

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/9/2009
Claim Number	: E08608-001
Claimant	: State of Texas
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$84,787.32

FACTS:

1. Oil Spill Incident: On December 25, 2007, the Nacogdoches County Sheriff's Office was notified of an oil spill located off Oil Spring Road (east of State Highway 226). The origin of the spill was determined to be a gunshot hole in an abandoned 210-barrel (bbl) above ground storage tank (AST) located approximately 12-inches off the ground's surface. The Railroad Commission District office was notified of the spill at approximately 1:00pm. Additionally, the United States Environmental Protection Agency (EPA), the Texas Commission of Environmental Quality (TCEQ), and Texas Parks and Wildlife (TPW) were also notified. The incident was reported to the National Response Center (NRC) via report # 858162.

The EPA Federal On Scene Coordinator (FOSC) was notified by the Texas Railroad Commission (TRRC) concerning the oil spill at the abandoned oil well site. A tank located at the site had been apparently shot, with approximately 170 barrels of oil released into the Oil Spring Creek which runs into Moss Creek, which ultimately empties into Lake Sam Rayburn. On Scene Coordinators [REDACTED], as well as START personnel, were dispatched to the site in order to coordinate with the Texas Railroad Commission and the Texas Commission of Environmental Quality (TCEQ) on cleanup activities.

The OSCs arrived on site at approximately 18:00hrs on December 25, 2007 and met with the claimant, TRRC. The claimant informed EPA of current cleanup activities which included the mobilization of equipment and materials to the site (e.g., frac tank, vacuum trucks, rubber tire backhoes, sorbent and containment booms). The claimant deployed sorbent and containment boom throughout Oil Spring Creek to prevent the migration of the product into Moss Creek. The claimant estimated that approximately 120 barrels of product had been removed from Oil Spring Creek thus far.

2. Description of removal activities: Due to the remote area and need to work in multiple areas, the clean up effort was divided into three work areas. Area 1 consisted of Oil spring Creek downstream of the County Road 420 Bridge (approximately 2700 feet). Area 2 consisted of the spill site and Area 3 consisted of the drainage area near the spill site down to the point of entry into the Oil Spring Creek.

The claimant continued to have free product removed from within Area 1 via in-situ burns as deemed necessary, sorbent/containment boom placement and replacement continued, and use of a vacuum truck at the County Road 420 Bridge continued. Within Area 2, excavation of oil impacted soil near the spill site including overland drainage pathways and the removal of remaining product from the leaking tank was ongoing.

An area of approximately 80ft by 40ft was being excavated around the damaged 210 barrel AST. The excavated soils were placed on plastic for future off-site transportation and disposal. Product removed from the tank was stored in the on-site frac tank pending future disposal or recycling. The claimant continued to remove free product from within Areas 1 and 3, as needed. Continued monitoring of sorbent/containment boom in Oil Spring Creek continued. Stockpiled soils were characterized, profiled, and transported off-site for disposal. The 500 barrel frac tank that was on-site contained approximately 110 barrels of recovered hydrocarbons.

Within Area 3, pressure washing of the drainage pathway continued and any remaining free product was pushed to the bridge located at County Road 420 for removal from the creek. Heated water at 3000 psi was used to wash the soil and remove any residual oil from the soils.

On January 2-4, 2008, the response contractors continued cleaning up the banks of the creek and removed residual oil. Approximately 130 barrels of hydrocarbon impacted water was taken from the frac tank to disposal. The monitoring of the creek, booms and pads continued on a periodic basis. On January 7, 2008, half the day was spent removing oil contaminated debris and then it was loaded on a trailer for disposal. On January 11, 2008, the trailer was hauled off and contained approximately 10 cubic yards of impacted debris.

By February 28, 2008, the entire area was inspected and there was no visible hydrocarbons seen. The remaining absorbent sock booms were removed from the creek and temporarily stored until May 5, 2008 when it was transported to disposal. On May 12, 2008, claimant personnel collected 5 soil confirmation samples for BTEX and TPH analysis from the remediated soil areas along the spill path to the creek. Additionally, 8 water samples were taken from along the flow path of the creek and tested for BTEX, TPH, and chloride analysis. Of the 8 samples taken, only 2 of the soil samples were above the target cleanup levels for TPH. On August 8, 2008, claimant personnel collected 2 more soil confirmation samples for TPH analysis and both came back below target cleanup levels for TPH and the response was considered complete.

3. *The Claim:* On January 5, 2009, the Railroad Commission of Texas submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$84,787.32 for the services provided. This claim is for removal costs based on the contracted rate schedule in place with the Railroad Commission of Texas at the time services were provided.

This claim consists of copies of the invoicing and associated dailies, disposal manifests, Police Report, NRC report, sample analysis and associated results and EPA FOOSC coordination. The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

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. USEPA FOSC Mr. ██████████ opened a Federal Project for this incident and has provided coordination via Pollution Reports.
2. The incident involved the discharge and continuing substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
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 on time.
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.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$84,787.32 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim# E08608-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, December 25, 2007 through August 8, 2008. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

The Claims Manager confirmed with the NPFC’s Case Management Division that the costs incurred in this removal cost claim are not duplicative and have not been presented by the FOSC under the Federal Project.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$84,787.32 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E08608-001. 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: \$84,787.32

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: