

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/13/2011
Claim Number	: E10642-0007
Claimant	: Louisiana Department of Environmental Quality
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$64,993.59

Facts:

On the morning of August 11, 2010 an oil well located in Paincourtville, LA blew out at approximately 0330 hours. The oil well is located 200 yards northwest of the intersection of Louisiana Highway (LA Hwy) 70 and LA Road 1004 within a sugar cane field. The blow out occurred during the completion phase of a drilling operation. Approximately 250-500 barrels of oil and gas discharged per day and 10-15 million cubic feet of natural gas per day was released within the atmosphere. Material discharged into local drainage ditches and land.

Drainage entered the Magnolia Canal south of Highway 70. The Magnolia Canal flows 1.7 miles south-southwest to the Saint Louis Canal. The Saint Louis canal flows approximately 3 miles south-southwest of Grand Bayou. Grand Bayou flows 2 miles south into Lake Verret, a navigable waterway of the United States.

The National Response Center was contacted via incident report # 950574.¹

Responsible Party

The Responsible Party has been identified as Mantle Oil & Gas, LLC (Mantle O&G), headquartered in Houston, TX. The oil rig is owned by Cajun All Well Services.

The National Pollution Fund Center (NPFC) issued a Responsible Party (RP) Notification letter to Mantle O&G in Friends Wood, Texas via email and certified mail.²

The Claimant and the Claim

Claimant, Louisiana Department of Environmental Quality (LDEQ) personnel conducted ambient air monitoring of a one mile in diameter action zone around the well. Monitoring runs were made approximately every two hours and the monitoring teams utilized the TVA model 1000B units that combine a flame ionization device (FID) with a photo ionization device (PID). Monitoring teams recorded volatile organic compound (VOC) readings in parts per million (ppm) at each monitoring point.³

Claimant also deployed the Mobile Air Monitoring Laboratory (MAML) to monitor the ambient air in the surrounding area. The MAML is a vehicle equipped with specialized air monitoring

¹ NRC Report # 950574

² Signed certified mail receipt.

³ TVA rental rates, Enrud Resources, Inc.

and support equipment. It is a self-contained mobile laboratory capable of continuous, real-time sampling and analysis. It can detect chemicals in low parts per billion levels from various environmental sources. Monitoring results from the MAML are used for screening and represent the status of the air at the time of sampling.⁴

Claimant contracted with Compliance Solutions Group (CSG) for monitoring and testing the water for oil, grease, and chloride. The samples were collected using a grab sampling technique with a sample dipping apparatus. The analysis was done in a LDEQ accredited laboratory using approved laboratory methods.⁵

The services provided by the Claimant were acknowledged by Mr. [REDACTED] FOSC, U.S. EPA.⁶

On June 12, 2011, LDEQ submitted a claim to the NPFC for reimbursement of their uncompensated equipment and labor costs.⁷ This claim is based on FEMA's Schedule of Equipment Rates⁸ and LDEQ labor rates.

This claim consists of the Standard NPFC Claim Form, LDEQ Labor and Equipment records, FEMA's Schedule of Equipment Rates, a disk with field notes, time sheets, pictures, reports, labor rates, rates for equipment, and a letter to NPFC.

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

⁴ Sampling and Analysis Plan, dtd August 12, 2010, Written by [REDACTED]

⁵ CSG Surface Water Sampling and Analysis Plan dtd August 12, 2010, written by Mr. [REDACTED] PE.

⁶ Polreps 1 through 3

⁷ LDEQ Labor and Equipment records.

⁸ FEMA Schedule of Equipment Rates dated May 1, 2008

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. The removal actions were coordinated with the Mr. [REDACTED] FOSC, U.S. EPA.
2. The incident involved the discharge and continuing substantial threat of 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 filed 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 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.

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.

The Claims Manager was able to confirm whether the costs claimed were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP). FOSC oversight was present during this period of response and the record does support the activities performed by the Claimant an appropriate activity as confirmed in the USEPA Pollution Reports.

The NPFC reviewed all of the invoicing, the daily field log information, the FOSC Pollution Reports, and compared the information billed against the pricing in schedule in place at the time services were rendered. The NPFC also verbally confirmed the presence of the Claimant with the FOSC during a phone call on or about June 16, 2011.

C. *Determined Amount:*

The NPFC determines that the OSLTF will pay \$64,993.59 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number E10642-0007 for removal costs.

AMOUNT: \$64,993.59

Claim Supervisor 

Date of Supervisor's review: *10/14/11*

Supervisor Action: *Approved*

Supervisor's Comments: