

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915024-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$9,490.00

FACTS:

A. Oil Spill Incident:

On March 19, 2014, the CG National Response Center (NRC) received notification of surface residual tar balls (SRBs) washing up on the beach on Grand Terre I, Jefferson Parish, LA, located on the Gulf of Mexico, a navigable waterway of the United States.¹ The CG Gulf Coast Incident Management Team (CG GCIMT) was notified and on March 20, 2014, responded to the report and found SRBs spread throughout Segment LAJF01-024-10 in Operation Zones 10 and 11. As the SRBs were in a quantity that exceeded the CG's capacity to mitigate, an email directive was issued to BP Exploration & Production (BP) to activate an oil spill response organization (OSRO) to respond for cleanup operations on Grand Terre I as directed.²

B. Description of removal actions performed:

On March 20, 2014, Danos & Curole Marine Contractors (BP's OSRO) and Mr. [REDACTED] Next Source, Inc., responded to the CG's directive of response and met with 1 CG active duty person on-scene. Cleanup of what appeared to be SRBs of MC252 origin began and extended throughout Segment LAJF01-024-10 in Operation Zones 10 and 11 on the beach. Approximately 18.69 pounds of SRBs were recovered and properly disposed of at Riverbirch Landfill, Avondale, LA. During the cleanup operations, CG personnel sampled an SRB from the beach located in Segment LAJF01-024-10 and submitted it to the CG Marine Safety Lab (CG MSL) for analysis. There is record of BP personnel splitting the sample with CG personnel.³

C. Sample Analysis: The sample collected by CG personnel was forwarded to the Coast Guard Marine Safety Laboratory (MSL) on May 15, 2014 (MSL Case Number 14-161). In an Oil Sample Analysis Report dated May 23, 2014, the MSL determined that sample 14-161-1 contained heavy petroleum oil with characteristics different from those samples of MC 252 oil. The MSL originally concluded that the sample was not derived from Deepwater Horizon oil.⁴

¹ See NRC Report # 1077122 dated March 19, 2014.

² See email directive to BP dated March 20, 2014.

³ See NPFC Optional OSLTF Form submitted by BP dated February 2, 2015.

⁴ See MSL Case # 14-161 dated May 23, 2014.

Further analysis of the oil sample was performed by the MSL at the request of the NPFC.⁵ In a follow-up memorandum dated February 11, 2015, the MSL clarified that sample 14-161-1 was analyzed using gas chromatography (ASTM Standard Test Method D 3328) and gas chromatography-mass spectrometry (ASTM Standard Practice D 5739). The analysis included a review of multiple polycyclic aromatic hydrocarbons (PAHs) and biomarker compounds that are source-specific and relatively resistant to weathering on normal environmental time scales. Further, the sample was compared against source oil collected during the Deepwater Horizon oil spill and response.

Qualitative review of the PAHs and biomarker profiles for this sample indicated that there were differences present between the PAHs that are not attributable to known weathering or non-weathering contamination. The biomarker for sample 14-161-1 is the same as DWH oil; however, based solely on the MSL analysis it is not possible to determine if the differences noted between the PAHs are the result of petroleum oil mixing in the environment or if they are “real” differences that would indicate that sample 14-161-1 is unrelated to DWH.⁶

- D. The Claim:** On February 2, 2015, BP submitted a removal cost claim to the National Pollution Funds Center (NPFC), asserting that the oil was not Deepwater Horizon oil and seeks reimbursement of its uncompensated removal costs in the amount of \$9,490.00 for services provided on March 20, 2014, which include personnel and vessel use. The claimed removal costs are based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

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”.

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”. 33 USC § 2701(31).

Removal costs include any 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).

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.

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

⁵ See email from Mr. [REDACTED], NPFC, to Ms. [REDACTED] USCG MSL, dated February 9, 2015.

⁶ See CG Marine Safety Lab Memo dated February 11, 2015.

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. Findings of Fact:

1. CG GCIMT as the Federal On-Scene Coordinator for this incident, oversaw the removal actions and determined that the actions undertaken by BP’s contracted OSRO were consistent with the NCP as reported in NRC Report # 1077122; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁷
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. §2701 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 costs;
4. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined the costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

Based on the MSL analysis of sample 14-161-1, it is not possible to determine if the oil is a result of mixing in the environment or if there are in fact differences that reflect the sample is not DWH oil; therefore, the NPFC determines that this is a mystery spill for which BP seeks reimbursement of its removal costs. The Claimant states that all costs claimed are for uncompensated removal costs incurred for this incident on March 20, 2014. BP represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant.

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.,

⁷ See NRC Tracker Spreadsheet for NRC Report # 1077122.

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.

Upon review of the claim submission, the NPFC has determined that the documentation presented to support the actions is reasonable, necessary and in accordance with the response objectives as determined by the CG GCIMT and that the actions were also monitored by CG personnel.

C. Determined Amount: \$9,490.00

The NPFC hereby determines that the OSLTF will offer to pay \$9,490.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915024-0001. 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.

Claim Supervisor:

Date of Supervisor's review: *February 24, 2015*

Supervisor Action: *Approved*

Supervisor's Comments: