

CLAIM SUMMARY / DETERMINATION

Claim Number:	917042-0001
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,734.09

FACTS:

Oil Spill Incident: On January 25, 2016, the Louisiana Department of Wildlife and Fisheries (LDWF) received a report indicating a natural gas leak in the well head at state lease # 1451 #4. The wellhead and subsequent silvery sheen (produced by the leak) occurred in Lake Raccourci, which flows into the Gulf of Mexico. Both Lake Raccourci and the Gulf of Mexico are navigable waterways of the US.

A tug owned by Shoreline Energy (Shoreline) was pushing four barges, going approximately three (3) mph when one of the barges struck an unlit, submerged wellhead (also owned by Shoreline). There was no damage to the vessel or barges, but the well head began blowing out natural gas hard enough to produce a jet of water into the air. The well was approximately six to seven feet underwater. As a result, there was a silvery substance on the water (natural gas condensate) that created a sheen approximately two (2) miles long. The contractor hired by Shoreline, ES&H, placed boom to collect and prevent it from further spreading on the water. This silvery condensate was not enough to collect for disposal and was therefore allowed to dissipate.

This incident was reported to the National Response Center (NRC) via NRC Report # 1138944.¹

Responsible Party: The Responsible Party (RP) is Shoreline Energy. The Claimant has asserted that it submitted the invoice to the RP on January 20, 2017 and it did not respond. The RP, along with seven (7) affiliated debtors (collectively, “the Debtors”), filed for Chapter 11 Bankruptcy on November 2, 2016 in the United States Bankruptcy Court for the Southern District of Texas. These bankruptcy cases were jointly administered under Case No.16-35571.

On December 12, 2016, the Debtors filed their Chapter 11 Plan of Reorganization and Disclosure Statement. On January 6, 2017, the Bankruptcy Court entered an order approving the Disclosure Statement. On February 24, 2017, the Bankruptcy Court entered an order confirming the Plan. On March 8, 2017, the Effective Date of the Plan occurred, and the Plan was consummated.

LOSCO has confirmed that it has not filed a proof of claim.²

Description of removal actions performed:

LOSCO, Department of Public Safety (DPS) and LDWF personnel response actions included meeting with, working with and following up with State Trustees and USCG, as well as taking pictures and preparing the spill report regarding the incident. Regarding the cleanup and removal actions, the USCG Marine Safety Unit (MSU) Houma FOSCR stated that, “the discharge of natural gas condensate from the

¹ See, NRC Report # 1138944, opened 1/25/2016.

² See, email from Mr. [REDACTED], LOSCO, to Ms. [REDACTED], NPFC, dated 9/19/2017.

well head was an OPA incident. This was a continuous unsecured source for several weeks. It was well justified to have the SOSC during this incident”.³

THE CLAIMANT AND THE CLAIM:

On September 13, 2017, the Louisiana Oil Spill Coordinator’s Office (LOSCO) presented a removal cost claim on behalf of both the DPS and LDWF to the NPFC for reimbursement of its uncompensated removal costs in the amount of **\$1,734.09** for its services that it provided from January 25 through February 5, 2016. These costs include travel/response time, equipment (truck mileage) and materials (field backpacks).

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;

³ See, email from PO [REDACTED], MSU Houma, to Ms. [REDACTED], NPFC, dated 9/19/2017.

- (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. The Claimant’s removal actions were coordinated with the FOSC via USCG Sector New Orleans.⁴ 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has been identified, but, to date, has not responded. 33 U.S.C. § 2701(32).
5. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and further documentation provided by USCG Sector Columbia River, and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

B. Analysis:

The NPFC Claims Division (CA) reviewed the cost invoices and dailies submitted by the Claimant to determine whether the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA 90 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 were reasonable and necessary.

The Claimant, LOSCO, submitted a well-documented claim to demonstrate that the actions it performed were OPA 90 removal actions, and that the work performed mitigated the effects of the oil spill that was discharged into Lake Raccourci and also threatened the Gulf of Mexico, both navigable waterways of the US. Upon adjudication of the claim, the NPFC verified that the rates charged were billed in accordance with the Labor and Equipment Records provided to LOSCO by LDWF. Additionally, the actions performed were confirmed and validated by the USCG MSU Houma. As such, the NPFC has determined which, of the amounts invoiced and paid, were reasonable.

⁴ See, USCG Sector New Orleans Case Report # 1008873, opened 1/26/2016, as well as the email from the FOSCR, PO [REDACTED], MSU Houma, to Ms. [REDACTED], NPFC, dated 9/19/2017.

The NPFC has determined that expenses for indirect costs must be denied. The indirect expenses claimed in the amount of \$480.92 are denied because they are charged in accordance with an unsubstantiated rate and are not supported by records of actual expenses incurred; rather, they appear to be calculated using a percentage of the labor costs billed.

Based upon the evidence presented in this claim submission and for the actions undertaken by LOSCO and all associated state entities, the NPFC hereby determines that LOSCO incurred **\$1,253.17** in costs that were reasonable and necessary, and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #917042-0001. Those costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for removal actions by the claimant on December 19, 2013 that are consistent with the NCP.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$1,253.17** as full compensation for the claimed removal costs incurred by the claimant and submitted to the NPFC under claim # 917042-0001. Of the costs claimed, \$480.92 are denied.

AMOUNT: \$1,253.17

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *9/28/17*

Supervisor Action: *Approved*