

CLAIM SUMMARY / DETERMINATION FORM

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| Claim Number | : 916059-0001 |
| Claimant | : State of Louisiana Oil Spill Coordinator's Office |
| Type of Claimant | : State |
| Type of Claim | : Removal Costs |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$4,488.90 |

FACTS:

Oil Spill Incident: The United States Coast Guard (USCG) Sector Houston/Galveston reports² that on July 25, 2012, a release of an unknown amount of crude oil & produced saltwater was released at the JB Watkins Well #154 from the well casing valve, impacting the well pad & adjacent waterway. The spill occurred at the Diasu Oil & Gas Co. Inc., Black Bayou Field: JB Watkins Well #154 site, located in Cameron Parish, Louisiana. This waterway is a nexus to the Black Bayou/Sabine River, eventually flowing into the Gulf of Mexico, all of which are navigable waterways of the US.

It is suspected³ that this incident was caused intentionally by an unknown person who manually removed a plug and pressure gauge during the after-work hours. The release was discovered during the morning field inspection and was secured immediately upon discovery. While the well pad had berm around it, it had filled up and thus overflowed into adjacent waterway. Field personnel deployed containment boom to contain the release. An Oil Spill Response Organization (OSRO) was hired for cleanup and removal of the oil.

Diasu Oil and Gas (the Responsible party (RP), part of the Linc USA GP umbrella) filed for relief under Chapter 11 of the U.S. Bankruptcy Code. LOSCO confirmed it had not filed a proof of claim with this bankruptcy.⁴

This incident was reported to the NRC via Report # 1018915.⁵

Description of removal actions performed: The OSRO, Environmental Safety & Health Consulting Service, Inc., was immediately deployed to handle the cleanup of the discharged oil. It deployed additional containment boom and perform all remedial activities. All recovered liquids were stored in an onsite storage tank and then hauled to the field production facility for processing. The soiled absorbents and excavated impacted soils were disposed of at a disposal facility.

It is estimated that 50 barrels of produced water and 100 gallons of crude oil were recovered at the site.

¹ The original amount claimed was \$4,488.90; however, as the claimant could not substantiate \$16.80 in third-party receipts, it removed this amount from its claim via email on 9/06/2016.

² See, USCG Sector Houston/Galveston Case Report # 605333, opened 7/25/2012.

³ See, LASP Written Notification for Incident # 12-04850, dated 8/03/2012.

⁴ See, email from Mr. [REDACTED], LOSCO, to Ms. [REDACTED], dated 8/09/2016.

⁵ See, NRC Report # 1018915, opened 7/25/2012.

Louisiana state personnel from multiple agencies responded to this incident and they are as follows:

LA DFW Environmental Scientists, Ms. [REDACTED] and Mr. [REDACTED], responded on-scene over the course of the cleanup. Ms. [REDACTED] reviewed release reports and coordinated DFW response, as well as compiled cost documentation. Mr. [REDACTED] visited the command post/spill site and performed wildlife impact assessment.

LA DEQ Environmental Scientists, Mr. [REDACTED] and Mr. [REDACTED], performed site visits/assessments over the course of the cleanup. Additionally, Mr. [REDACTED] reviewed the IAP and discussed boom removal with the RP and the State.

LOSCO responder, Mr. [REDACTED], served as the SOSC in the Unified Command. He also worked to prepare the IAPs and reviewed emails pertaining to the spill. State Budget Officer, Mr. [REDACTED], worked on expenditure coding & cost package preparation for billing, and the state's staff attorney, Ms. [REDACTED], reviewed via email with responders, and performed a cost package assessment.

- 3. *The Claim:*** On July 22, 2016, LOSCO presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$4,488.90 for the services provided from July 25 through November 20, 2012. A copy of the vendor rate schedule is provided in the claim submission.

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. FOSC Coordination has been established via USCG Sector Houston/Galveston.⁶ 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.
3. The claim was submitted to NPFC within the six year statute of limitations for removal costs. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has not been identified. 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 NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National

⁶ See, USCG Sector Houston/Galveston Case Report # 605333, opened 7/25/2012.

Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 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.

The Claims Manager validated the costs incurred and determined what were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

LOSCO provided a well-documented claim to show which of the actions it performed were for OPA-related activities and costs. It also demonstrated that the work performed mitigated the effects of the oil that was released into the berm/oil field. Additionally, the USCG Sector Houston/Galveston confirmed that the actions performed for this incident were consistent with the National Contingency Plan (NCP). Based upon the evidence in this claim submission for the actions undertaken by LOSCO, the Claims Manager hereby determines that the Claimant incurred \$4,455.30 in 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 #916059-0001. Please see the attached Summary of Costs spreadsheet for a detailed breakdown of approved costs.

The Claimant states that the costs claimed are for removal costs incurred by the Claimant for this incident from July 25 through November 20, 2012.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$4,455.30 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 916059-0001.

AMOUNT: \$4,455.30

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *9/8/16*

Supervisor Action: *Approved*

Supervisor’s Comments: