

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 918015-0001
Claimant	: The Mississippi Department of Environmental Quality
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$16,891.26

FACTS:

1. ***Oil Spill Incident:*** On August 30, 2017, the Mississippi Emergency Management Agency notified the MS Department of Environmental Quality (MDEQ) of a vessel discharging oil. The F/V CAPTAIN QUINTINN discharged approximately 800 gallons of petroleum, oil and lubricant into Pass Christian Harbor. Pass Christian Harbor flows directly into the Gulf of Mexico, both of which are navigable waterways of the US.¹

(The USCG was notified by MDEQ at 0802 on August 30, 2017; however, Hurricanes Harvey, Irma and Tropical Storm Cindy were the focus points of emergency for the Federal On-Scene Coordinator (FOSC). Thus, the USCG did not have the resources to respond and the state of Mississippi in its capacity as the State On-Scene Coordinator (SOSC), took the lead to handle response and cleanup.²

Description of removal actions performed: The Mississippi Department of Environmental Quality (MDEQ) contracted Enhanced Environmental and Energy Services (E3) for cleanup and removal of the oil from the water. E3 personnel placed boom to contain the oil and then used pads to absorb the oil from the water. The used pads and boom were placed in drums and brought to the Macland Disposal Center for disposal on September 1, 2017.³

The vessel owner, Mr. [REDACTED], the Responsible Party (RP), was not notified of the claim by MDEQ since he currently has a USCG unpaid violation.⁴ The NPFC notified the RP of MDEQ's claim on December 6, 2017.⁵

3. ***The Claim:*** On December 1, 2017, MDEQ presented a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund); requesting reimbursement of their uncompensated removal costs in the amount of \$16,891.26 for the services provided from August 30 through September 1, 2017. A copy of the vendor rate schedule is provided in the claim submission, as well a copies of comparable OSRO rates for the geographical area that were used for consideration in the prices charged for some items.

¹ See, Mississippi Department of Environmental Quality (MDEQ) Emergency Response Incident Report dated 11/27/17.

² *Id.*

³ See, Mississippi DEQ claim submission to the NPFC dated 11/27/17.

⁴ See, OSLTF Claim Form, item # 6 of page 1.

⁵ See, RP Notification letter to Mr. [REDACTED] dated December 6, 2017.

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. Overview:

1. USCG Sector Mobile IMD, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁶
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23);
3. A Responsible Party has been determined but, to date, has not yet paid the claim. 33 U.S.C. § 2701(32);
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.

B. Analysis:

The National Pollution Funds Center (NPFC) Claims Manager reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed and that all costs were supported by the record, were compensable “removal actions” under the Oil Pollution Act (OPA) and the claims regulations at 33 CFR 136, whether the costs were incurred as a result of the actions, whether the actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC, and whether the costs were adequately documented and reasonable.

MDEQ provided a well-documented claim to show the actions it performed were for OPA-response costs and that the work that was performed mitigated the effects of the oil that was released from the vessel into Pass Christian Harbor and, ultimately, the Gulf of Mexico. Additionally, the USCG Sector Mobile in its capacity as the Federal-On Scene Coordinator (FOSC) confirmed all actions that were performed for this incident. Based upon the evidence in this claim submission for the actions undertaken by MDEQ, along with the USCG’s statement, the Claims Manager hereby determines that the Claimant has incurred \$16,891.26 of uncompensated removal costs and that that amount is payable by the OSLTF as full

⁶ See, Claim Cover Letter, signed by MSTC [REDACTED], Sector Mobile IMD FOSCR, on 11/30/2017.

compensation for the reimbursable removal costs incurred by MDEQ and submitted to the NPFC under claim #918015-0001. The NPFC confirmed that the costs were incurred by the Claimant and that the costs invoiced were in accordance with the rate schedule that was in place at the time services were rendered. Upon adjudication of the claim, the NPFC requested additional information in support of charges that were not identified on the contractor's rate schedule. Upon receipt of a detailed explanation, the NPFC then performed a comparison of rates between this contractor and the rates of like response contractors in the same geographical area. Based on that review, the NPFC determined any costs not addressed on the contractor's rate schedule is deemed reasonable in price and approved accordingly.

The Claimant states that the costs claimed are for removal costs incurred by the Claimant for this incident from August 30 through September 1, 2017.

C. Determined Amount: \$16,891.26

Claim Supervisor: [REDACTED]
Date of Supervisor's review: <i>1/11/18</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: