

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/18/2011
Claim Number	: 911005-0001
Claimant	: Forest Oil Corporation
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$57,420.54

FACTS:

Oil Spill Incident: On October 27, 2009, at approximately 1340, an oil spill was discovered on the Humble Canal, approximately two miles southwest of Paradis, Louisiana in close proximity to an oil transfer line that Forest Oil Corporation operates in the Paradis Field. The oil was confined to the edge of the Humble Canal, which drains into Lake Des Allemands of the Barataria Basin, a navigable waterway of the United States. The oil migrated north from the Humble Canal approximately 250 feet into the swamp. Forest Oil called out the Oil Spill Response Organization (OSRO) Environmental Safety & Health (ES&H) Inc. to begin recovery of the oil, while utilizing their own personnel to deploy boom. Due to the spill location, the lack of a continuing or identifiable source and the fact that Forest Oil's "mass balance" accounting of oil transported through the line could not confirm a release. The suspected Responsible Party (RP) was reported as "unknown".

Forest Oil conducted mechanical integrity testing of the transfer line immediately following the leak discovery. This revealed the line had complete integrity and its potential as the source was ruled out. The Coast Guard subsequently obtained crude oil samples from Forest Oil's tank battery, as well as a sample of the spilled oil, and submitted them for forensic hydrocarbon fingerprinting analysis. According to the Coast Guard, the fingerprint analysis indicated that the two oils were dissimilar. Forest Oil, with the aid of the Louisiana Department of Natural Resources, undertook a thorough effort to identify historic wells, old flow lines and similar equipment that exist or existed in the area at a radius of one-half mile of the spill. There were a number of potential sources, but a review of those potential sources with the Coast Guard has ruled them out. However, Forest Oil Corporation agreed to manage the cleanup under the direction of the Coast Guard and utilize their contracted OSRO, ES&H.

Description of Removal Activities for this claimant: Forest Oil Corporation utilized their own personnel and contracted OSRO, ES&H to deploy boom and skim the water's surface using sorbent pads. After consulting with the Coast Guard and Oil Spill Trustees including the Louisiana Department of Environmental Quality (LADEQ), Louisiana Department of Natural Resources (LADNR), Louisiana Department of Wildlife and Fish, US Fish and Wildlife and the National Oceanic and Atmospheric Administration (NOAA), it was determined that passive recovery would be necessary for impacts to the swamp. A "passive remediation" process of allowing the oil to migrate out of the impacted area into the more open water of the Humble Canal, where it could be recovered, was implemented. As a result, the spill cleanup occurred over an extended period of time, from October 27, 2009 through May 1, 2010.

During this time boom was placed at all entrances to the swamp to prevent further impacts to the Humble Canal. Forest Oil also purchased a bird scare cannon and placed it in the area to prevent further impacts to wildlife.

ES&H billed Forest Oil for their personnel, equipment and disposal costs utilizing a standard rate schedule. National Oilwell Varco billed Forest Oil for equipment costs. Vanguard billed them for vacuum truck costs and Whitetail Oilfield Services billed them for pumping out oil lines for leak testing.

The Claim: On October 18, 2010, Forest Oil Corporation submitted a removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated removal costs in the amount of \$57,420.54.

Forest Oil is claiming ES&H invoiced personnel, equipment and disposal of waste costs totaling \$38,524.30. They are also claiming National Oilwell Varco equipment costs of \$6,825.07, Whitetail Oilfield Services contract costs of \$988.00, Vanguard Vacuum Truck invoice costs of \$2,687.75 and their own personnel and equipment (scare cannon) costs of \$8,395.42. Forest Oil provided a spreadsheet of these costs, which the NPFC used to approve or deny the cost compensation requested.

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (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. Removal costs are those “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) 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.

Under 33 USC §2713(a) all claims for removal costs or damages, with exceptions not applicable here, shall be presented first to the responsible party or guarantor of the source designated.

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].

Under 33 USC §2715(a) any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing 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 136.107,

“(a) The claims of subrogor (e.g., insured) and subrogee (e.g., insurer) for removal costs and damages arising out of the same incident should be presented together and must be signed by all claimants.

(b) A fully subrogated claim is payable only to the subrogee.”.

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.”

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. This is a de novo review. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

DETERMINATION OF LOSS:

A. Overview:

1. MSTC [REDACTED] provided FOSC coordination, with MST2 [REDACTED] as break-in FOSC.
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 for removal costs.
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 by the FOSC to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

On November 2, 2010, the NPFC contacted the FOSC and LADEQ to confirm that the RP was never identified, fingerprinting of oil did not match Forest Oil’s pipeline and the facts concerning Forest Oil’s claim statements are true and correct. Both the acting FOSC and LADEQ’s Vincent Cheramie responded, confirming the RP was never identified and fingerprinting did not match Forest Oil’s pipeline. They also confirmed that Forest Oil employees were on-scene and involved in the removal operations along with ES&H.

The NPFC requested additional information on three different occasions. Forest Oil provided their responses on November 22, 2010, January 25, 2011 and February 16, 2011. We analyzed all of the information submitted by the Claimant and denied the following costs:

- \$ 13.99 for costs above what the Claimant paid on invoice # 901880083
- \$ 26.13 for costs above what the Claimant paid on invoice # 901885098
- \$ 20.05 for costs above what the Claimant paid on invoice # 901889365
- \$ 160.00 because Level D PPE is not on signed daily on invoice # 1-21217
- \$ 666.00 for airboat rental costs over ES&H cost + 20% allowed on invoice # 9-2897
- \$ 810.97 for a flat bottom boat the Claimant ended up purchasing and keeping on invoice # 9-2897 11/05/09
- \$ 86.14 for miscellaneous expenses including equipment and meals with no receipts on invoice # 9-2897 11/06/09
- \$ 35.00 for ES&H employee not shown on IAP’s or daily signed logs on invoice # 9-3251
- \$ 413.79 for miscellaneous expenses including supplies and meals with no receipts on invoice # 9-3791
- \$ 276.25 for no proof of payment on invoice # 9-3546
- \$ 840.00 for lack of documentation for work hours for [REDACTED]
- \$ 485.34 for costs claimed above what [REDACTED] makes per hour
- \$2000.00 for [REDACTED] costs that were not substantiated by payroll records

\$5,833.66 are the total costs denied. See attached spreadsheet for details of these denials.

The NPFC finds all other costs are approved. The remaining invoices submitted were supported by signed dailies, proof of payment, and were consistent with the removal actions undertaken.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$51,586.88 of uncompensated removal costs and that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #910122-001. The claimant states that all costs claimed

are for uncompensated removal costs incurred by the claimant for this incident on October 27, 2009. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$51,586.88 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911005-0001. 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: \$51,586.88

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *2/18/11*

Supervisor Action: *Approved*