

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915080-0002
Claimant	: J. Connor Consulting, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$11,200.00

FACTS:

- 1. Oil Spill Incident:** The USCG Sector New Orleans reports¹ that on December 12, 2014, a spill was reported emanating into state lease waters from a shut in well located in Garden Island Bay, near Venice, LA. Garden Island Bay drains directly into the Gulf of Mexico, both of which are navigable waterways of the US.

This incident was reported to the National Response Center (NRC) via Report # 1103268.²

Description of removal actions performed: Upon receiving notification of the incident from Dune Operating, Inc. (the named Responsible Party (RP)), JCC traveled to the site of the incident to assist. From December 13 through December 19, 2014, JCC provided support to the Spill Management Team (SMT) by: collecting, organizing and disseminating information used in SITREPs and status updates; tracking resources; documenting and verifying equipment/contractor costs; providing input to the plan development and assisting in the evaluation of tactics/resources; attending Unified Command meetings to provide updated information on response events and to receive new/updated information for SITREPs and status updates; developing reports as requested by the RP for delivery to state and federal regulatory agencies; and reviewing the Emergency Use Authorization for the release at the request of the RP as part of the incident documentation package.

On March 8, 2015, the RP filed for Chapter 11 Bankruptcy.³ The Claimant, J. Connor Consulting, Inc., did not file a Proof of Claim with the Bankruptcy Court for the amount claimed.⁴

- 3. The Claim:** On July 25, 2015, JCC submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$11,200.00 for the services provided from December 12 through December 19, 2015. A copy of the vendor rate schedule has been provided in the claim submission.

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

¹ See USCG Sector New Orleans Case Report # 717253, opened 12/12/2014.

² See NRC Report # 1103268, opened 12/12/2014.

³ See Notice of Entry of Order setting deadline for the filing of Proofs of Claim dated April 17, 2015.

⁴ See email from Mr. [REDACTED], JCC, to Ms. [REDACTED], NPFC, dated 8/05/2015.

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. FOSC Coordination has been established via USCG Sector New Orleans.⁵ 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23); however, it did not pose a substantial threat to navigable waters.
3. A Responsible Party was determined and subsequently notified by the NPFC. However, no response has been received from the RP to date. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
5. 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.
6. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined which removal costs were incurred for removal actions in accordance with the NCP and whether the costs for these actions were 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 Claims Manager validated the costs incurred and determined what were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

⁵ See USCG Sector New Orleans Case Report # 717253, opened 12/12/2014.

JCC provided a well-documented claim to demonstrate that the actions it performed were for OPA-related costs and that the work performed assisted in mitigating the effects of the oil that was released from the compromised well/flow-line. Additionally, the USCG Sector New Orleans confirmed the actions performed for this incident. Based on the actions undertaken by JCC, the Claims Manager hereby determines that the Claimant incurred \$11,200.00 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by JCC and submitted to the NPFC under claim #915080-0002. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from December 12 through December 19, 2015.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$11,200.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915080-0002.

AMOUNT: \$11,200.00

Claim Supervisor: 

Date of Supervisor's review: *8/13/15*

Supervisor Action: *Approved*

Supervisor's Comments: