

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	917035-0001
<b>Claimant:</b>	Oil Mop, LLC
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$7,217.05

### FACTS:

**Oil Spill Incident:** On November 10, 2016, ██████████ of Galveston Bay Energy notified the National Response Center via report # 1163727 of a 26 gallon discharge of oil from a ruptured pipeline on their facility into Trinity Bay, a Navigable Waterway of the United States.<sup>1</sup> Galveston Bay Energy hired Oil Mop, LLC to conduct removal actions.<sup>2</sup>

**Description of Removal Activities for this claimant:** Oil Mop, LLC personnel responded and conducted removal actions on November 10, 2016. The response concentrated on removing oil from the surface of the waterway using sorbent pads and sorbent sweep.<sup>3</sup>

**Responsible Party:** The Responsible Party (RP) is Galveston Bay Energy, LLC. The Claimant has asserted that they submitted the invoice to the RP on March 22, 2017 and were told by the RP that they do not have the funds to pay for the invoice as they have filed for Chapter 11 Bankruptcy.<sup>4</sup> The NPFC issued an RP Notification Letter dated August 29, 2017. To date no response has been received as of yet.<sup>5</sup>

**The Claim:** On August 29, 2017, the NPFC received a removal cost claim from Oil Mop, LLC for reimbursement of their uncompensated removal costs in the amount of \$7,217.05.<sup>6</sup> The claim is based on invoice #N1703-139 from Oil Mop, LLC in the amount of \$7,217.05.<sup>7</sup>

### 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).

<sup>1</sup> See Nation Response Center report # 1163727.

<sup>2</sup> See Claimant's OSLTF claim submission received by NPFC on August 29, 2017.

<sup>3</sup> See Claimant's OSLTF claim submission received by NPFC on August 29, 2017.

<sup>4</sup> See Claimant's OSLTF claim submission received by NPFC on August 29, 2017.

<sup>5</sup> See NPFC RP Notification Letter dated 8/29/17.

<sup>6</sup> See Claimant's OSLTF claim submission received by NPFC on August 14, 2017.

<sup>7</sup> See Oil Mop, LLC invoice N1703-139 as part of claim submission received on August 29, 2017..

"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 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. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 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. 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;
4. 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);
5. 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:***

NPFC CA 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 (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.

In reviewing the claim, the NPFC considered the Claimant’s evidence which consisted of Oil Mop, LLC invoice N1703-139, rate schedule of prices for Oil Mop, LLC, and disposal manifests. The NPFC obtained a copy of the Texas General Land Office (TGLO) claim files which demonstrates the Response Officer was on scene, monitored the actions of the Claimant and confirmed the estimated spill of approximately 26 gallons of crude oil.<sup>8</sup>

Based on its review, the NPFC has determined that the costs incurred by Claimant are compensable under the OPA. The costs were reasonable and necessary to mitigate the effects of the incident and were determined by the NPFC to be consistent with the NCP. The NPFC confirmed that OMI rates were billed in accordance with the rate schedule in place with

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<sup>8</sup> See, TGLO Spill Case file # 2016-3458.

Galveston Bay along with email confirmation from [REDACTED] of Galveston Bay approving the charges billed by OMI.<sup>9</sup>

Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the cost of materials used at the time the services were rendered and were determined by the NPFC to be consistent with the NCP. Disposal of spoiled materials was conducted in accordance with all applicable laws and regulations.

The NPFC hereby determines that the OSLTF will pay \$7,217.05 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 917035-0001. All costs claimed are for charges incurred 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.

**AMOUNT: \$7,217.05**

[REDACTED]  
Claim Supervisor: [REDACTED]

Date of Supervisor's review: *8/30/17*

Supervisor Action: *Approved*

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<sup>9</sup> See OMI Claim submission documents for claim 917035-0001.