

CLAIM SUMMARY / DETERMINATION

Claim Number:	N13011-0004
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$7,312.49

FACTS:

Oil Spill Incident: On January 27, 2013, while being pushed down the Mississippi River by the M/V NATURES WAY ENDEAVOR, the T/B MOC 12 and T/B MOC 15 allided with the north face of the Vicksburg railroad bridge at MM 435 in Vicksburg, MS. The lead barge in the tow, T/B MOC 15 broke away after the allision and sustained damage along the portside of the barge. The T/B MOC 12 remained attached to the M/V NATURES WAY ENDEAVOR, alluding head on with the railroad bridge and sustaining significant damage to the starboard side of the barge. The #4 starboard cargo tank on the T/B MOC 12 ruptured and discharged approximately 7,000 gallons of sweet crude oil into the Mississippi River, a navigable waterway of the United States. The total capacity of T/B MOC 12 was approximately 600,000 gallons while the capacity of #4 starboard cargo hold was 86,520 gallons.

Background: USCG Marine Safety Detachment (MSD) Vicksburg¹ responded, closing the Mississippi River from MM 441-425 and established a safety zone around both barges.^{2 3}

The Coast Guard's National Pollution Funds Center (NPFC) issued a Notice of Designation (NOD) for the potential of claims to Third Coast Towing, LLC, owners of the T/B MOC 12 and T/B MOC 15 and to Nature's Way Marine, LLC, owner of the M/V NATURES WAY ENDEAVOR, which was pushing the barges down river.⁴

Responsible Party: Third Coast Towing, LLC, is the owner of the T/B MOC 12 and T/B MOC 15. Nature's Way Marine, LLC, owner of the M/V NATURES WAY ENDEAVOR, assumed responsibility for the incident. The NPFC issued an RP Notification on July 26, 2016. To date, no response has been received.

The Claimant: The State of Louisiana Oil Spill Coordinator's Office (LOSCO) serves as the single point of contact for all state 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 coordinates the state's oil spill response efforts, making sure that cleanups are properly completed.⁵

The Claim: On July 25, 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 **\$7,312.49** for its services that were provided from January 27, 2013 through February 04, 2013.

Description of Removal Actions Performed: Representatives from Louisiana's responding agencies were on scene working with the United States Coast Guard (USCG) as part of the Unified Command to

¹ While this location is considered an inland zone, USCG MSD Vicksburg assumed the lead as Federal On-Scene Coordinator (FOSC) from US EPA Region IV under EPA/USCG Memorandum of Understanding.

² See CG POLREP 1 DTG R 272349Z Jan 13.

³ See EPA POLREP 1 and Final dated February 13, 2013.

⁴ See NOD issued to Third Coast Towing, LLC dated January 31, 2013.

⁵ Losco.state.la.us

oversee the cleanup process. A description of the roles and responsibilities of the state agencies are as follows:

LOSCO filled a leadership role on behalf of the State of Louisiana in response to this oil spill incident. A representative⁶ was present at the incident command post serving as State On-Scene Coordinator (SOSC) for this incident and worked alongside the Federal On-Scene Coordinator (FOSC) to coordinate response activities. 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.

The Louisiana Department of Environmental Quality (LDEQ) under the direction and control of the Louisiana Oil Spill Coordinator, served as the lead technical agency for response to the discharges of oil and for cleanup of the oil pollution and served as the Deputy State On-Scene Coordinator.

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.

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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. 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 § 13.205.

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 costs were reasonable, necessary, and performed, in accordance with the NCP.

The Claimant provided a well documented claim⁷ to show which of the actions it performed were for OPA compensable activities. The Claimant also demonstrated that the work performed was for the 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 **\$7,312.43** in uncompensated removal costs and that the 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 # N13011-0004. Please see the attached Summary of Costs spreadsheet for a detailed breakdown of costs.

The denied amount of \$0.06 pertains to an unsubstantiated cost. Please see the Summary of Costs spreadsheet for itemized detailed information.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$7,312.43** as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under Claim # N13011-0004.

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>9/22/16</i></p> <p>Supervisor Action: <i>Approved</i></p>
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⁷ See Claimant's MRVE Workbook