

## CLAIM SUMMARY / DETERMINATION

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|--------------------------|---------------|
| <b>Claim Number:</b>     | E17607-0004   |
| <b>Claimant:</b>         | WorkBox, LLC  |
| <b>Type of Claimant:</b> | Subcontractor |
| <b>Type of Claim:</b>    | Removal Costs |
| <b>Claim Manager:</b>    | [REDACTED]    |
| <b>Amount Requested:</b> | \$2,154.45    |

### FACTS:

**Oil Spill Incident:** On January 26, 2017, the United States Environmental Protection Agency (USEPA) received a report from the Louisiana Department of Environmental Quality (LDEQ) of a discharge from a 400-barrel above ground storage tank (AST) that was lacking secondary containment. The discharge migrated into a wetland connected to the Port Allen Lock, which connects with the Intracoastal Waterway, a navigable water of the United States. The 400-barrel AST, identified as Tank #2, is associated with oil well Gay Union Corporation #37, serial number 75284 in the Bayou Choctaw Oil and Gas Field.<sup>1</sup> The discharge volume was approximately 200-400 barrels.

The discharge occurred five (5) months prior to the USEPA Federal On Scene Coordinator (FOSC) becoming aware of the spill and by January 2017, the incident had not been removed adequately. Approximately 10 acres of wetlands have been impacted by the oil spill and the primary known impact is to wildlife resources in and around the wetlands.<sup>2</sup> LDEQ indicated that the spill occurred as early as August 2016, but went unreported to the National Response Center (NRC). The Louisiana Department of Natural Resources (LDNR) conducted several site visits between August 2016 and November 2016.<sup>3</sup>

**Responsible Party (RP):** The operator of the lease associated with this discharge is Metairie Energy Corp.; therefore, they are the responsible party (RP). LDNR records show that Mr. [REDACTED] is the President of BPR Enterprises and the listed owner for the associated well. Mr. [REDACTED] is also the listed Vice President of Metairie Energy Company, Inc., operator of the well and designated RP by the USEPA FOSC.<sup>4</sup> On January 31, 2017, the USEPA FOSC, Ms. [REDACTED], issued A Notice of Federal Interest (NOFI) to Mr. [REDACTED] of Metairie Energy Company, Inc. c/o BPR Enterprises, Inc. which has Mr. [REDACTED] listed as the company President.<sup>5,6</sup>

**Description of Removal Activities:** On January 31, 2017, A & M Associates, Inc. (A&M) received notification from the RP, Mr. [REDACTED], requesting them to oversee the spill site as a representative of Metairie Energy, Inc. A&M mobilized to the spill location on January 31, 2017 and upon arrival, they jointly prepared a response plan and performed an assessment with Metairie Energy, Inc., LOSCO and the USEPA. The response was agreed to begin on

<sup>1</sup> See USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.2 "Site Description".

<sup>2</sup> See USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.2.2 "Description of Threat".

<sup>3</sup> See USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.3 "Preliminary Removal Assessment/Removal Site Inspection Results".

<sup>4</sup> See LADNR Lease Facility Inspection Report dated August 29, 2016 for well serial # 75284 operated by Metairie Energy Company, Inc.

<sup>5</sup> See USEPA Notice of Federal Interest (NOFI) dated January 31, 2017.

<sup>6</sup> See Metairie Energy Company, Inc. corporate filing information via Louisiana Secretary of State Business filings website.

February 2, 2017 and the spill was estimated to have affected four (4) wetland areas and one (1) culvert area that covered approximately ten (10) acres.<sup>7</sup>

**Background:** On November 9, 2017, the NPFC received a removal cost claim from A&M for reimbursement of uncompensated removal costs. Included in A&M's claim were subcontractor costs associated with work performed by WorkBox, LLC (WorkBox). A&M hired WorkBox as a subcontractor on March 1, 2017 to provide disposal, distribution and sanitation equipment relative to the oil spill response.<sup>8</sup> Costs claimed by A&M for duties performed by WorkBox remained unpaid by the OSRO. The NPFC informed A&M that all costs unpaid by Claimant could not be approved for payment by the OSLTF. A&M notified the NPFC that all costs unpaid to WorkBox were a result of the RP ceasing payment to A&M, and the OSRO lacking the funds to pay WorkBox.

On March 13, 2018, the NPFC issued a letter to WorkBox notifying them that the RP has ceased payment to A&M, and that all remaining unpaid costs performed by WorkBox in association to the oil spill removal should be submitted to Metairie Energy Corporation.<sup>9</sup> The NPFC informed WorkBox that they can submit their costs to the NPFC if the RP does not respond within 90 days of their claim submission, or if the RP outright denies the claim. WorkBox submitted their claim to the RP on February 16, 2018, and the RP has since issued no response to WorkBox.<sup>10</sup>

**The Claim:** On July 2, 2018, the NPFC received a removal costs claim from WorkBox for reimbursement of its remaining uncompensated removal costs for equipment expenses and energy, environment and compliance surcharges in the total unpaid amount of \$2,154.45.<sup>11</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).

"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

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<sup>7</sup> See Incident Action Plan for the period of 1/31/17 – 2/1/17.

<sup>8</sup> See WorkBox, LLC and A&M Associates, Inc. customer agreement document dated March 3, 2017.

<sup>9</sup> See WorkBox, LLC notification letter dated March 13, 2018.

<sup>10</sup> See Email containing Phone Conversation with [REDACTED] dated July 11, 2018.

<sup>11</sup> See Claim E17607-0004 submitted on July 2, 2018.

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. USEPA representative’s [REDACTED] and [REDACTED] served as the Federal On-Scene Coordinator’s (FOSC) for this incident and they determined that the actions undertaken by all parties were consistent 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. This incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters. To establish the substance as an “oil”, the NPFC relied heavily on the

scientific evidence available in two other Metairie claims (Claim No.s E17607-0001- Oil Mop, LLC and E17607-0002- Enhanced Environmental & Energy Services)<sup>12</sup>;

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 within the six year period to file claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager [REDACTED] has thoroughly reviewed all documentation submitted with Claim E17607-0004 and determined that 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 to be consistent with the NCP in accordance with the NPFC delegation of authority for determination of consistency, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that all costs requested in this claim were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by Workbox, the NPFC has determined that the payable costs were billed in accordance with the rate schedule and/or contractual agreements in place at the time the services were rendered, and were determined by the FOSC to be consistent with the NCP.

The NPFC hereby determines that the OSLTF will pay \$2,154.45 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # E17607-0004. 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.

**AMOUNT: \$2,154.45**

Claim Supervisor: [REDACTED] [REDACTED]

Date of Supervisor’s review: 7/17/2018

Supervisor Action: Approved

Supervisor’s Comments:

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<sup>12</sup> See Claim E17607-0001 Determination Letter and Claim E17607-0002 Determination Letter.