CLAIM SUMMARY / DETERMINATION

Claim Number:	916044-0001
Claimant:	Premier Industries, LLC
Type of Claimant:	Company
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$41,580.52

FACTS:

On June 28, 2015, a pipeline at a platform owned by Dune Operating Company (Dune) discharged oil into Garden Island Bay, a navigable waterway of the United States. Dune is the responsible party (RP) for the incident. The National Response Center was notified of the incident. Several oil spill removal organizations responded to clean up the oil. The claimant was verbally hired by Dune to work on the response. The claimant provided heavy equipment, tug and barge services, and labor to assist in the transport of the oiled materials from the site and to assist in cooking and cleaning for the cleanup crews.

THE CLAIMANT AND THE CLAIM:

Claimant is Premier Industries, LLC. On March 18, 2016, Claimant submitted a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund); requesting reimbursement of their uncompensated oil pollution removal costs associated with the response in the amount of $41,580.52. On March 8, 2015, Dune Operating Company, et al. filed for Chapter 11 Bankruptcy. Premier filed a claim in the bankruptcy action stating that the post-petition debt arose after the bankruptcy proceedings began, making them a priority creditor. The Claimant obtained a partial payment of $12,375.00 through the bankruptcy action. The amount claimed from the OSLTF is the outstanding balance.

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".

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."

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 FOSCR at Coast Guard Sector New Orleans verified that the activities related to transporting the roll-off containers by tug and barge to the site for disposal of oily material was consistent with the National Contingency Plan (NCP).
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The Claimant filed a claim in the RP's bankruptcy proceedings for the claimed uncompensated removal costs. In accordance with 33 CFR § 136.105(e)(12), the claimant notified the NPFC of the details of the court action.
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 which of 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.

B. *Analysis:*

NPFC CA reviewed the actual cost invoices and supporting documentation 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.

The NPFC confirmed that some of the actions undertaken were reasonable and necessary and that the services were billed in accordance with the Claimant's records. The NPFC also obtained verification from the FOSC that the tug and barge, and roll-off container transport and disposal activities described by the claimant and confirmed by Oil Mop LLC were activities that are consistent with the NCP. On that basis, the Claims Manager hereby determines that the Claimant did in fact incur $25,612.63 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 submitted to the NPFC under claim #916044-0001. The NPFC denies $15,967.89 of the claimed costs. The denied costs are related to items that are not specified on the claimant's rate schedule, items where the number of personnel could not be verified, items where the rate was reduced to reflect the published rate on the rate schedule, and for the labor related to cooking and cleaning, which the FOSC determined were not consistent with the NCP. The attached spreadsheet provides details of the adjudication.

C. *Determined Amount:*

The NPFC hereby determines that the OSLTF will pay $25,612.63 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916044-0001. All costs claimed are for charges incurred 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.

Claim Supervisor: [redacted]

Date of Supervisor's review: *7/12/16*

Supervisor Action: *Approved*