

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914140-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,800.00

FACTS:

On April 23, 2014, the CG National Response Center (NRC) received notification of a large amount of surface residual tar balls (SRBs) washed up on the beach on Horn Island, Jackson County, Mississippi, located on the Gulf of Mexico, a navigable waterway of the United States.¹ The CG Gulf Coast Incident Management Team (CG GCIMT) was notified and responded to the report and found SRBs spread throughout Segments MSJK1-006 and MSJK1-008. An email directive was issued to BP Exploration & Production (BP) to activate an oil spill response organization (OSRO) to respond for cleanup operations on Horn Island as directed.²

From April 23 through 24, 2014, Danos & Curole Marine Contractors (BP's OSRO), responded to the CG's directive of response and met with 2 CG active duty personnel on-scene. Cleanup of what appeared to be SRBs of MC252 origin began and extended through Zones 2 and 3 on the beach. As all visible material was mitigated, none was collected for disposal. During the operations, Both CG representatives and BP personnel sampled SRBs from the beach located in Segments MSJK1-006 and MSJK1-008.³

Upon receipt the MSL assigned Case Number 14-146 to the sample. In an Oil Sample Analysis Report dated April 29, 2014, the MSL determined that sample 14-146-1 contained heavy petroleum oil with characteristics different from those samples of MC 252 oil. The MSL concluded that the sample was not derived from Deepwater Horizon oil.⁴ However, upon re-analysis of the sample, using as chromatography and gas chromatography-mass spectrometry methods, the MSL clarified that the qualitative review of the PAHs and biomarker profiles indicated that the petroleum oils in the sample resulted in a new fingerprint that could not correlated to a single source based solely on chemical analysis.⁵ The biomarker profiles strongly suggested a relationship between the sample and Deepwater Horizon (MC-252) oil.⁶

HISTORY OF THE CLAIM:

On September 22, 2014, BP submitted a removal cost claim to the National Pollution Funds Center (NPFC), asserting that the oil was not Deepwater Horizon oil. Claimant sought reimbursement of its uncompensated removal costs in the amount of \$4,800.00 for services provided from April 23 through 24, 2014, which included personnel and vehicle use. The claimed removal costs are based on the rate schedule in place at the time services were provided.

¹ See NRC Report # 1080635, dated April 23, 2014.

² See email directive to BP dated April 23, 2014.

³ USCG NRC Tracker Spreadsheet, submitted with the claim by the claimant on September 22, 2014.

⁴ See MSL Case # 14-146 dated April 29, 2014.

⁵ See MSL Memo from Ms. [REDACTED], USCG MSL to Mr. [REDACTED] NPFC dated October 17, 2014.

⁶ See MSL Memo from Ms. [REDACTED], USCG MSL to Mr. [REDACTED] NPFC dated October 17, 2014.

Based on the subsequent analysis of sample number 14-146-1, the NPFC denied the claim on October 17, 2014.

BP timely sought reconsideration of the claim on December 17, 2014, arguing that the denial was arbitrary and capricious. It argued the following:

1. After initially concluding that the differences in PAH's supported a "non-match", the re-analysis seeks to adjust that conclusion, seeming to assert MSL's inability to determine whether the material was derived from DWH based upon PAH analysis.
2. Any number of weathered, light sweet Louisiana crude oils could have a similar chemical fingerprint and could "suggest a relationship" to MC-252.
3. The totality of circumstantial evidence surrounding many of the determinations points to unavoidable inconsistency that strongly suggests an error in analysis as of the 29 BP claims submitted from cleanup activity on Elmer's Island, LA, 12 of those BP claims have been paid by the NPFC while 17 of those BP claims were denied by the NPFC.

REQUEST FOR RECONSIDERATION:

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). The claimant has the burden of providing any facts and legal arguments to support its request for reconsideration.

RECONSIDERATION ANALYSIS:

The NPFC, in a request for reconsideration, performs a de novo review of the entire claim submission, including new information provided by the claimant in support of the request for reconsideration and any new information or facts independently discovered by the NPFC.

Subsequent to the NPFC denial of this claim the MSL discovered that the sampling was not conducted in accordance with accepted chain of custody protocols. Collected samples were temporarily stored in a large plastic bag with all other samples collected on that date. Thus, it is not known if the Sample 14-146-1, collected from Segments MSJK1-006 and MSJK1-008 from April 23 through 24, 2014, was in fact MC 252 oil, non MC 252 oil or a co-mingled oil where commingling occurred in the Gulf of Mexico or during collection actions.

Thus, the MSL Oil Spill Report relied upon by the NPFC in its initial denial of this claim is unreliable. The administrative record for this claim does however evidence that a BP OSRO conducted removal actions from April 23 through 24, 2014 for claim number 914140-0001. There is evidence in the record that the sample collected by BP was oil as defined by OPA. Further, BP provided the OSRO rate sheet in place at the time of the actions performed and the claimed costs were based on that rate schedule. BP provided evidence that it paid the removal costs.

Based on the evidence provided by BP and evidence collected by the NPFC and the MSL, the NPFC determines that the removal actions in this claim were associated with a mystery spill and BP is entitled to removal costs in the amount of \$4,800.00.

DETERMINED AMOUNT:

The NPFC will offer **\$4,800.00** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the OSLTF under claim # 914140-0001. 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.

Claim Supervisor: 

Date of Supervisor's Review: *2/3/15*

Supervisor Action: *Reconsideration Approved*

Supervisor's Comments: