

CLAIM SUMMARY / DETERMINATION

Claim Number:	915085-0001
Claimant:	Oil Mop, LLC
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$9,284.72

FACTS:

Oil Spill Incident: On July 29, 2014, Oil Mop, LLC was hired by Baby Oil, Inc to conduct a cleanup of an oil spill from an above ground storage tank (AST) owned by Baby Oil, Inc that was connected to Wiley Well #1, Orange Grove Facility, Gibson, LA.¹ CG Marine Safety Unit (MSU) Houma was notified of the spill and responded to investigate and provide oversight of the pollution removal activities.²

Description of Removal Activities for this claimant: Oil Mop, LLC arrived on-scene and began cleanup of the discharged oil from the containment berm surrounding the AST and from a tributary to the Gulf Coast Intracoastal Waterway (GICC), a navigable waterway of the United States. Cleanup was conducted with the use of a work boat, sorbent pads, and sorbent boom. All of the oiled sorbent material was collected and turned over to Baby Oil, Inc for proper disposal.³ Cleanup of the discharged oil was conducted to the satisfaction of MSU Houma personnel and in accordance with the National Contingency Plan.⁴

The Claim: On May 18, 2015, Oil Mop, LLC submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs for personnel and equipment costs in the amount of \$9,284.72.⁵

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (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. Removal costs are those “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”.

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).

¹ See Optional OSLTF Claim Form submitted by Oil Mop, LLC dated May 15, 2015.

² See email between Mr. [REDACTED], NPFC and MST1 [REDACTED], MSU Houma dated June 2, 2015.

³ See email between Mr. [REDACTED], NPFC and Mr. [REDACTED], Oil Mop, LLC dated May 18, 2015.

⁴ See email between Mr. [REDACTED], NPFC and [REDACTED], MSU Houma dated June 2, 2015.

⁵ See Optional OSLTF Claim Form submitted by Oil Mop, LLC dated May 15, 2015.

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 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. MST1 [REDACTED] of Coast Guard MSU Houma provided FOSC coordination 33 U.S.C. § 2702(b)(1)(B) and 2712 (a)(4);
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;
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 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.


The NPFC has confirmed that the rates charged by the Claimant are in accordance with the published rates at the time services were rendered.

The NPFC issued an RP Identification Letter to Baby Oil, Inc on May 18, 2015, notifying them that we had received a claim from Oil Mop, LLC. and they were identified as the party responsible for the uncompensated pollution removal costs associated with the claim. Baby Oil, Inc was contacted by the NPFC on May 19, 2015,⁶ and June 1, 2015,⁷ and given the opportunity to reimburse Oil Mop, LLC for their uncompensated pollution removal costs. To date, Baby Oil, LLC has failed to reimburse Oil Mop, LLC for their uncompensated pollution removal costs despite verbal promises to pay the Claimant.

Based on confirmation that actions undertaken by the Claimant were monitored and determined by the Federal On Scene Coordinator's Representative (FOSCR) to be reasonable and necessary and performed in accordance with the NCP, the NPFC approves the actions undertaken and validated that they were billed appropriately.

The NPFC hereby determines that the OSLTF will pay \$9,284.72 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915085-0001. 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.

AMOUNT: \$9,284.72

Claim Supervisor:	
Date of Supervisor's review:	<i>June 5, 2015</i>
Supervisor Action:	<i>Approved</i>
Supervisor's Comments:	

⁶ See email from Ms. , NPFC to Mr. , NPFC documenting the phone call to Baby Oil, Inc dated May 19, 2015.

⁷ See email from Mr. , NPFC to Ms. , NPFC documenting the phone call to Baby Oil, Inc dated June 1, 2015.