

CLAIM SUMMARY / DETERMINATION

Claim Number:	916037-0001
Claimant:	Louisiana Department of Natural Resources
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$20,075.13

FACTS:

1. Oil Spill Incident & Description of actions and threat as reported by the Federal On Scene Coordinator (FOSC):

On February 3, 2015, Louisiana Department of Natural Resources (LA DNR) inspected the GW MPT SU; YOUNGBLOOD Well 84 # 001, SN 212387 and discovered the wellhead was leaking oil at a rate of approximately 1 barrel per day. Oil was standing around the well head and beginning to run down gradient toward Cross Bayou, a navigable waterway of the US.

On February 4, 2015, LA DNR notified the United States Environmental Protection Agency (USEPA) Region 6 of the oil spill release. During follow-up conversations with LA DNR, USEPA in its capacity as the Federal On Scene Coordinator (FOSC) was notified that a local operator attempted to put a temporary plug in the tubing. That action slowed down the leak but the leak continued and the USEPA stated that a best estimate of discharge following the temporary plugging was about ¼ bbl/day.

On February 6, 2015, LA DNR informed USEPA they were advertising an Orphan Well plugging package for bid and could include the subject well in the package. Since the costs of the well plugging for the individual well would be significantly less, as part of a package, USEPA discussed issuing LA DNR a Pollution Removal Funding Authorization (PRFA) for LA DNR to plug the well although no PRFA was ever issued by the FOSC to the Claimant nor is there a no known Federal Project Number (FPN) or National Response Center (NRC) notification made.^{1 2}

In summary, the FOSC provided the following information: the well was unsecured and leaking oil; drainage from the facility expected to travel North and Northwest across surface drainage, approximately 250 yards to Cross Bayou and then to Cross Bayou approximately 6 miles to Cross Lake. Cross Lake discharges into the Red River³, a navigable waterway of the US.

- a. Incident Location: Greenwood-Waskom Field, Caddo Parish (Latitude 32° 27' 16.4" Longitude 94° 0' 43.4");
- b. Navigable Body of Water Impacted (or potentially impacted): ~1400' from State Line Lake;
- c. Amount of oil spilled: A contractor cleaned up about 1 barrel of oil.;

¹ See, Email from EPA OSC [REDACTED] to [REDACTED] dated 4/11/16 stating no FPN and no NRC notification.

² See, Email from EPA OSC [REDACTED] to [REDACTED] dated 3/31/16.

³ See, Email from EPA OSC [REDACTED] to [REDACTED] dated 3/31/16.

d. Potential Responsible Party: Bowie Operating Company, LLC.⁴

No Federal Project Number (FPN) was opened to pay for the response. The LDNR did hire Womack and Sons Contracting Company, a contractor to plug the well and address the environmental issues present at the time potentially affecting State Line Lake and other tributaries of the US. GW MPT SU; YOUNGBLOOD Well 84 # 001, SN 212387 was one of many wells within a group contract to be plugged by this contractor. Payment to Womack and Sons Contracting Company was verified by Ms. [REDACTED] LDNR Point of contact.

2. *The Claim:*

February 22, 2016, The State of Louisiana Department of Natural Resources (LDNR) submitted a removal cost claim to the NPFC, asserting that the well was abandoned back in 2011 and seeks to pursue the uncompensated removal costs the Claimant incurred responding to the incident from February 2, 2015 when they were first notified through July 30, 2015 when the final plugging of the well was completed by the contractor. On that basis, the Claimant seeks uncompensated removal costs in the total amount of \$20,075.13, for the services they provided from February 2, 2015 through July 30, 2015. The Claimant provided a copy of the Statement of work performed for the plugging of the subject well site, an Orphan Oilfield Site Inspection report, an itemized breakdown of costs for this response, a copy of the plug and abandonment procedures, state personnel time and vehicle logs, photos, vendor invoicing, proof of payment, daily description of actions performed, itemized receipts, and OSLTF Claim Form.^{5 6}

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (OPA 90), 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 is liable for the removal costs and damages described in 33 USC § 2702(b) that result from the incident. The responsible party's liability includes the "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 there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

⁴ See, April 13, 2016 NPFC RP Notification Letter.

⁵ See, Claimant submission.

⁶ See, OSLTF Claim Form, page 1 of 2, item #2 dated Feb. 2, 2015.

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, as provided in 33 U.S.C. §2713(d), “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 Director, 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.”

In addition, 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 Claimant’s removal actions were coordinated with the FOSC via US EPA Region VI.⁷ 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.

⁷ See, US EPA Region VI email to NPFC dated 3/31/16.

3. In accordance with 33 CFR § 136.105(e)(12), the claimant certified that no suit has been filed in court for the claimed uncompensated removal costs. (See, NPFC Claim Form, page one, and question 7, as provided by the claimant).
4. A Responsible Party was not identified by the FOSC. 33 U.S.C. § 2701(32).
5. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs.
6. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
7. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and further documentation provided by US EPA Region VI, and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

B. Analysis:

The NPFC Claims Division (CA) reviewed the cost invoices and dailies submitted by the Claimant to determine whether the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA 90 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 were reasonable and necessary.

The Claimant, LADNR, submitted a well-documented claim to demonstrate that the actions performed were OPA 90 removal actions, and that the work performed mitigated the effects of the oil spill that was released into Cross Bayou and Cross Lake, and thus potentially to the Red River. Additionally, the US EPA Region VI FOSC confirmed the actions claimed were performed by the Claimant and its contractors in response to this incident and determined that all of the Claimant's response actions were consistent with the National Contingency Plan. Upon adjudication of the claim, the NPFC verified that the rates charged were billed in accordance with the published rates for the Claimant's contractor. As such, the NPFC has determined that the amounts invoiced and paid, were reasonable.

Based on a review of all the supporting documentation and incident information, the Claims Manager determined that the Claimant did in fact incur \$20,075.13 in uncompensated removal costs that were reasonable and necessary, and that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #916037-0001. Those costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for removal actions by the Claimant from February 2, 2015 through July 30, 2015 that are consistent with the NCP.



On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$20,075.13 of uncompensated 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 #916037-0001. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay \$20,075.13 as full compensation for the claimed reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim 9160372-0001. All such costs were incurred by the Claimant for removal actions as that term is defined in OPA 90 and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: \$20,075.13


Claim Supervisor: 
Date of Supervisor's review: <i>April 25, 2016</i>
Supervisor Action: <i>Approved</i>