

CLAIM SUMMARY / DETERMINATION FORM

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| Claim Number | : E13424-0001 |
| Claimant | : Complete Environmental & Remediation Co., LLC |
| Type of Claimant | : Corporate |
| Type of Claim | : Removal Costs |
| Claim Manager | : ██████████ |
| Amount Requested | : \$882,849.03 |

FACTS:

Oil Spill Incident: The United States Environmental Protection Agency (USEPA) Region IV reports¹ that on June 27, 2013, crude oil was discharged from the North Yellow Creek Field Tank Battery #4, near Shubuta Eucutta Road in Shubuta, MS. The oil migrated over land for approximately 500-600 feet before entering Nickleson Creek. Nickleson Creek flows east before joining with Eucatta Creek. The oil continued to migrate about 10 miles south of the confluence of Eucata Creek and the Chickasawhay River, a navigable water of the U.S. The discharge was estimated to be approximately 213 bbls (8,946 gallons) of crude oil.²

The owner and/or operator of the tank battery, Logan Oil, LLC., discovered the discharge and shut down the production wells associated with the tank battery. The Federal On Scene Coordinator (FOSC), Mr. Leo Francendese, mobilized to oversee the cleanup. A Mississippi Department of Environmental Quality (MDEQ) representative also arrived at the scene and a Unified Command (UC) was established with the Responsible Party, MDEQ, and Wayne County Emergency Management Agency (EMA).³ Logan Oil, LLC, owner and/or operator of the tank battery, is the Responsible Party (RP) for this incident.

The Claim and the Claimant: On June 27, 2013, the Claimant, Complete Environmental & Remediation Co., LLC (Complete Environmental or the Claimant), acting on behalf of the Responsible Party, arrived on-scene and began conducting removal actions. Claimant conducted removal actions from June 27, 2013 through July 3, 2013, at which time it discontinued providing removal action services because the Reponsible Party notified it that it would no longer fund the activities. This claim is for removal costs associated with its removal actions in the amount of \$882,849.03, which covers the period of June 27, 2013 – July 3, 2013.⁴ Complete Environmental presented its claim to the Fund on October 17, 2013.

The administrative record for this claim consists of copies of the following: cover letter dated October 11, 2013, OSLTF Claim Form dated October 10, 2013, Incident Action Plans (IAPs), Pollution Reports (Polreps), USEPA Notice of Federal Assumption of Response Activity dated July 3, 2013, USEPA Notice of Federal Interest to Mr. ██████████ dated July 1, 2013, USEPA Aministrative Order dated July 4, 2013 to Logan Oil as the Responsible Party ordering immediate removal actions, a copy of Google maps of the site location,

¹ See US EPA Region IV POLREP #1, dated 6/27/2013.

² See US EPA Region IV POLREP #4, dated 7/12/2013.

³ See US EPA Region IV POLREP #4, dated 7/12/2013.

⁴ On July 3, 2013 the EPA FOSC federalized the incident and the remaining removal actions were funded by the Oil Spill Liability Trust Fund. Removal costs incurred after July 3, 2013 are not at issue in this claim.

miscellaneous email correspondence between the Claimant and the Responsible Party insurance representatives regarding presentment of costs and follow up requests for payment status of Claimant invoices, CD of site location pictures, Claimant rate schedule, Claimant invoicing with associated daily field logs and third party receipts.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), a responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

A “responsible party”, in the case of an onshore facility means the “owner or operator” of that facility. 33 USC § 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”.

“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).

Removal costs referred to in 33 USC § 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date 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 U.S.C. §2713(c)(2).

Payment of any claim by the Fund shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party. 33 USC § 2712(f).

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 136.203, the claimant bears the burden to prove the removal costs 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 costs associated with this claim were coordinated with the EPA FOSC, United States Environmental Protection Agency Region IV.⁵
2. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified that it has filed no suit in court for the claimed uncompensated removal costs.
3. The claim was presented to the Fund within the six year period of limitations for claims 33 U.S.C. § 2712(h)(1).
4. The claim was presented to the responsible party who denied payment of the claim prior to presentment of the claim to the Fund. 33 U.S.C. § 2713(c).

B. Analysis:

The National Pollution Funds Center (NPFC) issued a RP Notification Letter on October 21, 2013 to Logan Oil upon receipt of this claim.⁶

The claims manager reviewed the actual cost invoicing and dailies and focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR Part 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.

Claimant provided its vendor rate schedule, its invoices and associated daily field logs and third party receipts.. The claims manager validated the costs incurred and determined they

⁵ See US EPA Region IV POLREP #1, dated 6/27/2013.

⁶ See RP Notification Letter dated October 21, 2013.

were appropriately billed in accordance with the rate schedule, were reasonable and necessary and were performed in accordance with the National Contingency Plan (NCP).

The oversight by the Federal On-Scene Coordinator, Mr. [REDACTED] of US EPA Region IV, was confirmed via the POLREPs, Incident Action Plans (IAPs) and internal email correspondence written by him and both Region IV and other Federal representatives that were part of the UC for this incident. Additionally, the work performed by Complete Environmental was approved by and completed in accordance with the UC response objectives as is noted in the Incident Action Plan generated for this incident. In accordance with the IAPs, the Claimant performed response actions to remove the oil from the site location and as far south as 12 miles. The response area has been identified in the IAPs as Zones A-E. The Claimant performed response actions in all zones identified by the UC up until the time the incident was federalized by the USEPA FOSC on July 3, 2013. All actions performed by the Claimant have been deemed reasonable, necessary, and performed in accordance with the NCP in order to mitigate the effects of the spill.

Based on the evidence in this claim submission and affirmation by the FOSC for the actions undertaken by Complete Environmental and its contractor, the Claims Manager hereby determines that the Claimant did incur \$882,849.03 of uncompensated removal costs and that these costs were consistent with the NCP and coordinated with the EPA FOSC. This amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by Complete Environmental and submitted to the NPFC under claim #E13424-0001. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from June 27 through July 3, 2013. Complete Environmental represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount: \$882,849.03

The NPFC hereby determines that the OSLTF will offer \$882,849.03 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim E13424-0001. 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: [REDACTED]

Date of Supervisor's review: *11/25/13*

Supervisor Action: *Approved*

Supervisor's Comments: