

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	918039-0001
<b>Claimant:</b>	C-Port 2, LLC
<b>Type of Claimant:</b>	CORPORATION
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$10,823.55

### **FACTS:**

A. **Oil Spill Incident:** At 0225 on March 1, 2018, a crane operator discovered diesel oil floating into slips #1 and #2 located at the C-Port 2 (C-Port) facility in Golden Meadow, LA.<sup>1</sup> In response, the facility manager launched a boat and had absorbent boom placed in the water. At 0255 Harbor Police and United States Coast Guard (USCG) personnel were notified and USCG National Response Center (NRC) Case Number 1205491 was generated.<sup>2</sup> C-Port hired the oil spill removal organization (OSRO) Clean Tank, LLC (Clean Tank) to conduct further oil removal actions. USCG personnel responded at approximately 0800 and ensured slips were clean and to conduct an investigation into the source of the spill. Unfortunately, USCG personnel were unable to identify the source of the spill but was able to determine that the product in the water was an oil.<sup>3</sup>

B. **Description of removal actions performed:** C-Port responded to the oil spill by deploying a four (4) man team, deploying one (1) oil response vessel and 300 feet of containment boom. Subsequently, Clean Tank responded at C-Port's request, deploying personnel with pollution removal equipment. Specifically, Clean Tank deployed additional sorbent materials and conducted waste disposal.<sup>4</sup>

### **CLAIM AND CLAIMANTS:**

This claim was presented to the National Pollution Funds Center (NPFC) on August 24, 2018, by C-Port 2, LLC for their uncompensated removal costs totaling \$10,823.55.<sup>5</sup>

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<sup>1</sup> See information submitted in advance of the claim submission in an email from C-Port-2 to the NPFC dated June 27, 2018. Also, the C-Port 2 facility is a private self-storage company with boat slips connected to Bayou Lafourche. Bayou Lafourche is a 106-mile-long bayou flowing directly into the Gulf of Mexico, a navigable waterway of the United States.

<sup>2</sup> See, Cajun Iron Workers, Inc. Pollution Investigation report dated March 1, 2018.

<sup>3</sup> See, email from CW03 [REDACTED], USCG FOSC, to Mr. [REDACTED], NPFC, dated September 17, 2018.

<sup>4</sup> See, Clean Tank, LLC Ticket # 15182 dated March 1, 2018.

<sup>5</sup> See, Optional OSLTF Claim Form dated August 15, 2018.

**APPLICABLE LAW:**

"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. CWO3 ████████ of Marine Safety Unit Houma provided FOSC coordination IAW 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(23), to navigable waters as determined by the USCG FOSCR;
3. 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;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

***B. Analysis:***

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) 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 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 reasonable.

The NPFC has confirmed that the rates charged by the Claimant are in accordance with the published rates at the time services were rendered. Based on the Federal On Scene Coordinator’s direction and oversight, the response has been determined to be reasonable, necessary and performed in accordance with the NCP and as such, is approved.

The NPFC hereby determines that the OSLTF will pay \$10,823.55 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 918039-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

**AMOUNT: \$10,823.55**

Claim Supervisor:

A black rectangular redaction box covers the signature of the Claim Supervisor. A handwritten mark, possibly initials, is visible at the top left corner of the redaction.

Date of Supervisor's review: *October 18, 2018*

Supervisor Action: *Approved*