

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/4/2008
Claim Number	: N07072-001
Claimant	: Environmental Safety and Health Consulting Services Inc
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$245,204.85

FACTS:

1. Incident #1: On 30 September 2007 at approximately 1830, MSU Baton Rouge received a report from the State Police of an unknown amount of black oil spilled in Bayou Sorrel in the vicinity of Bayou Sorrel Oil, LLC. The incident was reported to the National Response Center via report # 850423 on 1 October 2007. The MSU Pollution Investigation Team responded to the incident and discovered approximately 30 bbls of crude oil that had collected near the facility. The Pollution Investigation Team was unable to locate the responsible party during the initial response and assessment. The Coast Guard Federal On Scene Coordinator Rep (FOSCR) opened a Federal Project with the National Pollution Funds Center (NPFC) and hired Oil Mop, LLC to conduct cleanup operations. Oil Mop, LLC deployed 500 feet of hard boom along the shore to contain the oil. The Coast Guard requested an overflight at first light from Air Station New Orleans in order to assess the extent of the damages. On 1 October 2007, the CG overflight found pockets of recoverable oil in multiple places in the vicinity of Bayou Sorrel.

The CG conducted a meeting with personnel from Bayou Sorrel, LLC and Oil Mop, LLC. Bayou Sorrel, LLC requests to take over responsibility for the cleanup but does not officially take over responsibility for the spill. From 2 October 2007 through 15 October 2007, MSU Baton Rouge monitored the cleanup operations conducted by Bayou Sorrel Oil, LLC and their contractor, Environmental Safety & Health (ES&H). ES&H made repairs to a crack in a transfer pipe near the spill area. Bayou Sorrel Oil, LLC pressure tested all systems and found that piping meets required test guidelines. Bayou Sorrel Oil, LLC will bring all wells back up to pressure, one well at a time in order to monitor each individually. The wells are estimated to take approximately two days each to come up to full pressure.

The CG collected twenty-eight (28) samples for evidence and analysis by the Marine Safety Lab. Bayou Sorrel Oil, LLC has still not taken responsibility for the spill but has accepted financial responsibility for all cleanup operations.

Incident #2: On May 15, 2008, at approximately 1832, Bayou Sorrel Oil, LLC notified the National Response Center (NRC) via report # 871065 that a release of approximately 1.5 barrels of crude oil was discharged into a navigable waterway as a result of the high level safety monitor associated with the facility sump system had failed allowing the sump to overflow. The release was contained by boom which was deployed prior to this incident. The Responsible Party, Bayou Sorrel Oil, LLC contacted their clean up contractor, ES&H, to mobilize to the incident location to handle response actions. ES&H had a 3 man crew respond to the incident location on the morning of May 16, 2008. All response work was completed by the close of business on May 16, 2008.

Incident #3: On July 4, 2008, at approximately 0948, Bayou Sorrel Oil, LLC notified the National Response Center (NRC) via report # 876233 that a release of approximately 2 gallons of crude oil was discharged into a navigable waterway as a result of a well that was in the process of being taken out of service and had started bubbling and producing a sheen approximately 300 yards x 70 yards and the spill was described as being a very light silver in color. The Responsible Party, Bayou Sorrel Oil, LLC contacted their clean up contractor, ES&H, to mobilize to the incident location to handle response actions.

Incident #4: On July 8, 2008, at approximately 1437, the National Response Center (NRC) was notified via report # 876630 that a release of approximately 3 barrels of an unknown oil was discharged into navigable waters and suspected to be from an out of service flow line. Bayou Sorrel Oil, LLC notified their contractor, ES&H to respond to the incident. Bayou Sorrel Oil, LLC reported that a flow line associated with their #8 well developed a leak allowing crude oil to release into the adjacent inundated floodplain. ES&H and representatives of the Coast Guard from MSU Baton Rouge responded on site and performed a visual assessment of the impacted area. The amount of spilled oil is estimated at approximately 3 barrels.

2. Description of removal actions for incident #1: On 1 October 2007, Mr. [REDACTED] of ES&H Consulting & Training Group, was contacted by Bayou Sorrel Oil, LLC and requested to assist them with investigating a crude oil release that was noted by the USCG on 30 September 2007 and located in the Bayou Sorrel Oil & Gas Field in the vicinity of the Bayou Sorrel Oil, LLC field production facility. The claimant met with Bayou Sorrel Oil employees and five members of the USCG. Visual assessment of the areas impacted by the crude oil and produced water. Three [REDACTED] engineering personnel arrived on site to evaluate the facility's flow lines to see if any of the flow lines may have been the source of the crude release. After conducting the visual assessment, Bayou Sorrel Oil, LLC took a proactive measure in assuming the role of the responsible party for the crude oil release. ES&H was mobilized as the contractor for Bayou Sorrel Oil, LLC. Bayou Sorrel Oil, LLC personnel began to shut-in all wells associated with the facility. Fourteen ES&H personnel arrived on scene and began response actions on the impacted areas.

Thirty contractor personnel continued active response between October 2, 2007 and October 6, 2007. At the conclusion of the response on October 6, 2007, active response was then moved into a passive maintenance phase. A 13 man response crew returned to the incident location to conduct passive maintenance on October 8, 2007. As of October 8, 2007, the source of the release was still undetermined.

Description of removal actions for incident #2: On May 16, 2008, ES&H mobilized a crew to perform response actions. The oil recovered via a drum skimmer was pumped back into the compressor sump. All contaminated absorbents were loaded into DOT drums for proper disposal.

Description of removal actions for incident #3: On July 4, 2008, ES&H mobilized a 2 man crew to the incident location. Bayou Sorrel Oil, LLC boomed the canal and surrounded the well with absorbent boom. Any wells in the area were shut-in and bled down to zero pressure. A work boat in the area was rerouted to the #8 well in order to pump cement down the well. ES&H responded to deploy containment boom for secondary precautions. The responsible party requested to rent 100' of 10' containment boom which was wrapped around the subject wellhead from ES&H therefore the boom rental lasted from 7/4/08 through 8/20/08.

Description of removal actions for incident #4: On July 8, 2008, ES&H mobilized an initial 4 man crew to the incident location. A small ongoing leak was found and secured by July 11, 2008. The incident was then placed in a passive maintenance phase which consisted of the ongoing deployment of absorbent and containment boom to remove any residual oil. The crude oil was recovered via absorbent pads and nets. Additionally, vegetation was removed. All contaminated absorbents and vegetation were placed into pollution bags and loaded into roll off boxes for proper disposal. See claimant submission for photographs and the Incident Action Plan (IAP) generated for the incident.

3. *The Claim:* On November 18, 2008, ES&H submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the amount of \$245,204.85 for the services provided to Bayou Sorrel Oil, LLC on October 1, 2007; May 16, 2008; July 4, 2008; and July 8, 2008. This claim is for removal costs based on the contracted rate schedule in place with Bayou Sorrel Oil, LLC at the time services were provided to Bayou Sorrel Oil, LLC.

The invoices, which are the subject of this claim, were sent by the claimant to Bayou Sorrel Oil, LLC. The certified invoices were accepted and signed for.

This claim consists of proof of presentment, copies of the invoicing and associated dailies, disposal manifests, contracted rate schedule, NRC reports, and Incident Action Plan associated with the July 8, 2008 incident. 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 FOSC, 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. The FOSC has provided FOSC coordination. Sector New Orleans opened a Federal project for the incident dated September 30, 2007 for the October 1, 2007 response by the claimant. MISLE Case # 376719 was also opened for the May 2008 incident and see also Activity # 3094158.
2. The incident involved the 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 although the Responsible Party

associated with these oil pollution incidents has filed a Chapter 11 Bankruptcy that has now been converted to a Chapter 7 Bankruptcy. See Case # 08-51164 United States Bankruptcy Court for the Western District of Louisiana.

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 \$245,204.85 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# N07072-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident for the time period of, October 1, 2007; May 16, 2008; July 4, 2008; and July 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.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$245,204.85 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N07072-001. The NPFC 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. 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: \$245,204.85

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action: