

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N14034-0001
Claimant	: Apache Corporation
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	
Amount Requested	: \$1,685,690.17

### **FACTS:**

#### ***Oil Spill Incident:***

On March 18, 2014, the Claimant, Apache Corporation (Apache), was notified of a hydrocarbon spill incident in the area adjacent to Apache's South Pass Block 24 (SP-24) W-1 facility. Without confirming the actual source of the spill but due to its proximity to Apache's facility, they immediately initiated spill response protocols and contracted with ES&H to conduct removal actions. Apache made notification to the National Response Center (NRC) via report # 1077033<sup>1</sup>.

#### ***Identification of the Responsible Party for the Incident:***

During the United States Coast Guard's (USCG) investigation into the cause of the release, Apache took oil samples in the immediate area of the discharge and these samples were transferred to the Coast Guard Marine Safety Laboratory (MSL). Apache immediately conducted a hydrostatic pressure test of its pipeline in the vicinity of the spill location in order to determine the integrity of their flow line and to determine whether or not the flow line was the source of the release. Because there was no loss of pressure over time, failure of their pipeline was ruled out. Oil samples were also taken at the facilities of Onyx Exploration LLP and Palm Energy Gulf Shore and transferred to the MSL. These samples were analyzed by the MSL using ASTM standards that have been developed to identify and differentiate various types of oils. On March 19, 2014 the Coast Guard issued Notices of Federal Interest (NOFIs) to Apache Corporation, Onyx Exploration LLP and Palm Energy Gulf Shore.

Apache was later informed by the USCG that a review and comparison of the analytical results for the Apache-produced hydrocarbons to the analysis of samples collected at the spill site indicated that the Apache facility or its operations were not the source of the discharge. On or about May 28, 2014 the Coast Guard withdrew the NOFI to Apache and Apache was notified that the Coast Guard had federalized the project and would assume the management of all future response actions and response costs for the incident under a Federal Project Number (FPN). Apache directed its response contractor, ES&H, to demobilize. It worked with the USCG to

<sup>1</sup> See, NRC Report # 1077033, opened 3/18/2014

transfer control and direction of cleanup response actions to the USCG.<sup>2</sup> At the time of this adjudication, no RP has been identified for this incident.

***Description of removal actions performed:***

As noted above, the Claimant, Apache Corporation, hired ES&H for cleanup and necessary response actions. On March 20, 2014, ES&H performed a joint inspection of the spill site with Apache and they discovered an area of about 300' x 250' covered in oil. The next morning, ES&H arrived on-site with personnel and materials/equipment to begin cleanup. The majority of the crude oil was discovered within the canes of the marsh. ES&H personnel had to cut the canes off at the roots as cleanup was performed. Personnel put 900' of boom out around the spill area and also placed an additional 500' along the pass to ensure that further contamination did not occur.

ES&H personnel also used absorbent pads and absorbent boom to recover the oil. By April 11, 2014, the spill site was transitioned to a maintenance phase until May 31, 2014, when the USCG took over the maintenance officially on June 1, 2014 (opening its first Pollution Report (POLREP) for the FPN on June 3, 2014).

***The Claim:*** On November 21, 2014, Apache presented a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) for reimbursement of its uncompensated removal costs in the amount of \$1,685,690.17 for the services provided from March 18, 2014 through June 17, 2014. It is important to note that while a Federal Project was opened on June 1, 2014, and from that date the Coast Guard funded the removal actions from the Fund, Claimant continued to incur costs from June 1 through June 22, 2014 for the roll off box rental that was initiated prior to the federalization of the spill. Once the roll off boxes were removed from the site, all future costs were handled under the Federal Project and paid from the Fund.

**APPLICABLE LAW:**

With certain exceptions the responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, is liable for removal costs and damages resulting from the incident. 33 USC § 2702(a).

"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 U.S.C. § 2701(31).

Removal costs are 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).

"Remove" or "removal" means "containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate

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<sup>2</sup> On June 3, 2014 the Coast Guard contracted with ES&H to continue the removal actions under FPN N14034.

damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches.” 33 USC § 2701(30).

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. Findings of Facts:***

1. Sector New Orleans, as the FOSC for this incident, determined that the removal actions undertaken by the Claimant were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. A Responsible Party has not been identified at this time. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year period of limitations for presenting claims to the Fund. 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 has thoroughly reviewed all documentation submitted with the claim and determined what removal costs presented were for actions in accordance



with the NCP, and if the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

**B. Analysis:**

The claims manager followed OPA and the claims regulations when adjudicating this claim: (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 consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

NPFC reviewed all actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The NPFC developed a spread sheet that reflects all costs incurred and payments made by Claimant.<sup>3</sup> NPFC adjudicated the claim and determined that most of the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP) as well as validating whether or not the claimed costs are adequately supported by the record. Upon completion of its adjudication, the NPFC has determined that the Claimant incurred \$1,659,219.55 of uncompensated removal costs as defined by OPA and the claims regulations that are payable from the Fund.

The NPFC has denied a total amount of \$26,470.62 which falls into three main categories and they are: (1) mathematical errors, (2) costs not supported by the record with satisfactory documentation, and (3) improper billing. Please see the attached spreadsheet of costs for an itemization of all costs denied by line individual line item.

**C. Determined Amount:**

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.203 and 136.205. The costs determined to be payable are for uncompensated removal costs that are determined to be consistent with the National Contingency Plan.

The NPFC hereby determines that the NPFC will offer \$1,659,219.55 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #N14034-0001. These costs 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. \$26,470.62 in claimed costs are denied.

**AMOUNT: \$1,659,219.55**

Claim Supervisor

<sup>3</sup> See Spreadsheet attached to this determination.

Date of Supervisor's review: *5/5/15*

Supervisor Action: *Approved*