

CLAIM SUMMARY / DETERMINATION

Claim Number:	915089-0001
Claimant:	BP Exploration & Production Inc.
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$1,504.81

FACTS:

A. Oil Spill Incident:

On March 26, 2014, the Coast Guard (CG) National Response Center (NRC) received a phone call from Jefferson Parish Representative, ██████████, who reported finding oil in the form of hundreds of surface residual tar balls (SRBs) that washed up on Elmer's Island, in Jefferson Parish, LA. Elmer's Island is located on the Gulf of Mexico, a navigable waterway of the United States.¹

On March 26, 2014 CG Gulf Coast Incident Management Team (CG GCIMT) traveled to Elmer's Island, Zones 2 and 6 and confirmed MC-252 oil in a quantities beyond the Coast Guard member's capacity to mitigate. CG GCIMT directed BP Exploration and Production Inc., (BP) as the responsible party to undertake removal activities in segments: LAJF01-001-10c, LAJF 01-004-20, LAJF 01-004-40, LAJF 01-004-60 and LAJF 01-002-10 in Operational Zones 2 and 6 and, BP activated one of its oil spill response organizations (OSRO) for cleanup operations on Grand Isle.²

B. Description of removal actions performed:

On March 26, 2014, a team from Danos & Curole Marine Contractors (Danos), BP's OSRO responded to the CG's directive and met with one CG active duty person on-scene. Cleanup of SRBs of MC252 origin extended along the beach, in Zones 2 and 6. Approximately 10 lbs of SRBs with an average size of 2.0 cm were recovered and properly disposed of at River Birch Landfill, Avondale, LA.³ Federal On Scene Coordinator's Representative (FOSCR), MECS ██████████ determined removal actions were complete in the area identified.⁴

C. Sample Analysis: The sample collected by CG personnel was forwarded to the Coast Guard Marine Safety Lab (CG MSL) on May 14, 2014 (CG MSL Case Number 14-163 Activity # 4825762). In an Oil Sample Analysis Report dated May 15, 2014, the MSL determined that sample 14-163-1 and source samples 10-095-QC and 10-220-2 were not derived from a common source of petroleum oil therefore the lab concluded a "Non- Match" with MC252 oil.⁵

¹ See NRC Report #1077769 dated March 26, 2014

² See email directive to BP dated March 26, 2014

³ See Unit Log ICS 214-CG Attachment D in admin record

⁴ See NRC Tracker Spreadsheet and USCG DART NRC Data Base Sample Table

⁵ See MSL Case # 14-163 dated May 15, 2014

D. The Claim: On June 11, 2015, National Pollution Funds Center (NPFC) received BP's removal cost claim asserting that the oil was not Deepwater Horizon oil and as such, BP seeks reimbursement of its uncompensated removal costs in the amount of \$1,504.81 for services provided on March 26, 2014 which included its personnel, vehicle, and equipment used. 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".

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. Findings of Fact:

1. CG GCIMT as the Federal On-Scene Coordinator (FOSC) 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 # 1077769; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁶
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:

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 CG MSL case # 14 -163 analysis concluded that sample 14-163-1, when compared against Deepwater Horizon oil spill source samples 10-095-QC and 10-220-2, was not derived from MC 252 oil and as such, the response was determined to be a mystery spill. BP incurred costs to remove SRBs relating to NRC report 1077769 for which BP is not the responsible party. Because BP is not the responsible party, it seeks to recover its removal costs in this claim from the OSLTF. BP asserts and it has properly documented the hours for its personnel and equipment costs related to the incident incurred on March 26, 2014.⁷ BP represents that all

⁶ See NPFC Optional OSLTF Form received at NPFC June 11, 2015 and submitted by BP dated May 18, 2015

⁷ See BP’s Exhibit G with supporting documents of its personnel and equipment costs

costs paid are compensable removal costs that are payable by the OSLTF as presented by the Claimant.

Upon review of BP's claim submission, the NPFC has determined that the documentation presented in support of BP's actions were reasonable, necessary, and performed in accordance with the response objectives as determined by the CG GCIMT. And, that the actions were also monitored by CG personnel. Additionally, MSL analysis confirms that the response was not associated with the MC252 oil spill.

The NPFC hereby determines that the OSLTF will offer to pay \$1,504.81 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915089-0001. 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.

C. Determined Amount: \$1,504.81

Claim Supervisor:



Date of Supervisor's review: *6/16/15*

Supervisor Action: *Approved*

Supervisor's Comments: