

CLAIM SUMMARY / DETERMINATION

Claim Number:	916008-0001
Claimant:	American Pollution Control Corp.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$42,769.24

FACTS:

Oil Spill Incident: On April 1, 2015, the Pharaoh Facility in Bayou Sorrel, LA, owned by Pharaoh Oil and Gas Inc. (Pharaoh), was notified by USCG Sector New Orleans that there was oil pollution at their facility resulting from cut and uncapped flow lines that posed a substantial threat of oil discharge in Bayou Sorrel, a tributary to a navigable waterway of the United States.. Per USCG Administrative Order 15-001, Pharaoh was directed to hire a classified Oil Spill Removal Organization (OSRO) to remove all oil and oil contaminated material from the site.¹ Consequently, American Pollution Control Corporation (AMPOL) was contracted by United States Health and Environmental Liability Management LLC. (U.S. HELM) to conduct the oil pollution removal activities. The acting Federal On-Scene Coordinator's Representative (FOSCR), MSTC ██████████, MSU Baton Rouge, provided oversight of the cleanup activities.²

Description of Removal Activities for this Claimant: On April 23, 2015, AMPOL responded to the Pharaoh facility for oil pollution removal activities. Removal activities included the on-water recovery of oil and the removal and disposal of oil and oil contaminated soil from within the facility, to include oil storage tanks and uncapped flow lines. Between April 23 and July 10, 2015, AMPOL personnel attended the site on several occasions for boom upkeep and flow line decommissioning. Third party equipment rentals and services associated with this response were provided by Better Pumps and Solutions and Triton Industries for the rental of high capacity pumps and Gator Environmental & Rentals Inc for the transportation of oil and oil contaminated soil. The oil and contaminated soil was properly disposed at R360 Environmental Solutions between May 11, 2015, and May 14, 2015.³

Responsible Party: The owner of the Pharaoh Oil and Gas facility is Mr. ██████████. AMPOL made presentment of the costs associated with this claim to Mr. ██████████ on August 12, 2015 and again on August 25, 2015 but Mr. ██████████ has refused payment.⁴ Mr. ██████████ was issued an RP notification letter by the NPFC notifying him of our pending claim with AMPOL on November 23, 2015.⁵

¹ See USCG Sector New Orleans Administrative Order 15-001 dated April 1, 2015.

² See Optional OSLTF form dated November 20, 2015, submitted by American Pollution Control Corp.

³ Id.

⁴ Id.

⁵ See RP notification letter issued by the NPFC to Mr. ██████████ dated November 23, 2015.

The Claim: On November 20, 2015, AMPOL submitted a pollution removal cost claim to the National Pollution Funds Center (NPFC) requesting reimbursement of their uncompensated pollution removal costs totaling \$41,142.63.⁶ As evidence for its claim, AMPOL submitted five (5) invoices that collectively totaled \$44,586.63. In a request for additional information, the NPFC questioned AMPOL's difference between their claimed sum certain and invoices provided with their claim submission. Subsequently, by email dated December 21, 2015, Mr. [REDACTED], AMPOL, notified the NPFC that AMPOL wished to withdraw one of the invoices submitted with their original claim submission and change their sum certain to \$42,769.24, which was the correct total of their four (4) remaining uncompensated pollution removal invoices.⁷

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."

⁶ See Optional OSLTF form dated November 20, 2015, submitted by American Pollution Control Corp.

⁷ See email from [REDACTED] to USCG Claim Manager [REDACTED] dated December 21, 2015.

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. MSTC [REDACTED], CG MSU Baton Rouge, as the Federal On-Scene Coordinator Representative (FOSCR) for this incident, determined that the actions undertaken by AMPOL were consistent with the NCP⁸ for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 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 statute of limitations. 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.

⁸ See email from MSTC [REDACTED], MSU Baton Rouge to Mr. [REDACTED], NPFC dated November 24, 2015.

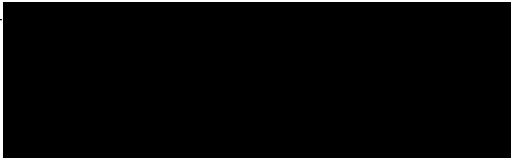
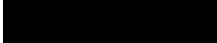
B. Analysis:

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 to be consistent with the NCP, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule in place at the time the services were rendered and were determined by the NPFC to be consistent with the NCP. Costs denied by the NPFC include the July 9 and July 10, 2015 AMPOL personnel costs for Technician [REDACTED], who was billed at a supervisor rate instead of a technician rate. The overcharges include: \$522.50 instead of \$399.00 for July 9, 2015, and \$220.00 instead of \$168.00 for July 10, 2015. In addition, AMPOL claimed Gator Environmental’s rental of the double rail roll off truck on April 27, 2015, for a total of \$1,276.00. The correct charge of the double rail roll off truck with fuel surcharge as calculated by the NPFC is \$1,064.80, or \$211.20 less than was claimed by AMPOL.

The NPFC therefore determines that the OSLTF will pay \$42,340.30 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916008-0001. 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: \$42,340.30


Claim Supervisor: 
Date of Supervisor’s review: <i>December 31, 2015</i>
Supervisor Action: <i>Approved</i>
Supervisor’s Comments: