

CLAIM SUMMARY / DETERMINATION

Claim Number:	916019-0001
Claimant:	Environmental Safety & Health (ES&H) Consulting Services, Inc
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$71,562.98

FACTS:

- 1. *Oil Spill Incident:*** On January 20, 2014, a spill of approximately 30 barrels of crude oil in a marsh area located near Lake Long, Bourg, LA, which is identified as a tributary to the Intracoastal Waterway, a navigable waterway of the United States. The incident was reported to the National Response Center via report # 1071673.¹ The Claimant, Environmental Safety & Health Consulting Services, Inc. (ES&H), presented the responsible party (RP), S2 Energy, with an invoice dated 5/12/2014 in the amount of \$100,242.70 which is identified as ES&H Invoice 1-33985. The Claimant was unsuccessful in collecting full payment for the services rendered on this invoice. ES&H did however collect a partial payment in the amount of \$28,679.76 which left an outstanding balance of \$71,562.98. ES&H was successfully paid for five (5) previous invoices that were presented to S2 Energy in the total amount of \$1,488,925.11.²

While no Federal On-Scene Coordinator (FOSC) monitored this incident, the Louisiana State Police did respond to the NRC notification and filed a report (#14-00343) dated January 20, 2014.³ Louisiana Department of Environmental Quality (LADEQ) responded to this incident in its entirety and it has confirmed the USCG Marine Safety Unit (MSU) Morgan City, LA was notified of the incident via NRC but did not actually respond on site. The USCG FOSC stated that the unit passed the case onto LADEQ for action. Verified in MISLE case report 669766. Response actions were necessary to mitigate further environmental damages.⁴

- 2. *Description of removal actions performed:*** On January 20, 2014, S2 Energy 1, LP retained the response services of ES&H to conduct cleanup and response activities. Under the direction of S2 Energy's, Mr. ██████████, ES&H was provided oversight during the cleanup operations for the entire spill duration. ES&H, personnel began removing the contaminated water. ES&H also mobilized roll-off boxes, absorbent boom, and various other pieces of equipment. Additionally, hard boom and absorbent boom were placed in the water for containment of the product.

¹ See, NRC Report # 1071673, dated 1/20/2014

² See, ES&H Claim Submission received on December 29, 2015.

³ See, LSP/DEQ Incident report dated January 20, 2014.

⁴ See, Coast Guard MISLE Case # 669766.

Removal and containerization of visually impacted debris and oily water continued throughout the response efforts. Contaminated debris, oil, and oily water was transported to Port Marine Vac Services, BFI Colonial Waste, and Republic Services for proper disposal. No sampling was performed.⁵

- 3. *The Claim:*** On 29 December 2015, ES&H presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of their uncompensated removal costs in the total amount of \$71,562.98 for the services provided from approximately March 24, 2014 through April 25, 2014. A copy of the vendor rate schedule is included with this claim.

This claim consists of copies of the following: NRC Report # 1071673; a cover letter dated October 29, 2015; invoice number 1-33985 for this incident dates of March 24, 2014 through April 25, 2014; and supporting receipts of sub-contractors paid by ES&H for this incident; disposal invoices for this incident; LA State Police # 14-00343, dated January 20, 2014.; disposal manifests for this incident; pictures of the spill and cleanup activities; and internal email correspondence.⁶

In addition to the above enclosed documents provided by ES&H, additional information was obtained before making a final determination. Those additional documents are identified as five (5) ES&H invoices and along with all proper supporting documentation and proof of payment by the RP to the Claimant.

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (OPA 90), at 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for removal costs and damages resulting from the incident, 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 at 33 USC § 2701(31) as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which

⁵ See, ES&H claim submission received on December 29, 2015.

⁶ See, ES&H claim submission received on December 29, 2015.

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].

Under 33 USC §2713(a), all claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party or guarantor of the designated source of the incident. Then 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. Overview:

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation

- of Authority for Determination of Consistency with the NCP 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 report of a discharge and substantial threat of discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
 3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
 4. A Responsible Party was determined for this incident. 33 U.S.C. § 2701(32);
 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 that the majority of the 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:

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.

Upon review of the claim submission, the NPFC has determined that the costs presented and incurred were billed in accordance with the rate schedule in place at the time services were rendered. The NPFC also determined that the actions taken by the Claimant and its subcontractor were reasonable and necessary in order to mitigate the discharge and continuing threat of discharge to the environment and were performed under the direct supervision of LADEQ and an RP Representative. Proper disposal has been performed and documented.

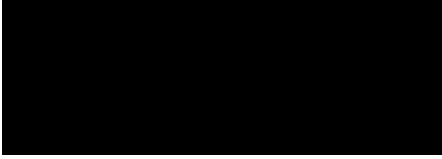

C. Determined Amount: \$71,515,98

The Claims Manager hereby determines that the Claimant did in fact incur \$71,515.98 of removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and presented to the NPFC under claim #916019-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from approximately March 24, 2014 through April 25, 2014. The Claimant represents that all costs paid/incurred by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Denied costs: \$47.00. NPFC denied \$35.00 for charges in excess of the number of people on scene. All denied costs in this category are unsupported by the record. Additionally, NPFC

denies the \$12.00 requested from Tommy's Stop -N-Go, Inc, dated March 3, 2014 for a roll of quarters (\$10.00) and the associated 20% surcharge (\$2.00).⁷

AMOUNT: \$71,515.98


Claim Supervisor: 
Date of Supervisor's review: <i>5/23/16</i>
Supervisor Action: <i>Approved</i>