

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	915081-0004
<b>Claimant:</b>	Clean Gulf Associates Services, LLC
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$272,819.46

### **FACTS:**

**Oil Spill Incident:** The United States Coast Guard (USCG) Sector New Orleans reports that on August 27, 2014, a sheen was reported emanating from a flow-line leak on a shut in well located at Garden Island Bay, near Venice, LA. Garden Island Bay drains directly into the Gulf of Mexico, both of which are navigable waterways of the US.<sup>1</sup>

This incident was reported to the National Response Center (NRC) via Report # 1093583.<sup>2</sup>

**Description of removal actions performed:** Clean Gulf Associates Services, LLC (CGA) was contracted by the Responsible Party (RP), Dune Energy, to perform cleanup and removal actions that included the use of boats, skimmers, sorbents, and personnel.<sup>3</sup> CGA's daily field logs demonstrate that from 8/28/14 through 9/10/14, they provided personnel, material and equipment daily in order to perform skimming operations and remove any and all recoverable oil from surface waters as well as provide containment boom that was utilized daily.<sup>4</sup> Additionally, MST3 [REDACTED] of Sector New Orleans provide a Pollution Investigator statement dated 11/6/14 which describes the response actions performed which was to contain and recover all oil on site. The statement further provides that CGA's recovery operations continued until 9/10/14 and the site was finally cleared on 9/29/14 after disposal had been completed by OMI. Coast Guard stated that at the conclusion of the cleanup, 240bbls of oil were recovered.<sup>5</sup>

Several site visits by the USCG Incident Management Division (IMD), Louisiana Department of Environmental Quality (LA DEQ), Louisiana Department of Natural Resources (LA DNR), and the Louisiana Oil Spill Coordinator's Office (LOSCO) were conducted during this cleanup period. On September 29, 2014, the USCG IMD, LOSCO and LA DEQ all made a final site visit and agreed that the RP could remove all sorbent and hard boom on site in order to conclude cleanup efforts.<sup>6</sup>

Dune made three payments for Invoice 970390-001 and 970390-002 ~ one on December 10, 2014 in the amount of \$136,409.73, the second on January, 05, 2015 in the amount of \$100,000.00, and a final on February, 02, 2015 rendering payment in full for both invoices.<sup>7</sup> Subsequently, the Trustee for the Dune Liquidating Plan informed the Claimant that all three payments paid to CGA were pre-petition payments and must be returned to the Trustee.<sup>8</sup> The Claimant paid the requested funds to [REDACTED]

<sup>1</sup> See USCG Sector New Orleans Case Report # 698677, opened 8/27/2014.

<sup>2</sup> See NRC Report # 1093583, opened 8/27/2014.

<sup>3</sup> See Invoice Dailies for this incident, included with the claim by the Claimant on 8/31/2017.

<sup>4</sup> See CGA Invoice Dailies from 8/28/14 through 9/10/14.

<sup>5</sup> See USCG PI Statement of MST3 [REDACTED] dated 11/6/14.

<sup>6</sup> See USCG PI Statement of MST3 [REDACTED] dated 11/6/14.

<sup>7</sup> See OSLTF Claim Form dated August 31, 2017, NPFC Claim # 915081-0004.

<sup>8</sup> See letter to Clean Gulf Associates from Anderson Toblin PLLC dated July, 01, 2016.

████ on August 22, 2017.<sup>9</sup>

**Responsible Party:** The Responsible Party (RP) is Dune Operating Company (Dune), located in Venice, LA, Garden Island Bay. Shortly after this oil spill incident, the RP filed for Chapter 11 Bankruptcy.<sup>10</sup> RP Dune sold all of its assets to Trimont, including the Garden Island Bay field.

**The Claim:** On August 31, 2017, CGA presented a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) which was identified as NPFC Claim # 915081-0004; requesting reimbursement of their uncompensated removal costs in the amount of \$272,819.46 for the services provided from August 28 through September 10, 2014.<sup>11</sup> The Claimant presented its costs to Dune via the following invoices: 970390-001 (\$178,250.84), dated September 15, 2014 and 970390-002 (\$94,568.62), dated September 29, 2014.

#### **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

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<sup>9</sup> See OSLTF Claim dated August 31, 2017, NPFC Claim # 915081-0004.

<sup>10</sup> See letter to CGA from Anderson Toblin PLLC dated July 01, 2016.

<sup>11</sup> See OSLTF Claim dated August 31, 2017, NPFC Claim # 915081-0004.

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. USCG Sector New Orleans, 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);<sup>12</sup>
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23);
3. Dune Operating Company is the designated Responsible Party (RP) but has since filed Bankruptcy for which the CGA has not filed a Proof of Claim for the costs subject of this claim;
4. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. 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;
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

#### **B. Analysis:**

The National Pollution Funds Center (NPFC) Claims Manager reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed and that all costs were supported by the record, were compensable “removal actions” under the Oil Pollution Act (OPA) and the claims regulations at 33 CFR 136, whether the costs were incurred as a result of the actions, whether the actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC, and whether the costs were adequately documented and reasonable.

CGA provided a well-documented claim to show the actions it performed were for OPA related costs and that the work that they performed mitigated the effects of the oil that was discharged from the compromised well/flow-line. Additionally, the USCG Sector New Orleans confirmed what actions were performed for this incident. Based upon the evidence in this claim submission for the actions

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<sup>12</sup> See USCG Sector New Orleans Case Report # 698677, opened 8/27/2014.



undertaken by CGA along with the USCG's statement, the Claims Manager hereby determines that the Claimant has incurred \$272,819.46 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by CGA and submitted to the NPFC under claim #915081-0004.

**C. *Determined Amount:***

The NPFC hereby determines that the OSLTF will offer \$272,819.46 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915081-0004.

**AMOUNT: \$272,819.46**

Claim Supervisor:

Date of Supervisor's review: 10/03/2017

Supervisor Action: *Approved*

Supervisor's Comments: