

CLAIM SUMMARY / DETERMINATION

Claim Number:	916011-0001
Claimant:	Oil Mop, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$53,126.70

FACTS:

A. Oil Spill Incident:

On 26 June 2015, Gulf Restoration Network observed a large rainbow sheen surrounding the area of the Mesa Gulf Coast Facility, during a restoration over-flight.¹ Gulf Restoration Network immediately reported the sheen to the facility operator, as well as the National Response Center (NRC) on 26 June 2015 at 14:38 via NRC Report # 1121074. HLP Engineering reported the sheen to the NRC at 20:11 on the same day, 26 June 2015.

The sheen was located in an area surrounding the Mesa Gulf Coast production barge facility. Mesa Gulf Coast owns the production barge, its tanks and equipment and has been identified as the responsible party (RP) by the Federal On Scene Coordinator (FOSC).

The RP hired Oil Mop, LLC (OMI) to handle cleanup and response actions for this incident,² and on June 26, 2015 Oil Mop, LLC (OMI) responded to the discharge. They noticed that crude oil was migrating from the marsh grass adjacent to the facility. OMI personnel believed that the oil was crude oil that had previously discharged from the facility on November 9, 2014 and had been stranded in the marsh area during a high tide.³

On 29 June 2015, United States Coast Guard (USCG) Sector New Orleans, Incident Management Division (IMD) personnel arrived on scene to investigate the discharge and monitor the removal actions. Upon the Coast Guard's arrival on-scene, they concurred that the crude oil in the marsh grass area had been stranded after a previous spill that occurred on 09 November 2014,⁴ involving a discharge of approximately 25 barrels of oil from a 400-barrel tank storing crude oil located on the Mesa Gulf Coast facility into Lake Hermitage, a navigable waterway of the U.S. The FOSCR, PO [REDACTED] explained that the oil discharged on November 9, 2014 remained in the marsh throughout the low tides that occurred during the 2014 winter and the oil had not reached that level of the bank until the oil in the marsh began sheening into the waterway on June 26, 2015.⁵

¹ See Gulf Restoration Overflight Image.

² See Email dated 12/9/15 from Sector New Orleans to the NPFC.

³ OMI had responded to the November 2014 discharge and conducted removal actions for that incident. OMI submitted a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) under Claim #916013-0001.

⁴ See Claim # 916013-0001.

⁵ See Email dated 12/14/2015 from FOSCR to NPFC.

B. Description of the Mesa Gulf Coast Facility, Lake Hermitage Field Production Facility No. 1 per the Facility Response Plan (FRP):⁶

The production barge facility in question is an oil and gas production site covering an area of approximately 0.75 acres which, according to the IMD, is unmanned and requires minimal day to day activities. The facility is located over water in Lake Hermitage and consists of one production concrete barge and one storage barge. The production barge is associated with permitted oil and gas wells. Natural gas is removed from the facility by pipeline. The crude oil and water mixture enters the first stage of separation at the bulk separator and heater treater where the mixture is allowed to separate. Once separated the crude oil is stored in 3,000-barrel storage barge compartments awaiting transfer to marine vessel(s).⁷

C. Description of Removal Actions Performed:

As noted above this incident is associated with the November 9, 2014 discharge, Claim Number 916013-0001.⁸ OMI arrived on-scene June 26, 2015¹⁰ with response equipment to conduct cleanup operations. OMI brought personnel, vessel assets, absorbent pads, and 5" sorbent boom as needed to perform cleanup. OMI immediately deployed two 30' barge boats to begin a low pressure flush in the grassy area¹¹ using three 2" wash pumps and 30' of 2" suction hose. OMI deployed approximately ten bales of 5" sorbent boom around the marsh area.

Final response work was conducted by OMI on July 01, 2015 under the oversight of the FOSCR.

D. Presentment to the Responsible Party:

As noted above Mesa Gulf Coast, LLC is identified by the FOSC as the owner/operator of the 400-barrel storage tank that discharged the oil. The Claimant, OMI, presented its invoices and documentation associated with this claim to the RP: OMI Invoice #N1510-257, in the amount of \$57,316.40 issued to Mesa on October 28, 2015. To date, OMI has not received payment for this invoice.

It is important to note that at the time this invoice was submitted to the Fund in the amount of \$57,316.40 on November 20, 2015, it included the first day of response which was June 26, 2015 and the costs from that day were included in the total sum certain amount requested. On December 11, 2015, OMI removed the daily ticket and charges for June 26, 2015 in the amount

⁶ See, Mesa Gulf Coast Facility Response Plan, Section 1.5 p. 6

⁷ This facility can accommodate a single marine transfer barge per loading, which is typically a 5,000-barrel barge. Pile clusters are used to moor the marine transfer vessel during transfer of the crude oil from the storage tank to the marine transfer vessel.

⁸ The NPFC notes that between May 10, 2014 and July 22, 2015 the Mesa Gulf Coast production facility suffered five discharges from different tanks and equipment on the production barge requiring removal actions. The NPFC has received five (5) separate oil spill claims from this Claimant in response to oil spills that occurred at the Mesa Gulf Coast facility between May 10, 2014 and June 26, 2015: Claim # 916009-0001, in the amount of \$52,134.43; claim #916010-0001, in the amount of \$70,005.32; the instant claim # 916011-0001 in the amount of \$53,126.70, claim # 916012-0001, in the amount of \$5,237.80, and claim # 916013-0001 in the amount of \$328,551.59. The NPFC is reviewing and adjudicating each claim separately.

⁹ See, Enclosure (2) Mesa Site Diagram.

¹⁰ OMI invoice dated June 26, 2015 is not subject of this claim.

¹¹ See, OMI low pressure flush image.

of \$4,189.70, and amended its sum certain down to \$53,126.70.¹² As such, the June 26, 2015 costs are not subject to this claim.

Upon receipt of this claim submission, the NPFC sent an RP Notification Letter to the RP dated November 24, 2015. On November 25, 2015, the RP acknowledged receipt of the NPFC's notification and requested an extension of time to respond. The NPFC granted a thirty (30) day extension, giving Mesa until December 30, 2015 to respond with any information it wished the NPFC consider.¹³ On December 29, 2015, the RP sent an email to NPFC requesting an additional thirty day extension to try to settle with the Claimant. In an e-mail dated December 30, 2015, the NPFC denied the request for an extension and advised the RP that it is free to continue discussions/negotiations with the Claimant as it deems appropriate and should notify NPFC if settlement occurs.¹⁴

THE CLAIMANT AND CLAIM

On November 20, 2015, Oil Mop, LLC (OMI) submitted a removal cost claim associated with the cleanup of the Mesa Gulf Coast, LLC oil spill to the Oil Spill Liability Trust Fund (OSLTF or the Fund), asserting that Mesa failed to pay them for their uncompensated removal costs totaling \$53,126.70 as described and itemized in invoice # N1510-257.

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 or the substantial threat of a discharge of oil to navigable waters and adjoining shorelines of the United States.

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". 33 USC 2701(31) A responsible party's liability includes "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).

In the case of a facility, the responsible party is the person owning or operating the facility. 33 U.S.C. 2701(32)(B)

A "facility" means "any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil." 33 USC 2701(9)

"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.

¹² See email from Claimant to NPFC, dated 12/11/2015.

¹³ See, November 30, 2015 email from NPFC to Mesa granting 30 day ext. to settle with Claimant.

¹⁴ See, December 30, 2015 email from NPFC to Mesa rejecting extension of time to settle.

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. 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. Findings of Fact:

1. MST [REDACTED] of Sector New Orleans provided coordination for this claim in his capacity as the Federal On-Scene Coordinator's Representative (FOSCR) for this incident. He provided a lengthy writeup regarding the incident and affirmed that he oversaw the removal actions and determined that the actions undertaken by Oil Mop, LLC were consistent with the NCP¹⁵. 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 to "navigable waters."
3. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. §2712(h)(1).
4. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs claimed were associated with OPA compensable removal 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. NPFC Analysis:

It is important to note that while there are no comparison oil samples associated with this claim, the FOSC's statement and OMI's removal actions associated with this incident and the November 9, 2014 incident are credible evidence that demonstrating that this incident is a residual effect of the November 9, 2014 incident.

¹⁵ See email from MST [REDACTED] Sector New Orleans FOSCR to Mr [REDACTED], NPFC dated December 9, 2015.

The NPFC CA Division 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 136.203 (1) the actions taken were 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 National Contingency Plan or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC reviewed the OMI rate schedule that was in place at the time the services were provided; the NPFC based its adjudication of these costs on the rate schedule, the OMI invoices, the daily support logs, disposal manifests, and third party invoicing along with proof of payment for actions performed. The Claimant performed cleanup utilizing personnel, boat assets, drum skimmer, sorbent boom and pads as needed to remove the oil associated with this incident and ensured disposal was properly performed and documented. Based on its review, the NPFC determined that most of the claimed costs are reimbursable from the Fund, were actions taken to minimize and mitigate the effects of the incident, and were reasonable and necessary and were at the direction of the FOSC.

Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered, unless otherwise indicated below, and were determined by the FOSCR to be consistent with the National Contingency Plan (NCP).

The NPFC denied a total of \$259.66 in requested costs. A description of the denied costs are as follows:

1. June 28, 2015 – Total denied \$82.01

The Claimant presented meal costs in the amount of \$232.01 pursuant to the terms and conditions of its rate schedule. The Claimant did not however produce itemized food receipts which would demonstrate what was purchased and as such, the Claimant and NPFC have agreed that where itemized receipts were missing, the NPFC would allow \$15 per man per meal up to the total meal reimbursement request for a given day. As such, the NPFC allowed \$150.00.

2. June 29, 2015 – Total denied \$74.27.

The denied costs are associated with unsupported meal receipts therefore the NPFC reimbursed the Claimant based on the process described above.

3. June 30, 2015 – Total denied \$103.38

The denied costs are associated with unsupported meal receipts therefore the NPFC reimbursed the Claimant based on the process described above.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer \$52,867.04 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # 916011-0001. All reimbursable costs are for charges paid 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.

Determined Amount: \$52,867.04

Claim Supervisor

Date of Supervisor's review: *1/13/16*

Supervisor Action: *Approved*

Supervisor's Comments: