

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N11056-0001
Claimant	: State of Louisiana, Department of Public Safety
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$11,783.94

FACTS:

- 1. Oil Spill Incident:** On September 11, 2011, raw crude oil was discovered discharging from a puncture in a pipeline located in the Cedyco Manilla Village Field.¹ Manilla Village is located in Bayou Dupont, a navigable waterway of the United States. The Plaquemines and Jefferson Parish, LA operators contacted the National Response Center (NRC) via Report # 989238, which in turn notified the United States Coast Guard (USCG) Sector New Orleans.

The rate of discharge was approximately three to five gallons per hour. An over-flight was ordered by the USCG, and it reported that a good amount of oil was on the platform and surrounding area. The holding tanks were also observed to be badly damaged. The rainbow sheen was reported to be approximately one mile wide and a half mile long.²

Cedyco Corporation, the Responsible Party (RP), did not take responsibility for this spill therefore the spill was federalized and placed under Federal Project Number N11056.³

- 2. Description of removal actions performed:** The Claimant, the Louisiana Oil Spill Coordinator's Office (LOSCO)(a division of the Louisiana Department of Public Safety (LA DPS)), sent a representative to serve as the State On-Scene Coordinator (SOSC) during the response. Additionally, LOSCO served as the coordinator for all state agencies in the reimbursement process.

As the SOSC, actions included the following: attended briefings and meetings at the Incident Command (IC); assisted in the writing of Incident Action Plans during the oil spill; and attended site visits to assure compliance with IAPs and federal regulations.

The Louisiana Department of Environmental Quality (LDEQ) actions included the following: attended briefings and meetings at the IC to ensure safety and state regulatory compliance; provided updates to LOSCO and LDEQ upper management; and monitored field operations, which included clean-up oversight of affected areas of shoreline and assisting in Division Clearance Inspections once the areas were judged complete.

The Louisiana Department of Wildlife and Fisheries (LDWF) actions included the following: attended briefings and meetings at the IC; coordinated with both the State and USCG to monitor and restrict access to the impacted area, as well as to help with cleanup and removal operations; identified, recommended and oversaw response actions to help

¹ See NRC Report # 989238, dated 9/11/2011.

² See USCG Sector New Orleans Case Report # 568629, opened 9/11/2011.

³ See USCG Sector New Orleans Case Report # 568629, opened 9/11/2011.

wildlife species and habitats at risk; participated in Shoreline Cleanup Assessment Teams (SCAT); and reviewed IAPs, over-flight information and SCAT briefings.

3. **The Claim:** On June 27, 2012, LOSCO submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$11,783.94 for the services provided from September 11, 2011 through January 20, 2012. This claim is for removal costs based on the rate schedule in place at the time services were provided. Copies of the vendor rate schedules are provided in the claim file.

This claim consists of copies of the following: invoicing and associated dailies; Cover letter to the NPFC, dated 6/20/2012; OSLTF Claim Form; NRC Report # 989238; LA DPS Statement of Work; Pollution Removal Funding Authorization forms for the LA DPS, LDEQ and LDWF; AT&T Mobility phone statements; LA DPS Vehicle Mileage logs; LA DPS Labor Record; LDEQ Equipment Rental logs; LDEQ Mileage logs; LDEQ Unit logs; LDEQ Labor Record logs; LDWF Materials Summary Record logs; Bayou Fuel Marine and Hardware Supplies, Inc. invoices; third-party receipts; LDWF Equipment Rental logs; Coastal and Nongame Resources Division Boat logs; LDWF Mileage logs; LDWF Labor Record logs; pictures and internal email correspondence.

The review of the actual cost invoicing and dailies 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 consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

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. FOSC Coordination has been established via Sector New Orleans Case # 568629.⁴
2. The incident involved the report of a 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. Presentment of costs to the RP was made by the Claimant, prior to the submission of the claim. The NPFC also notified the RP and to date the NPFC has received no response.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined whether or not removal costs presented were for

⁴ See USCG Sector New Orleans Case Report # 568629, opened 9/11/2011.

actions in accordance with the NCP and what 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 Claimant states that costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from September 11, 2011 through January 20, 2012. The Claimant represents that costs it paid are compensable removal costs, payable by the OSLTF as presented by the claimant. The Claims Manager validated the costs incurred and determined which of the costs claimed were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

The Claims Manager hereby determines that the Claimant incurred \$11,768.59 of uncompensated removal costs and that 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 #N11056-0001. \$15.35 in claimed wireless phone minute costs are denied because it could not be validated, by the preponderance of the evidence, that these costs were a result of the oil spill. Additionally, it appears that the State of LA is on a long-term contract with AT&T Mobility, so it would have incurred these costs regardless of the spill as a cost of doing business.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$11,768.59 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim N11056-0001. 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: \$11,768.59

Claim Supervisor: 

Date of Supervisor's review: 7/23/12

Supervisor Action: *Approved*

Supervisor's Comments: