

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915090-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$1,068.79

FACTS:

A. Oil Spill Incident:

On March 31, 2014 the Coast Guard (CG) National Response Center (NRC) received a call that hundreds of surface residual tar balls (SRBs) washed up on the beach at Elmer's Island, Grand Isle, Jefferson Parish, LA. Elmer's Island is located on the Gulf of Mexico, a navigable waterway of the United States.¹

The Coast Guard Gulf Coast Incident Management Team (CG GCIMT) responded to NRC report # 1078312 and traveled to Elmer's Island and found SRBs spread throughout segments LAJF01-002-10b and LAJF01-001-10d within operational zones 4 and 5 (Back Bay) in quantities that the CG members could not mitigate. CG GCIMT directed BP Exploration and Production Inc., (BP) as the responsible party to undertake removal activities in segments: LAJF01-002-10b and LAJF01-001-10d within operational zones 4 and 5 (Back Bay), and BP activated one of its oil spill response organization (OSRO) for cleanup operations on Elmer's Island.²

Description of removal actions performed:

On March 31, 2014, a team from Danos & Curole Marine Contractors (Danos), BP's OSRO dispatched a team to Elmer's Island. The Danos team met with CG active duty personnel on-scene where cleanup began on the SRBs of what appeared to be MC252 (Deepwater Horizon) origin and extended along the beach in segments LAJF01-001-10d and LAJF01-002-10b within operational zones 4 and 5. The Danos team was directed by USCG MST3 [REDACTED] as the acting Federal On Scene Coordinator's Representative (FOSCR). MST3 [REDACTED] determined that the removal actions were completed March 31, 2014. Approximately 22 lbs of SRBs were recovered and properly disposed of at River Birch Landfill, Avondale, LA. During cleanup operations, CG representatives sampled an SRB from segment LAJF01-1-002-10b. The sample was submitted to the CG Marine Safety Lab (CG MSL) for analysis.³

Sample Analysis: The sample collected by CG personnel was received on May 15, 2014 at the CG MSL. The MSL Oil Sample Analysis Report (MSL Case Number 14-160) dated

¹ See NRC Report #1078312 dated March 31, 2014.

² See email directive to BP dated March 31, 2014.

³ See NPFC Optional OSLTF Form received NPFC June 11, 2015.

May 20, 2014 concluded that sample 14-160-1 when compared to source samples 10-095-QC and 10-220-2, it was not derived from a common source of petroleum oil and had characteristics different from those source samples of MC 252 oil.⁴

B. The Claim: On June 11, 2015, BP the National Pollution Funds Center (NPFC) received BP's removal cost claim asserting that the oil was not Deepwater Horizon oil and sought reimbursement of its uncompensated removal costs in the amount of \$1,068.79 for services provided on March 31, 2014, which included personnel and vehicle 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 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;

⁴ See MSL Case # 14-160 dated May 20, 2014.

(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 # 1094723; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁵
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.

As a result of the MSL analysis, it was determined that the SRBs were not derived from MC 252 oil and this incident has been determined a mystery spill for which BP seeks reimbursement of its removal costs from the Oil Spill Liability Trust Fund (OSLTF). BP states that all costs claimed are for uncompensated removal costs that it incurred for this incident on March 31, 2014. BP represents that all costs paid are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Upon review of the claim submission, the NPFC has determined that the documentation presented to support the actions were reasonable, necessary, and performed in accordance

⁵ See NPFC Optional OSLTF Form received NPFC June 11, 2015.

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 \$1,068.79 as full compensation for the claimed removal costs incurred by the BP and submitted to the NPFC under claim 915090-0001. All costs claimed are for charges paid for by BP 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: \$1,068.79

Claim Supervisor:

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

Supervisor Action: *Approved*

Supervisor's Comments: