

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6839
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
11/02/2011

VIA EMAIL: [REDACTED]@BlankRome.com
[REDACTED]@nrcc.com
[REDACTED]@nrcc.com

VIA FedEx to Blank Rome LLP

National Response Corporation (NRC)
c/o Blank Rome LLP
Attn: Ms. Jeanne Grasso
Watergate 600 New Hampshire Ave., NW
Washington, DC 20037

Re: Claim Number E10201-001

Dear Ms. Grasso:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$6,013,003.44 is compensable for OPA claim number E10201-001.

This reconsideration determination is based on an analysis of information submitted.

All costs that are not determined as compensable are considered denied.

Our offer of payment of this amount is subject to execution of the attached three party agreement where indicated and its return to:

Director (ca)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If the agreement is not executed by all parties the offer is void. In that case no further offer will be made until such time as NRC's claim in bankruptcy has been resolved and NRC provides any additional information needed to determine what amount of any qualifying oil removal cost claim remains uncompensated and payable from the Fund..

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6831.



Chief, Claims Adjudication Division
United States Coast Guard

ENCL: Claims Summary / Determination Form
NPFC Settlement Agreement
(1) RP Audit
(2) NPFC Summary of costs spreadsheet

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E10201-001
Claimant	: National Response Corporation (NRC)
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Donna Hellberg
Amount Requested	: \$6,053,787.38

INCIDENT:

On October 23, 2009, a fire/explosion occurred at the Gulf Caribbean Petroleum Refining L.P. facility located in Bayamon, Puerto Rico (hereinafter the CAPECO facility). The CAPECO facility, a major petroleum products supplier for Puerto Rico, imports, off loads, stores and distributes petroleum products. As a result of the explosion and fire that occurred, an unknown amount of oil was discharged from the some of the tanks at the facility. Product was found in the storm water channels, on-site streams and creeks, neighboring wetlands, and off-site waters leading to San Juan Bay. The federal onscene coordinator (FOSC) determined that the deteriorating conditions of the remaining tanks posed a substantial threat of discharge to navigable waters. The responsible party (RP) for this incident is Gulf Caribbean Petroleum Refining LP.

CLAIM AND CLAIMANT:

The Claimant, the National Response Corporation (NRC), provided removal support to the RP for this incident. On or about January 7, 2010, Claimant presented its claim for removal costs in the amount of \$4,645,863.41 to the Responsible Party (RP). On February 16, 2010, National Response Corporation (NRC) presented a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs in the original amount of \$4,645,863.41. The NPFC sent the RP notification letter, dated February 19, 2010, to Mr. Domingo M. Perez of Caribbean Petroleum Refining, L.P. advising that Claimant presented a claim to the NPFC for certain uncompensated removal costs.¹ The RP acknowledged receipt of the invoices that are the subject of this claim by way of CAPECO's Financial Audit. (See Enclosure 1—RP Audit). The RP, through its insurer, reimbursed Claimant \$2,000,025.00 as partial payment for removal costs incurred by the Claimant.

On August 23, 2010, the Claimant revised its sum certain for the claim to \$6,053,787.38². These claimed costs, plus the payments made by CAPECO and its insurers in the amount of \$2,000,025.00, are identified on the RP audit summary sheet which total \$8,053,812.38 in total response costs. (See Enclosure 1 – RP Audit).

The Claimant submitted the following documents in support of its claim: Cover letter and NPFC claim form, NRC invoices and supporting documentation for each, proof of payments, NRC time and material rates, NRC subcontractor contacts, contractor

¹ See, NPFC letter, to CAPECO, re: Claim No. E10201-001, dated February 19, 2010.

² See, email from Chris Ward of NRC to Donna Hellberg of NPFC dated August 23, 2010.

agreements and rates, remittance from RP, spreadsheet of summary invoices, third party invoices, and United States Environmental Protection (USEPA) pollution reports (POLREPs). The NPFC's review of the actual cost invoice and related documents focused on: (1) whether the actions taken were compensable removal actions under OPA and the claims regulations at 33 CFR 136 (e.g. whether the actions were taken to prevent, minimize, and mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken are determined to be consistent with the National Contingency Plan (NCP) or directed by the FOOSC; (4) whether the costs were adequately documented and reasonable.; and (5) whether the Claimant's submitted costs were uncompensated.

The NPFC adjudicated the claim on December 6, 2010 and made a partial offer to the Claimant in the amount of \$191,716.91. The NPFC denied \$5,862,070.47 of costs on the grounds that the Claimant had not paid its subcontractors in full. The NPFC determined that any costs not paid by the Claimant were not "uncompensated" removal costs as set forth in the governing claims regulations under 33 CFR §136.205 entitled "Compensation allowable."

CAPECO (RP) BANKRUPTCY:

On August 12, 2010, Caribbean Petroleum Refining L.P. and two affiliated companies, Caribbean Petroleum Corporation and Gulf Petroleum Refining (Puerto Rico) Corporation, filed with the United States Bankruptcy Court for the District of Delaware voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, Case No. 10-12553 (KG) (CAPECO bankruptcy proceedings).

In August 2010, Claimant notified the NPFC that it would file a proof of claim in the CAPECO bankruptcy proceeding. On October 12, 2010, NRC filed a proof of claim reflecting its debt of \$6,895,722.71 with the bankruptcy trustee. This amount included the removal costs before the NPFC and \$729,304.37 in interest due to the Claimant on its unpaid invoices.

REQUEST FOR RECONSIDERATION:

On January 6, 2011, the Claimant requested that the NPFC reconsider its claim. At this time the NPFC understood that the NRC claim included removal costs for two subcontractors, Clean Harbors and Caribbean Enviromarine Services (CEMS). The request for reconsideration included proof of payment for all invoices associated with Clean Harbors, which constituted full payment to this subcontractor. Claimant, still maintaining that the NPFC could adjudicate the CEMS invoices even though NRC had not paid CEMS, requested that the NPFC approve an escrow payment or subrogation agreement concept that would allow the NPFC to adjudicate the claim the CEMS invoices.

In order for the NPFC to adjudicate and pay the Claimant for removal costs that it had not paid to CEMS, the NPFC determined, and the Claimant agreed, that CEMS could execute a subrogation and assignment agreement with the Claimant providing that the Claimant would acquire all rights, claims and causes of action that CEMS had under any other law.

On January 31, 2011, CEMS and the NRC executed a Subrogation and Assignment of Rights Agreement whereby CEMS agreed to subrogate to the NRC its claim for uncompensated removal costs in connection with the CAPECO incident in the amount of \$3,876,782.52. The NPFC received this agreement on February 3, 2011.

The NPFC subsequently discovered that the CEMS invoices included removal costs for eight subcontractors to CEMS. Claimant had not paid these subcontractors' invoices. The Claimant subsequently executed Subrogation and Assignment of Rights Agreements with each of the subcontractors: (1) Industrial Hydrovac Services; (2) Indutech Environmental Services; (3) MI Construction, Inc.; (4) Jorge Lopez; (5) Joaquin Lezcano; (6) Oil Energy Systems; (7) Industrial Cleaning Solutions, and (8) RAC Enterprises.³ The NPFC received the executed agreements on March 28, 2011.

In a letter dated June 8, 2011, Claimant provided a copy of the proof of claim filed by NRC in the CAPECO bankruptcy proceedings. OPA 90 provides that if a claim is presented to a responsible party and the claim is not settled within 90 days after the date on which the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 USC 2713(c)(2). It further provides that no claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim. 33 USC 2713(b)(2).

On June 21, 2011 the NPFC advised NRC that pursuant to 33 U.S.C. § 2713(b)(2) and because NRC filed a proof of claim in the CAPECO bankruptcy proceedings, the NPFC would hold the claim in abeyance until the bankruptcy court action has been resolved.

NPFC DETERMINATION ON RECONSIDERATION:

NPFC payment of a claim that pends in a bankruptcy action

OPA section 1013(c) provides that a claimant whose presented claim has been denied by a responsible party or not settled after 90 days may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. 33 U.S.C. §2713(c)(2). Further if a claim is presented in accordance with section 1013 and full and adequate compensation is unavailable, a claim for uncompensated damages and removal costs may be presented to the Fund. 33 U.S.C. §2713(d). In light of both provisions NPFC has not interpreted the election provision to mean that if a claimant elects to commence an action in court the claimant is necessarily precluded from ever coming to the Fund if, after the court action is complete, the claim remains uncompensated. The legislative history of these provisions supports NPFC's view:

“Subsections (c) and (d) provide for a second means of obtaining compensation. Subsection (c) allows for claims against the Fund where attempts to reach a settlement with the responsible party or guarantor were unsuccessful....At this point, the claimant may elect to commence an action in court, but once having decided to pursue the claim in

³ Claimant provided Subrogation and Assignment of Rights Agreements between NRC and CEMS and subrogation agreements between CEMS and: (1) Industrial Hydrovac Services; (2) Indutech Environmental Services; (3) MI Construction, Inc.; (4) Jorge Lopez; (5) Joaquin Lezcano; (6) Oil Energy Systems; (7) Industrial Cleaning Solutions, and (8) RAC Enterprises.

court, the claimant cannot come back and assert his claim against the Fund while the legal action is still pending.

Subsection (d) also permits a claim against the Fund in those instances where claimants are not adequately compensated by the responsible party or guarantor. Failure to receive full compensation could occur for a number of reasons. First, the responsible party...may have successfully invoked his limitation of liability...and the claim may exceed that limitation...For some other reason, such as insolvency, the responsible party or guarantor may not be able to satisfy all claims. Uncompensated claims could, therefore, be brought against the Fund which served as a backup for such situations."

House Report 101-242 Part 2, page 66, Committee on Merchant Marine and Fisheries (September 18, 1989):

Any claim brought against the Fund after a court action is completed would be payable from the Fund only to the extent the claim is for qualifying oil removal costs and damages under OPA, and meets other requirements as applicable including the provision at OPA section 1012(f). 33 U.S.C. §2712(f) provides that payment of any claim by the Fund is subject to the United States Government acquiring by subrogation all rights of the claimant to recover from the responsible party.

Claimant fails to provide any convincing support when it argues that filing a proof of claim in a bankruptcy proceeding is not an action in court. Plainly such a bankruptcy proceeding is before a properly constituted federal court. Such claims may be disputed by the bankrupt estate and if so the merits of the claim may be tried by the bankruptcy court, just as the merits of such claims are generally tried in a district court against a solvent responsible party. Accordingly the NPFC view has been that a claimant that files a proof of claim commences an action in court for purposes of OPA section 1013. Until the bankruptcy proceedings are resolved what rights that may be subrogable to the United State Government and what amounts may be "uncompensated" remain to be resolved. While OPA provides that a claimant may "elect" to commence an action in court, once a claimant does so, the NPFC will not approve or certify a claim for the same costs while the claimants claim pends in court. 33 U.S.C. §1013(b)(2).

NPFC view is that if a claimant commences an action in court, achieves a judgment against the responsible party for its claim, but is unable to collect on the judgment, the Fund is available to pay that claim if it is a qualifying OPA claim and the rights against the responsible party are subrogated to the United States Government. An accepted and undisputed claim in bankruptcy, where all that remains to be achieved is a share of the eventual distribution from the estate would similarly merit payment from the Fund if the accepted claim is a qualifying OPA claim and the rights against the responsible party are subrogated to the United State Government so that the pending distribution pends as a United States claim.

In this case the NPFC determines that a three-party agreement executed by the NRC, the NPFC and the bankruptcy Trustee will satisfy the OPA requirements in respect to pending court actions. The attached agreement provides that (1) the parties stipulate to a liquidated and accepted amount of \$6,013,003.44 in the bankruptcy action; (2) that the NPFC and NRC agree that NRC assigns all its rights in the bankruptcy action to the

NPFC; (3) that the Trustee agrees to the assignment of the Claimant's rights to the NPFC, and (4) that the Trustee approves the agreement. In the event that the agreement is so crafted and approved by all parties and accepted by the Trustee the NPFC will pay the claim in the amount of \$6,013, 003.44 as further addressed below. If such an agreement is not executed NPFC will defer any offer of payment until the claimant's claim is resolved in the bankruptcy action and NPFC can determine what amount of claimant's claim as adjudicated remains a qualified uncompensated claim payable under OPA.

NPFC Removal Costs Determination on Reconsideration

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. Further, a 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. 33 CFR 136.115(d). As noted above a claimant must establish the criteria provided in 33 CFR § 136.203 for removal cost claims.

The NPFC's analysis on reconsideration was a *de novo* review of the Claimant's entire claim submission.

Determination of removal costs on reconsideration:

A. Findings of Fact:

1. USEPA, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. A Responsible Party was identified. 33 U.S.C. § 2701(32). The NPFC notified the RP that a claim was filed with the NPFC for the removal costs. The RP has not made full payment of costs to date;
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(2);
5. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined which removal costs were incurred for removal actions in accordance with the NCP and whether the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205. The Claims Manager also identified denied costs and the grounds for denial, and
6. The subrogation and assignment agreement between NRC and CEMS and the subrogation agreements between CEMS and its eight subcontractors ensure that the United States is subrogated to all rights, claims, and causes of action that the claimants have under any other law.

B. Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm that the Claimant had obtained all rights, claims and causes of actions with CEMS and the CEMS

subcontractors for the 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 has determined on reconsideration that the majority of costs incurred by the Claimant and its associated vendors were reasonable and necessary in order to mitigate the effects of the incident. Upon reconsideration and information provided by the Claimant, the NPFC has determined that the costs were billed in accordance with the rate schedules in place at the time the services were rendered, unless otherwise indicated below, and consistent with the NCP.

Itemization of denied costs broken down by NRC Invoice #:

NRC Invoice # 544832 – Amount Denied = \$5,648.50
NRC Invoice # 545071 – Amount Denied = \$1,661.00
NRC Invoice # 545316 – Amount Denied = \$3,454.00
NRC Invoice # 546219 – Amount Denied = \$9,678.90
NRC Invoice # 546251 – Amount Denied = \$3,489.75
NRC Invoice # 547616 – Amount Denied = \$16,850.74

The above costs were denied on the grounds that there were unidentified differences between the amounts requested and the documentation.

Total amount denied = \$40,783.94⁴

Details of denied costs:

NRC Invoice # 544832:

CEMS Personnel and Materials denied:

11/2/09

Leoncio Cancel – Foreperson - \$1,025.00 – billed twice on the same day as a foreperson for the same period;

Jose Cardona – Laborer - \$545.00 – billed twice on the same as a laborer for the same period;

Jose Reyes – Laborer - \$545.00 – billed twice on the same day as a laborer for the same period;

Angel Santiago – Hoseperson – \$ 545.00 - billed twice in the same day; once as a laborer and once a Hoseperson for the same period. Denied the Hoseperson billing;

Jose Toledo – Laborer – \$545.00 - billed twice on the same day as a laborer for the same period;

⁴ See, Enclosure 2 – NPFC Summary of Costs spreadsheet

Julio Torres – Equipment Operator - \$785.00 - billed twice on the same day; once as a laborer and once as an equipment operator during the period;

11/5/09

Jerry Ortiz – Laborer - \$605.00 – billed twice on the same day as a laborer for the same period;

TOTAL personnel time denied = \$4,595.00

The NPFC has denied \$540.00 on CEMS equipment as there is a miscalculation on the Claimant's invoice. The NPFC approved 100% of the billed costs identified on the invoicing. CEMS has the total equipment for this period as \$195,081.25 when the line items actually total \$194,541.25.

TOTAL equipment costs denied = \$540.00

TOTAL 10% markup on denied costs = \$513.50

TOTAL denied this invoice = \$5,648.50

NRC Invoice # 545071:

Clean Harbors Personnel and Materials denied:

11/9/09

Rickie Garritt – \$170.00 – per diem charged twice for same person, same day;

11/11/09

Rickie Garritt – \$170.00 – per diem charged twice for same person, same day;

TOTAL personnel time denied = \$340.00

TOTAL 10% markup on denied costs = \$34.00

TOTAL denied for Clean Harbors on this invoice = \$374.00

CEMS Personnel and Materials denied:

11/15/09

The Claimant has the total amount invoiced for personnel on 11/15/09 as \$85,775.00 although the actual daily documentation totals \$85,055.00 therefore the NPFC denied the difference of \$720.00 due to math error.

TOTAL personnel costs denied = \$720.00

TOTAL 10% markup on denied costs = \$72.00

TOTAL denied this invoice = \$792.00

11/13/09

The Claimant billed \$30,565.00 in equipment on this day based on invoice but all line items only total \$30,115.00 therefore the NPFC denied the difference of \$450.00 due to math error.

TOTAL equipment costs denied = \$450.00
TOTAL 10% markup on denied costs = \$45.00
TOTAL denied this invoice = \$495.00
OVERALL TOTAL DENIED THIS INVOICE = \$1,661.00

NRC Invoice # 545316:

CEMS Personnel and Materials denied:

11/19/09

Eugenio Campos – Laborer - \$785.00 – duplicate billing for same person, same position on the same day;
Luis Saez – Laborer - \$785.00 - duplicate billing for same person, same position on the same day;

11/21/09

Eugenio Campos – Laborer - \$785.00 – duplicate billing for same person, same position on the same day;
Rafael Lopez – Laborer - \$785.00 - duplicate billing for same person, same position on the same day;

TOTAL personnel costs denied = \$3,140.00
TOTAL 10% markup on denied costs = \$314.00
OVERALL TOTAL DENIED THIS INVOICE = \$3,454.00

NRC Invoice # 546219:

CEMS Personnel and Materials denied:

11/30/09

Emmanuel Sabater – Equipment Operator - \$515.00 - duplicate billing for same person, as an equipment operator when billed as a laborer on the same day;

TOTAL personnel costs denied = \$515.00
TOTAL 10% markup on denied costs = \$51.50
TOTAL denied this invoice = \$566.50

12/1/11

The Claimant requested \$23,567.50 for materials on 12/1/09 although the daily for this date only totals \$15,283.50 therefore the difference of \$8,284.00 is denied as undocumented and unsupported by the record.

TOTAL material costs denied = \$8,284.00
TOTAL 10% markup on denied costs = \$828.40
TOTAL denied this invoice = \$9,112.40
OVERALL TOTAL DENIED THIS INVOICE = \$9,678.90

NRC Invoice # 546251:

Clean Harbors Equipment denied:

12/8/09

The Claimant did not provide an invoice or documents in support of equipment charges on 12/8/09 in the amount of \$3,172.50 therefore this amount is denied as undocumented and unsupported by the record.

TOTAL equipment costs denied = \$3,172.50
TOTAL 10% markup on denied costs = \$317.25
OVERALL TOTAL DENIED THIS INVOICE = \$3,489.75

NRC Invoice # 547616:

Third Party Charges

11/22/09 – Group I third party receipts - \$3,893.70 due to illegible receipts that could not be read;

11/24/09 – Group IIA third party receipts - \$565.42 due to illegible and/or missing receipts;

11/29/09 – Group IIB third party receipts - \$6,207.25 due to illegible and/or missing receipts;

11/29/09 – Group IIIA third party receipts - \$72.00 due to illegible and/or missing receipts;

12/10/09 – Group IVB third party receipts - \$4,580.49 due to illegible and/or missing receipts or documentation.

TOTAL third party costs denied = \$15,318.86
TOTAL 10% markup on denied costs = \$1,531.89
OVERALL TOTAL DENIED THIS INVOICE = \$16,850.75

Unidentified differences denied between the amount requested and the amount documented = \$1.05

TOTAL DENIED: \$40,783.94

Overall Summary by category of denied costs

Personnel and associated markup = \$3,454.00

Equipment & Materials and associated markup = \$20,478.15

Third party receipts and associated markup = \$16,850.75

Misc. difference denied = \$1.05

Total = \$40,783.94

The NPFC hereby determines that the NPFC offers, and the OSLTF is available to pay, **\$6,013,003.44** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E10201-001 upon execution of the three-party Settlement Agreement attached to this Claim Summary/Determination. 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.

In the event that the Settlement Agreement is not executed by all parties the offer is void and no further offer will be made until such time as Claimant's claim in the bankruptcy proceeding has been resolved and the Claimant provides any additional information needed to determine what amount of its qualifying oil removal costs remain uncompensated and payable from the Fund.

Claim Supervisor: 

Date of Supervisor's Review: *11/02/11*

Supervisor Action: *Determination on reconsideration approved*

Supervisor's Comments:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	Chapter 11
Caribbean Petroleum Corp., et al., ⁵	Case No. 10-12553 (KG)
Debtors.	Jointly Administered

SETTLEMENT AGREEMENT

WHEREAS, on or about February 16, 2010, National Response Corporation (“NRC”) filed a claim (NPFC Claim #910072) with the Oil Spill Liability Trust Fund (“OSLTF”), administered by the National Pollution Funds Center (“NPFC”) of the United States Coast Guard (“USCG”), under Section 1013 of the Oil Pollution Act (“OPA”), 33 U.S.C. § 2713, seeking to recover \$76,970.43 in connection with removal costs incurred by NRC, under contract with Caribbean Petroleum Refining L.P. (“CPR”), in responding to a spill that took place on November 15, 2008 at the waterfront port facility operated by CPR in Bayamón, Puerto Rico (the “2008 Spill Claim”);

WHEREAS, on or about February 25, 2010, NRC reduced its 2008 Spill Claim to \$52,336.03;

WHEREAS, on or about February 16, 2010, NRC filed a claim (NPFC Claim #E10201) with the OSLTF, under Section 1013 of OPA, 33 U.S.C. § 2713, seeking to recover \$4,645,863.41 in connection with removal costs incurred by NRC, under contract with CPR, in

⁵ The Debtors in these chapter 11 cases (along with the last four digits of each Debtor's federal tax identification number) were: Caribbean Petroleum Corporation (7836), Caribbean Petroleum Refining L.P. (1421), and Gulf Petroleum Refining (Puerto Rico) Corporation (1417). Following confirmation of the Debtors' chapter 11 plan, Caribbean Petroleum Liquidation Trust was established as the successor in interest to the Debtors, and the Debtors were dissolved. The service address for Caribbean Petroleum Liquidation Trust is: P.O. Box 361988, San Juan, Puerto Rico 00936.

responding to the October 23, 2009 explosions and fires at the former petroleum distribution terminal operated by CPR in Bayamón, Puerto Rico (the "Facility");

WHEREAS, on or about March 1, 2010, NRC filed a claim with the OSLTF, under Section 1013 of OPA, 33 U.S.C. § 2713, seeking to recover an additional \$1,407,923.97 in connection with removal costs incurred by NRC, under contract with CPR, in responding to the October 23, 2009 explosions and fires at the Facility (the two claims related to the October 23, 2009 explosions and fires at the Facility, in a total amount of \$6,053,787.38, have been treated by the OSLTF as a single claim and are referred to herein collectively as the "2009 Spill Claim");

WHEREAS, on August 12, 2010 (the "Petition Date"), CPR, and two affiliated companies, Caribbean Petroleum Corporation and Gulf Petroleum Refining (Puerto Rico) Corporation (collectively, the "Debtors"), filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), which have been consolidated for procedural purposes and are being jointly administered as Case No. 10-12553 (the "Bankruptcy Cases");

WHEREAS, on or about October 12, 2010, NRC filed a proof of claim against CPR in the amount of \$6,895,722.71 for amounts allegedly owed by CPR to NRC in connection with services provided by NRC in responding to the November 15, 2008 spill at the waterfront port location and the October 23, 2009 explosions and fires at the Facility ("NRC POC");

WHEREAS, on or about December 23, 2010, NRC agreed to accept \$51,125.41 from the OSLTF as full compensation for the removal costs sought in the 2008 Spill Claim and also agreed to assign to the OSLTF all of its rights, claims, and rights of action against any party, person, firm, or corporation that may be liable for the removal costs covered by the 2008 Spill Claim;

WHEREAS, on January 14, 2011, the OSLTF paid \$51,125.41 to NRC in connection with the 2008 Spill Claim;

WHEREAS, on or about February 4, 2011, the United States filed proofs of claim in the Bankruptcy Cases (“USCG POCs”) that asserted, on behalf of the USCG, that one or more of the Debtors were liable under the Oil Pollution Act (“OPA”), 33 U.S.C. § 2701 et seq., in the amount of \$5,776,301 for removal costs incurred by the USCG prior to the Petition Date in connection with the October 23, 2009 explosions and fire at the Facility, as well as a contingent claim in the amount of \$6,053,787 related to the 2009 Spill Claim filed by NRC with the OSLTF, which, at the time of filing of the USCG POCs, was under review by the OSLTF;

WHEREAS, on or about March 28, 2011, the USCG filed a proof of claim in the amount of \$52,609.41 against Caribbean Petroleum Corporation seeking to recover the \$51,125.41 paid by the OSLTF to NRC in connection with the 2008 Spill Claim, as well as an additional \$1,484 in costs incurred by the NPFC in connection with the processing of the 2008 Spill Claim (“USCG Supplemental POC”);

WHEREAS, on June 3, 2011, the Bankruptcy Court approved a Settlement Agreement entered into by the United States and the Debtors (the “June 2011 Settlement Agreement”) pursuant to which the Debtors agreed, inter alia, that the United States, on behalf of the USCG, would have an allowed general unsecured claim of \$5,776,301 with respect to removal costs incurred by the OSLTF at the Facility prior to the Petition Date;

WHEREAS, under the June 2011 Settlement Agreement, the United States specifically reserved all subrogated rights that the United States might obtain under Section 1015 of OPA, 33 U.S.C. § 2715, as a result of paying any claim submitted to the OSLTF if such payment was made on or after the date of lodging of the Settlement Agreement;

WHEREAS, on May 9, 2011, the Bankruptcy Court approved the Fourth Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors, the

Statutory Committee of Unsecured Creditors, and Banco Popular de Puerto Rico (the "Plan of Liquidation");

WHEREAS, the Plan of Liquidation established the Caribbean Petroleum Liquidation Trust ("Liquidation Trust"), to be administered by the Liquidation Trustee;

WHEREAS, the Liquidation Trustee has the authority, subject to the terms of the Liquidation Trust Documents and the Plan of Liquidation to, inter alia, file and prosecute objections to, and negotiate, settle, or otherwise resolve, all disputed claims and represent the Debtors' estates before the Bankruptcy Court with respect to matters concerning the Liquidation Trust;

WHEREAS, NRC and the Liquidation Trust wish to resolve the NRC POC;

WHEREAS, the United States, on behalf of the USCG, and NRC wish to resolve the 2009 Spill Claim;

WHEREAS, the United States, on behalf of the USCG, and the Liquidation Trust wish to resolve the USCG Supplemental POC, as well as any claim of the United States for reimbursement of monies to be paid to NRC in connection with the 2009 Spill Claim pursuant to the reservation of the United States, under Section 1015 of OPA, 33 U.S.C. § 2715, under the June 2011 Settlement Agreement;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 33 U.S.C. §§ 2713 and 2715.

2. Within 30 days after the date of the Bankruptcy Court's approval of this Settlement Agreement, the OSLTF shall pay NRC \$6,013,003.44 as full compensation for the 2009 Spill Claim. This payment represents a full and final release and satisfaction of all claims of NRC against the OSLTF under OPA associated with the 2009 Spill Claim.

3. NRC assigns, transfers, and subrogates to the United States, on behalf of the USCG, all rights, claims, interest, and rights of action that NRC may have against any party, person, firm, or corporation that may be liable for the amount claimed in the 2009 Spill Claim. NRC authorizes the United States to sue, compromise, or settle in NRC's name, and the United States is fully substituted for NRC and subrogated to all of NRC's rights to recover, the amount claimed in the 2009 Spill Claim from any person under any law. NRC warrants that no legal action, except the NRC POC, has been brought regarding this matter and that no settlement other than this Settlement Agreement has been or will be made by NRC or any person on NRC's behalf with any person for costs which are the subject of the 2009 Spill Claim.

4. NRC transfers to the United States, on behalf of the USCG, its rights against the Liquidation Trust under the NRC POC with respect to the amounts included in the 2008 Spill Claim and the 2009 Spill Claim (\$6,106,123.41).

5. NRC agrees to cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover all or any portion of the payment set forth in Paragraph 2 above. The cooperation shall include, but is not limited to, (a) paying the OSLTF any compensation received from any other source for the same claim within 30 days after the receipt of such funds; and (b) providing any documentation, evidence, testimony, and other support as may be necessary for the United States to recover from any other person or party the monies paid to NRC with respect to the 2009 Spill Claim.

6. The undersigned representative of NRC certifies that the information contained in the 2009 Spill Claim represents all material facts related to the claim and is true and correct to

the best of his or her information and belief. The undersigned representative of NRC understands that the misrepresentation of facts related to this matter is subject to prosecution under federal law (including, but not limited to, 18 U.S.C. §§ 287 and 1001).

7. In full and complete satisfaction of (a) the NRC POC, (b) the Supplemental USCG POC, and (c) any subrogation rights of the United States under Section 1015 of OPA, 33 U.S.C. § 2715, with respect to the payment to be made by the OSLTF to NRC with respect to the 2009 Spill Claim, the United States, on behalf of the USCG, shall have an allowed claim of \$6,070,596.85 against CPR (the "USCG Allowed Claim"), to be paid as a Class 5 General Unsecured Claim under the Plan of Liquidation.

8. The USCG Allowed Claim shall receive the same treatment under the Plan of Liquidation, without discrimination, as all other allowed Class 5 General Unsecured Claims, with all attendant rights provided by the Bankruptcy Code and other applicable law, and shall not be entitled to any priority in distribution over other allowed Class 5 General Unsecured Claims. In no event shall the USCG Allowed Claim be subordinated to any other allowed Class 5 Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

9. Distributions to the United States pursuant to this Settlement Agreement shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System ("CDCS") number, to be provided to the Liquidation Trust by the Financial Litigation Unit of the United States Attorney's Office for the District of Delaware. Such instructions shall be provided to the Liquidation Trust at the following address: P.O. Box 361988, San Juan, Puerto Rico 00936. At the time of any distribution to the United States pursuant to this Settlement Agreement, the Liquidation Trustee shall transmit written confirmation of such distribution to the United States at the addresses

specified below, with a reference to Bankruptcy Case Number 10-12553 (KG) (Bankr. D. Del.)

and the CDCS number:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Ref. DOJ File No. 90-11-3-10100

Thomas H. Van Horn
Legal Counsel
National Pollution Funds Center
U.S. Coast Guard Stop 7100
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598

10. Payment to NRC pursuant to this Settlement Agreement shall be made to XX.

11. This Settlement Agreement shall be subject to approval of the Bankruptcy Court.

The Debtors shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

12. If for any reason this Settlement Agreement is not approved by the Bankruptcy Court: (i) the Settlement Agreement shall be null and void, and the parties hereto shall not be bound under the Settlement Agreement or under any documents executed in connection herewith; (ii) the parties shall have no liability to one another arising out of or in connection with the Settlement Agreement or under any documents executed in connection herewith; and (iii) the Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

13. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein, except for those matters that were agreed to by the Debtors and the United States, on behalf of the USCG, in the June 2011 Settlement Agreement.

14. This Settlement Agreement may not be amended except by a writing signed by all the parties and approved by the Bankruptcy Court.

15. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

16. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the District of Delaware) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT IN IN
RE CARIBBEAN PETROLEUM CORP., ET AL., CASE NO. 10-12553 (KG) (BANKR. D.
DEL.).

FOR THE UNITED STATES OF AMERICA:

Date: _____

By: _____

ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

By: _____

DONALD G. FRANKEL
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Suite 616
One Gateway Center
Newton, MA 02458
617-450-0442

THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT IN IN
RE CARIBBEAN PETROLEUM CORP., ET AL., CASE NO. 10-12553 (KG) (BANKR. D.
DEL.).

FOR THE UNITED STATES COAST GUARD, NATIONAL POLLUTION FUNDS CENTER:

Date: _____

By: _____

THOMAS S. MORRISON
Division Chief, Claims Division
National Pollution Funds Center
U.S. Coast Guard Stop 7100
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598

THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT IN IN
RE CARIBBEAN PETROLEUM CORP., ET AL., CASE NO. 10-12553 (KG) (BANKR. D.
DEL.).

FOR NATIONAL RESPONSE CORPORATION:

Date: _____

By: _____

NAME
TITLE AND ADDRESS

THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT IN IN
RE CARIBBEAN PETROLEUM CORP., ET AL., CASE NO. 10-12553 (KG) (BANKR. D.
DEL.).

FOR THE CARIBBEAN PETROLEUM LIQUIDATION TRUST:

Date: _____

By: _____

NAME

Liquidation Trustee

ADDRESS OF LIQUIDATION TRUSTEE