

CLAIM SUMMARY / DETERMINATION ON RECONSIDERATION

Claim Number:	E13424-0002
Claimant:	Logan Oil, LLC
Type of Claimant:	Corporate (US)
Type of Claim:	Affirmative Defense
Claim Manager:	██████████
Amount Requested:	\$141,768.10

Incident:

On June 27, 2013, Mississippi Department of Environmental Quality (MSDEQ) was notified of a crude oil discharge from the Logan Oil, LLC, North Yellow Creek Field Tank Battery #4 (TB #4), near 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 Eucutta Creek. The oil continued to migrate about 10 miles south of the confluence of Eucutta Creek and the Chickasawhay River, a navigable water of the U.S. The discharge was estimated to be approximately 213 bbls or 8,946 gallons of crude oil.¹

Claimant and the Claim:

Claimant is Logan Oil, LLC (Logan Oil or Claimant), which owns and operates TB #4.² An above-ground 500 bbl storage tank within TB #4 was identified as the source of the discharge. Logan Oil, LLC, is the responsible party as the owner/operator.³

Logan Oil presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) on June 29, 2016, asserting that it was entitled to a complete defense under the theory that vandals had entered TB #4 and opened a drain valve and removed a plug from their secondary containment drain line. The alleged vandal also purportedly opened a manual valve on the facility's heater treater, which resulted in crude oil overflowing an above-ground storage tank and escaping through the opened drain line. Based on these allegations, Claimant sought reimbursement of \$141,768.10 in uncompensated removal and monitoring costs incurred as a result of the oil spill.

Procedural History:

On January 13, 2017, the NPFC denied the Claimant's request for an affirmative defense citing that the Claimant failed to demonstrate that a third party caused the incident; failed to show that the incident was solely caused by a third party; failed to prove it exercised due care with respect to the oil concerned; failed to prove it took precautions against foreseeable acts of third parties with respect to the oil concerned; and failed to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities.⁴

¹ See EPA Region IV POLREP 1 dated July 1, 2013.

² This claim was submitted by Claimant's attorney Watkins & Eager in a letter to the NPFC dated June 23rd 2016.

³ See EPA Region IV POLREP 1 dated July 1, 2013.

⁴ See NPFC Determination dated January 13, 2017.

Request for Reconsideration:

On February 7, 2017, the Claimant requested reconsideration of the NPFC's denial citing that Logan Oil, LLC, and others had been in settlement negotiations with the United States Department of Justice (DOJ) and Coast Guard regarding the response costs associated with the spill as well as the costs associated with their affirmative defense claim. As such, Claimant was seeking relief appropriate in order to preserve all appealed rights in light of the ongoing settlement negotiations and additional time to provide information pertinent to their claim.⁵

On February 9, 2017, the NPFC acknowledged the Claimant's request for reconsideration as timely and granted them a 90 day extension to provide additional information. The time awaiting the additional information was added to the 90 days as allowed for the NPFC to issue a determination upon reconsideration.⁶ On April 20, 2017, the NPFC acknowledged the Claimant's second request for an extension of time and granted the Claimant an additional 30 days to provide additional information. The time awaiting additional information was added to the 90 days as allowed for the NPFC to issue a determination upon reconsideration.⁷

On May 24, 2017, a consent decree was signed and affirmed by the District Court for the Southern District Mississippi Eastern Division between the Coast Guard and Logan Oil LLC, Logan Oil Services LLC, and Mr. [REDACTED] (collectively the defendants) stating that the defendants will pay the OSLTF \$1 million dollars in compensation for oil removal costs; withdraw their affirmative defense claim against the Fund with prejudice; and continue to be accountable for any new costs associated with the oil spill.⁸

Determination:

As ordered by the Court in the consent decree dated May 24, 2017, the Claimant must withdraw its affirmative defense claim against the Fund with prejudice. In doing so, the Claimant has lost any opportunity to further pursue this claim and has lost its subrogable rights. Without subrogable rights, the Claimant no longer has a compensable claim before the Fund.⁹ Therefore, the NPFC denies the claim.

Claim Supervisor: [REDACTED] [REDACTED] FOR
Date of Supervisor's review: <i>June 1, 2017</i>
Supervisor Action: <i>Denial Approved</i>

⁵ See Claimant's Request for Reconsideration dated February 7, 2017.

⁶ See letter from the NPFC to Claimant dated February 9, 2017.

⁷ See email from the NPFC to Claimant dated April 20, 2017.

⁸ See Consent Decree signed and affirmed by the District Court for the Southern District Mississippi Eastern Division dated May 24, 2017.

⁹ Payment of any claim or obligation by the Fund under this Act 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).