

CLAIM SUMMARY / DETERMINATION ON RECONSIDERATION FORM

Date	: 8/17/2011
Claim Number	: 906090-001
Claimant	: T & T Marine Salvage, Inc.
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$100,489.50

FACTS:

On December 4, 2004, a natural gas and oil well operated by Shoreham Oil & Gas (Shoreham) blew out and discharged 50 barrels of oil into Galveston Bay, a navigable water of the U.S. Shoreham is the responsible party (RP) for the facility and incident. The well was at Red Fish Island on the Houston Ship Channel. The U.S. Coast Guard MSO Houston-Galveston responded along with the Texas General Land Office. T&T Marine Salvage was hired to perform air monitoring and clean up the oil.

Claimant and Claim:

The claimant is the OSRO that responded to the incident. Claimant provided oil spill response services and submitted its costs to Shoreham. Shoreham did not pay T&T. Shoreham's insurer produced a check to cover the costs payable to both Shoreham and T&T. However, the insurer issued the check to Shoreham, which deposited the check, depriving T&T of the payout. T&T pursued payment, but has been unsuccessful and seeks reimbursement from the Oil Spill Liability Trust Fund (OSLTF). The initial claim was submitted on July 25, 2006.

On August 25, 2006, the NPFC initially denied the claim as being a natural gas incident with no oil spill response by the claimant, and thus, not covered by OPA. On September 29, 2006, the NPFC received the claimant's request for reconsideration. Via TGLO records the claimant has shown that the incident involved OPA oil. Therefore, the NPFC accepted the reconsideration and reviewed it to determine the amount to compensate the claimant under OPA.

APPLICABLE LAW:

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC § 2712(a)(4) and 2713 of OPA 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 (NCP) 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 such an incident." 33 USC § 2701(31).

The Claims Regulations at 33 CFR § 136.105(b) provide that each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. Claimant bears the burden of providing all evidence, information and documentation

deemed necessary by the Director, NPFC, to support the claim. 33 CFR 136.105(a). In addition, 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 [Federal On-Scene Coordinator] 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].

Claims for uncompensated removal costs must be presented to the Fund within six years after the date of completion of all removal actions for that incident. 33 USC § 2712(h).

DETERMINATION OF LOSS:

A. Overview:

1. The removal actions were coordinated with the FOSC as evidenced by the email dated November 6, 2006, regarding a telephone conversation with Capt. Diehl with USCG Sector Houston.
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 certified that it has no suit in court for the claimed uncompensated removal costs.
4. The claim was submitted within six years after the date of completion of all removal actions for this incident.
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that the most of the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205. The excepted or denied costs are itemized in the attached spreadsheet.

B. Analysis:

Claimant states that all costs claimed are for uncompensated removal costs incurred for this incident for the time period of December 9 through December 19, 2004. The Claimant represents that all costs claimed are compensable removal costs, payable by the OSLTF.

The NPFC Claims Manager reviewed the Claimant’s actual cost invoices/dailies and rate schedule to confirm that the Claimant had incurred the costs claimed, that the costs were


uncompensated, and that the costs were adequately documented and reasonable. Because the services and materials/equipment were provided in the response directed by the Texas General Land Office and USCG, NPFC further finds that T&T has satisfied its burden of showing that certain amounts claimed were reasonable and necessary.

The Claims Manager confirmed that certain removal costs were: for compensable "removal actions" under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) incurred as a result of these actions; and (3) incurred for removal actions determined by the FOSC to be consistent with the NCP or directed by the FOSC.

As detailed in the attached spreadsheet, the NPFC has approved \$63,770.00 in OPA-compensable costs. Some of the claimed costs were reduced or denied for several reasons, including lack of documentation such as receipts/proof of payment, denial if not supported by invoice/receipt or existence on rate sheet, and adjustment to match rate schedule. The total denied is \$36,719.50. On this basis, the NPFC Claims Manager finds that the Claimant did incur \$63,770.00 of uncompensated removal costs that are supported by the record and that this amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under the claim.

AMOUNT:

The NPFC hereby determines that the OSLTF will pay \$63,770.00 as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #906090-001.

Claim Supervisor: 

Date of Supervisor's Review:

Supervisor Action:

Supervisor's Comments: