

## CLAIM SUMMARY / DETERMINATION FORM

Date : 10/19/2010  
Claim Number : 911001-0001  
Claimant : LaFourche Parish Government  
Type of Claimant : Local Government  
Type of Claim : Removal Costs  
Claim Manager : XXXXXXXXXX  
Amount Requested : \$1,972.95

### **I. Facts**

On July 30, 2010, Lafourche Parish Office of Emergency Preparedness was notified by Fire Central of a gasoline odor coming from the area of the car wash near Grand Isle Shipyard in Larose. After further investigation from the Fire Department, the odor was found to be coming from the catch basin at the car wash and was threatening to run off into Bayou La Fourche, a navigable waterway and also provides the Parish's source of drinking water.

The claimant notified ES&H and they immediately responded to the incident and conducted all remedial operations. ES&H discovered that gasoline was dumped into the drainage system at the car wash and had traveled through the drainage system to a catch basin near Hamilton Street.

All liquids were removed from the drains via a vacuum truck. Fresh water was pumped into the upstream drains to flush the gasoline from the drainage system. Approximately 3,000 gallons of freshwater was pumped into the drains and then removed. Air monitoring was conducted during the entire process and no elevated levels of LEL were detected.

The National Response Center was contacted on July 31, 2010 via incident report # 949491.

### **II. Responsible Party**

The United States Coast Guard MSU Houma, LA investigated and was unable to determine the responsible party.

### **III. The Claim**

On October 7, 2010, the NPFC received a claim for removal costs in the amount of \$1,972.95 from the LaFourche Parish, Louisiana. This claim consists of an unsigned claim form (CG NPFC-CA1), NRC Report # 949491, Lafourche Parish Spill or Release Report, Photos, and ES&H invoice # 1-22947 for \$1,972.95.

### **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 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].

## **V. DETERMINATION OF LOSS:**

### ***A. Causation***

Containment and clean-up were necessary to prevent hazmat from entering Bayou LaFourche waterway. Bayou LaFourche is a navigable waterway and also provides the Parish’s source of drinking water. LaFourche Fire Department responded for initial containment and ES&H was contracted to effect clean-up the spill.

### ***B. Analysis***

LaFourche Parish’s Claim is not valid until the NPFC receives an original signature. Under 33 USC § 136.105 (c) Each claim must be signed in ink by the claimant certifying to the best of the claimant’s knowledge and belief that the claim accurately reflects all material. The Claims Manager contacted ES&H to inquire whether or not the invoices have been paid in full and the Claims Manager was told by ES&H that the invoices that pertain to this claim (Invoice 1-22947) have not been paid.<sup>1</sup> Since the invoices have not been paid the claimant has not incurred uncompensated removal costs. Under 33 USC § 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. Because the claimant has failed to pay the invoices

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<sup>1</sup> See, Email dated October 18, 2010 from Mr. [REDACTED] to Ms. [REDACTED], Claims Manager.

associated with ES&H's work, the costs are not considered uncompensated removal costs as the term is defined in the Oil Pollution Act.

**C. *Determined Amount: \$0.00***

The NPFC hereby determines that the claim is denied in accordance with 33 CFR § 136.105(c) and 33 CFR § 136.205.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *10/19/10*

Supervisor Action: *Denial approved*

Supervisor's Comments: