

CLAIM SUMMARY / DETERMINATION

Claim Number:	N12061-0002
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$2,478.53

FACTS:

Oil Spill Incident: On July 19, 2012, the CG National Response Center (NRC) was notified of the discharge of approximately 100 gallons of crude oil from a leaking valve attached to a storage tank located in a wetland area between Calcasieu Lake and the Gulf of Mexico in Cameron, LA. The storage tank is owned and operated by TF&B Oil Company, a petroleum wholesaler headquartered in Mandeville, LA. On July 26, 2012, the Louisiana Department of Wildlife and Fisheries (LDWF), the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Natural Resources (LDNR), and the Louisiana Oil Spill Coordinator's Office (LOSCO) responded to the spill, discovering an oil sheen from the release of oil from the "flooded staging areas".¹ USCG Federal On-Scene Coordinator's Representative (FOSCR), MSTC [REDACTED], responded to the spill site, authorizing the State of Louisiana to proceed with removal actions.

Description of Removal Activities for this Claimant: From July 26, 2012, through August 27, 2012, "Representatives from Louisiana responding agencies were on scene working with USCG as part of the Unified Command to oversee the cleanup process."³ [REDACTED], LDNR, produced the July 26, 2012, TF&B Oil Co. site visit survey; LDEQ personnel responded to the spill site, documenting containment efforts and directing the RP's response efforts⁴; LOSCO personnel attended site visits, participated in unified command meetings, coordinated with state agencies, tracked costs, and reviewed site visit material; and LDWF personnel arrived on July 26, 2012, to assess wildlife impacts, coordinate response efforts, and compile cost documentation.

Responsible Party: TF&B Oil Company (TF&B) is the owner and operator of the facility involved in the claimed oil spill incident. On July 19, 2012, World Environmental, on behalf of TF&B, contacted the CG NRC, "reporting a discharge of crude oil into containment and onto soil."⁵ By letter dated August 2, 2016, the NPFC issued TF&B an RP Notification Letter, notifying it of the pending claim with the State of Louisiana.⁶ To date, the NPFC has received no correspondence from the RP.

¹ See July 2012 Oil Spill Response Summary dated July 26, 2012.

² See United States Coast Guard Authorization to Proceed with Removal and Disposal form dated August 27, 2012.

³ See Optional OSLTF Claim Form dated July 14, 2016.

⁴ See Oil Spill Little Chenier Field Meeting Minutes dated July 26, 2012.

⁵ See CG NRC report dated July 19, 2012.

⁶ See RP notification letter dated August 2, 2016.

The Claim: On July 22, 2016, the State of Louisiana submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs totaling \$2,478.53.

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. MSTC [REDACTED] CG Sector Lake Charles, as the Federal On-Scene Coordinator’s Representative (FOSCR) for this incident, determined that the actions undertaken by the State of Louisiana were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁷
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
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 that 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 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 to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant for this incident were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the costs were billed in

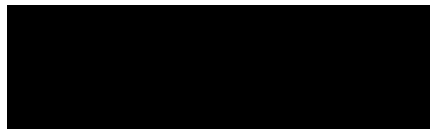
⁷ See United States Coast Guard Authorization to Proceed with Removal and Disposal form dated August 27, 2012

accordance with the rate schedule that was in place at the time the services were rendered and were determined by the NPFC and the FOSC to be consistent with the NCP. The costs denied by the NPFC are in the total amount of \$22.95 for \$.05 in costs affiliated with unidentified differences, \$16.08 in costs affiliated with unsupported response supplies and purchases, and \$6.82 in mileage costs claimed in excess of the 2012 IRS Standard Mileage Rate of 55.5 cents per mile.^{8 9}

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$2,455.58 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N12061-0002. All costs claimed are for charges paid for 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.

AMOUNT: \$2,455.58



Claim Supervisor:



Date of Supervisor's review: *August 31, 2016*

Supervisor Action: *Approved*

Supervisor's Comments:

⁸ See IRS 2012 Standard Mileage Rates, available at <https://www.irs.gov/uac/irs-announces-2012-standard-mileage-rates-most-rates-are-the-same-as-in-july>

⁹ See NPFC spreadsheet for claim N12061-0002.