

CLAIM SUMMARY / DETERMINATION

Claim Number:	916061-0001
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$2,312.66

FACTS:

Oil Spill Incident: On April 02, 2014, a group of Louisiana Department of Wildlife and Fisheries – Office of Wildlife, (LDWF) employees, led by ██████████ were touring Pointe Aux Chenes Wildlife Management Area (WMA). While passing by the Baby Oil – Bully Camp field, which is directly south of the WMA, the LDWF employees observed a discharge from a 2-inch flow line. The discharge was primarily gas and condensate, however LDWF found stained and dead vegetation in the path of the discharge. ██████████ called the National Response Center (NRC) hotline¹ and alerted the State trustees, as well as the Responsible Party (RP), Baby Oil, Inc.

Upon investigation of the flow line, LDWF learned that the flow line had been shut in that same day, April 02, 2014. LDWF found that there were two leaks in the flow line, approximately 100 yards apart. Both of the leaks had been fixed the previous day and the line remained shut in.

The investigation involved two (2) separate sources for the oil leak. The sources are known as Source A and Source B. Source B involves the initial oil spill that was discovered on April 02, 2014.

Source A: Had a pinhole leak in the flow line. The majority of the release stayed in the marsh and did not make it to open water. There was a small amount of emulsified product in the water to the north east of the source, with rainbow sheen along the bank, north east and north west of the spill. A small amount of recoverable product was found in the marsh, north of the spill. The release had coated the vegetation and the marsh, causing most of the vegetation to die.

Source B: This oil spill was discovered on April 02, 2014 that involves a pinhole leak in the line that was approximately 100 yards to the north east of Source A. The area around Source B seemed to have either experienced a spill event previously or the release had been ongoing for some time. The vegetation in the flow path of Source B was dead and most of the marsh and was denude. During the investigation, LDWF found that the area around the holes in the lines, contained sheens with spots of emulsified product underneath the debris.

On February 16, 2016, the Louisiana Oil Spill Coordinator's Office, (LOSCO), sent the RP a letter with removal and assessments costs enclosed.² The letter stated that Baby Oil, Inc. was the RP and as such, Baby Oil was responsible for paying both the removal costs and the assessment costs that the State incurred as a result of the oil spill.

¹ NRC Incident Report # 1078728.

² See, LOSCO letter to Baby Oil, Inc., and signed by the Director of LOSCO, dated February 16, 2016.

On July 26, 2016, the National Pollution Funds Center (NPFC) sent Baby Oil, Inc. an RP Notification letter. To date, the RP has not made contact with the NPFC nor has the Claimant received anything.

The Claimant: LOSCO serves as the single point of contact for all programs related to oil spills in Louisiana. Its mission is to respond to oil spill events, restore natural resources, protect economic infrastructure, and safeguard public health. LOSCO is funded by a two-cent barrel tax on all oil transported to or from vessels at Louisiana marine terminals. LOSCO coordinates the state's oil spill response efforts, making sure that cleanups are properly completed.³

The Claim: On July 25, 2016, LOSCO presented a removal cost claim to the NPFC for reimbursement of its uncompensated removal costs in the amount of **\$2,312.66** for its services that they provided from April 02, 2014 through December 17, 2014.

Description of removal actions performed: Representatives from Louisiana's responding agencies were on scene working with the United States Coast Guard (USCG)⁴ as part of the Unified Command to oversee the cleanup process. A description of the roles and responsibilities of the state agencies are as follows:

Department of Wildlife and Fisheries (LDWF) – under the direction and control of the LOSCO, LDWF monitored and responded to the oil spill that threatened or impacted wildlife and fishery resources. LOSCO also provided oversight of the clean-up operations in order to minimize and mitigate wildlife impacts.

Ms. [REDACTED] provided coordination by phone and in person, including coordinating with spill response personnel on field response activities, keeping apprised of updates and information from the RP, USCG, and other state response agencies for situational awareness, updating other state agencies (LDEQ, LOSCO, LDNR) on LDWF spill response activities and spill status to ensure that state effort is coordinated. [REDACTED] briefed LDWF upper management on spill response efforts and the potential impacts.

[REDACTED] was at the location for routine inspections when he discovered the incident. He investigated the incident and submitted an NRC report (1078569). [REDACTED] was at the Unified Command Post acting as the LDWF representative. He also assessed wildlife impacts.

LOSCO filled a leadership role on behalf of the State of Louisiana in response to the oil spill. A representative⁵ was present at the incident command post serving as State On-Scene Coordinator (SOSC) for this incident. Additionally, LOSCO was responsible for the coordination of other State agencies as well as local stakeholders in response to the oil spill and ensured adequate staffing for the designated state functions in the incident command.

Mr. [REDACTED] manned the Command Post as Louisiana's State On Scene Coordinator (SOSC).

³ Losco.state.la.us

⁴ MSU Baton Rouge

⁵ [REDACTED]

Mr. [REDACTED] set up coding in the LOSCO system in order to allow employees to track their time, e-mailed LOSCO employees with description of established codes, e-mailed other State agencies to request that they properly track their involvement for future cost reimbursement.

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 MSU Baton Rouge. 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. 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.
5. 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

B. Analysis:

NPFC, Claims Division, reviewed the Claimant’s cost 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 validated the costs that were incurred by the Claimant and determined which of the costs were reasonable, necessary, and performed in accordance with the NCP. The Claimant provided a well-documented claim⁶ to show which of the actions it performed were for OPA compensable activities. The Claimant also demonstrated that the work performed was for response to oil and for the cleanup of pollution that was determined to be consistent with the NCP.

Based upon the evidence presented in this claim submission and for the actions undertaken by LOSCO and all associated state entities, the NPFC hereby determines that LOSCO incurred **\$1,269.21** in uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs that were incurred by the Claimant and submitted to the NPFC under claim # 916061-0001. Please see the attached Summary of Costs spreadsheet for a detailed breakdown of costs.

The denied costs pertain to the following:

Indirect Rate, in the amount of **\$678.81** – As the indirect costs claimed have not been substantiated, they are denied. Should the Claimant seek reconsideration of these costs, it would need to provide a description/documentation of the costs claimed. Additionally, the Claimant would also need to show that the indirect rate claimed here is not related to "OMB Circular A-87 Indirect Charges," as these are not compensable costs since the Claims Division is not a grant program nor is the Claims Program in a direct contractual relationship with the Claimant and as such, provisions of OMB Circular A-87 do not apply.

Per the Claimant, certain costs need to be removed because the costs are related to NRDA costs in the amount of \$364.61.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$1,269.21** as full compensation for the claimed removal costs incurred by the claimant and submitted to the NPFC under claim # 916061-0001

<p></p> <p>Claim Supervisor: </p> <p>Date of Supervisor's review: <i>9/20/16</i></p> <p>Supervisor Action: <i>Approved</i></p>
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⁶ See, Claimant's BOBE workbook.