

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 916060-0001
Claimant	: State of Louisiana Oil Spill Coordinator's Office
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$13,055.95

FACTS:

Oil Spill Incident: The United States Coast Guard Sector New Orleans reports¹ that on January 14, 2014, a clamp for a previous leak on a segment of 12" facility piping in an overhead pipe rack failed, causing approximately 15-20 barrels of crude oil to spill onto the Roseau canes growing below the pipe rack.² The East Bay Central Facility (where the incident occurred) is an oil storage facility for the entire East Bay Field, and is located along the east bank of Southwest Pass, Mississippi River, both of which are navigable waterways of the US.

On April 14, 2016, EPL Oil and Gas (the Responsible party (RP), part of the Energy XXI Ltd umbrella) announced that it entered into a financial restructuring and that it had voluntarily 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.³

This incident was reported to the NRC via Report # 1071124.⁴

Description of removal actions performed: The Oil Spill Response Organization (OSRO), Oil Mop, Inc., was immediately deployed to handle the cleanup of the discharged oil. All of the free oil was captured and removed through absorbents and suction. The piping segment was blocked and flushed, and the entire segment of piping that contained the leak was fabricated and replaced.

In its role as State On-Scene Coordinator (SOSC), Louisiana state personnel from multiple agencies responded to this incident and they are as follows:

LA DFW Environmental Scientists, [REDACTED] and [REDACTED], responded on-scene over the course of the cleanup. [REDACTED] reviewed release reports, organized spill response data and coordinated DFW response. [REDACTED] also reviewed hazing status/recommendations. [REDACTED] visited the incident command post/spill site and prepared updates/follow up paperwork. He also conducted a conference call with the Unified Command.

LA DEQ Environmental Scientists, [REDACTED], and [REDACTED], performed site visits/assessments over the course of the cleanup. Additionally, [REDACTED] reviewed response documents/paperwork.

¹ See, USCG Sector New Orleans Case Report # 668670, opened 1/14/2014.

² See, EPL Unauthorized Discharge Notification Report, dated 1/21/2014, and submitted with the claim by the claimant on 7/25/2016.

³ See, email from [REDACTED], LOSCO, to [REDACTED], dated 8/09/2016.

⁴ See, NRC Report # 1071124, opened 1/14/2014.

LA CPRA Environmental Scientist, [REDACTED] made site visits/assessments over the course of the cleanup, and provided follow-up coordination on work completed (LOSCO states that these was not NRDA-related activities).

LOSCO responders, [REDACTED] and [REDACTED] served as the SOSCs in the Unified Command. Additionally, State Budget Officer, Mr. [REDACTED] worked on cost package preparation for billing.

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 \$13,055.95 for the services provided from January 14 through December 14, 2014. A copy of the vendor rate schedule is provided in the claim submission.

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."

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 New Orleans.⁵ 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 been identified and notified by both the Claimant and the NPFC but, to date, has not responded. 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 Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

⁵ See, USCG Sector New Orleans Case Report # 668670, opened 1/14/2014.

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 costs. It also demonstrated that the work performed mitigated the effects of the oil that was released from the piping and into East Bay Field. Additionally, the USCG Sector New Orleans confirmed 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 and its fellow state partners, the Claims Manager hereby determines that the Claimant incurred \$10,628.37 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 #916060-0001. \$2,427.58 in costs are denied as unsubstantiated. Please see the attached Summary of Costs spreadsheet for a detailed breakdown of denied costs.

The Claimant states that the costs claimed are for removal costs incurred by the Claimant for this incident from January 14 through December 14, 2014.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$10,628.37 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 916060-0001. \$2,427.58 in claimed costs are denied.

AMOUNT: \$10,628.37

Claim Supervisor: [REDACTED]
Date of Supervisor’s review: <i>9/8/16</i>
Supervisor Action: <i>Approved</i>
Supervisor’s Comments: