33,274.80** as full compensation for the reimbursable removal costs incurred by Phoenix Pollution Control & Environmental Services and submitted to the NPFC under claim # 917030-0001. All reimbursable costs are for charges paid/incurred by Phoenix Pollution Control for removal actions as that term is defined in OPA and are compensable removal costs by the OSLTF as presented by AMPOL.

RECONSIDERATION AMOUNT: \$33,274.80

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *8/15/17*

Supervisor Action: *Reconsideration Approved*

¹⁹ See, NPFC Summary of Costs spreadsheet.