

CLAIM SUMMARY / DETERMINATION

Claim Number:	919016-0001
Claimant:	Oil Mop, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$176,088.07
Determination:	Offer in the amount of \$166,670.78

EXECUTIVE SUMMARY:

At approximately 1110 on April 3, 2018, Marine Safety Unit (MSU) Houma received notification from Summit Oil and Gas, LLC that a crude oil storage tank located in Bay Jaque developed a leak and subsequently caused an estimated 108 barrels of Louisiana crude to discharge directly into Bay Jaque, a tributary of Bayou Lafourche, a navigable waterway of the United States.¹ The owner and operator of the facility is Summit Oil & Gas, LLC (Summit) and is thus the responsible party (RP) as defined by the Oil Pollution Act of 1990 (OPA).² The RP reported the incident to the National Response Center on the same day as the spill.³ The RP hired Oil Mop LLC⁴ (“OMI”, “OMIES” or “claimant”) to contain the oil and perform response activities.⁵ OMI arrived on site on April 3, 2018.⁶

OMI presented its uncompensated removal costs to the RP on May 7, 2018 and May 21, 2018.⁷ Having not received payment from the RP,⁸ OMI presented to the National Pollution Funds Center (NPFC) its uncompensated removal cost claim seeking \$176,088.07. The claim was dated February 12, 2018⁹ and received by the NPFC on February 12, 2019.¹⁰ The NPFC thoroughly reviewed all documentation submitted with the claim, reviewed Coast Guard and state documentation, analyzed the applicable law and regulations, and after careful consideration has determined that \$166,670.78 of the requested \$176,088.07 is compensable and offers this amount as full and final compensation for this claim.¹¹

¹ April 3, 2018 email from MST1 ██████████, FOSCR to Ms. ██████████, NOAA providing details of the incident.

² 33 U.S.C. § 2701.

³ National Response Center (NRC) Report # 1208362 dated April 3, 2018.

⁴ The claim was submitted by Oil Mop LLC, but within the claim it is referenced as OMIES. According to ██████████ in the attachment to his April 11, 2019 email, the company was acquired by a new owner. The acronym is interchangeable.

⁵ USCG Pollution Responder Statement dated April 3, 2018.

⁶ OMI Invoice # N1805-059 dated May 7, 2018 for dates April 3, 2018 to April 10, 2018.

⁷ Optional OSLTF claim form dated February 12, 2018, question #5.

⁸ See, 33 CFR 136.103(c). (A claimant must first present a claim for uncompensated removal costs to the RP. After ninety days, if the RP has not settled the claim, the claimant may present it claim to the NPFC).

⁹ Presumably, the form was accidentally dated “2018”, and likely should have been dated February 12, 2019.

¹⁰ OMI claim submission.

¹¹ 33 CFR 136.115.

I. INCIDENT, RESPONSIBLE PARTY AND REMOVAL OPERATIONS:

Incident

According to the RP, at 1045 on April 3, 2018, [REDACTED], the owner of Summit, arrived at the site and discovered that a tank was leaking oil.¹² He and a contract pumper began deploying boom. They shut in the well and called [REDACTED], Manager Business Development at Summit and notified the National Response Center. They started transferring the oil into another tank.¹³ The tank leaked about 108 barrels of crude oil¹⁴ into Bay Jaque, a tributary of Bayou Lafourche, a navigable waterway of the United States that is connected to the Gulf of Mexico.¹⁵

Responsible Party

The owner and operator of the facility was identified as Summit Oil & Gas LLC.¹⁶ As such, it is the responsible party for the incident.

On February 13, 2019, the NPFC issued a Responsible Party Notification Letter to Summit Oil & Gas, LLC.¹⁷ The NPFC did not receive a response to the Notification Letter from the RP.

Recovery Operations

The U.S. Coast Guard Marine Safety Unit (MSU) Houma was the Federal On-Scene Coordinator (FOSC) and oversaw the response and removal operations.¹⁸

At 1048 on April 3, after being notified of the spill by Mr [REDACTED], [REDACTED] called Summit's spill contractor, OMI. At 1555, OMI arrived on scene with personnel and equipment, and deployed more boom and started skimming operations.¹⁹ OMI and its subcontractors provided full oil spill response services to clean up the oil and dispose of it. Services were provided from April 3, 2018 through May 7, 2018.²⁰

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990²¹ require all claims for removal costs or damages be presented to the responsible party before seeking compensation from the NPFC.²²

¹² Letter from Summit to Louisiana Department of Environmental Quality (LDEQ) dated April 9, 2018.

¹³ *Id.*

¹⁴ USCG MSU Houma "Pollution Responder Statement".

¹⁵ *Id.*

¹⁶ Email from [REDACTED] to the NPFC dated February 15, 2019.

¹⁷ NPFC RP Notification Letter to Summit Oil & Gas, LLC dated February 13, 2019.

¹⁸ USCG MSU Houma "Pollution Responder Statement".

¹⁹ Letter from Summit to LDEQ dated April 9, 2018.

²⁰ Dates listed on daily Field Service Tickets.

²¹ 33 U.S.C. § 2701 *et seq.*

²² 33 CFR 136.103.

OMI states that it presented its invoices to the RP in May of 2018.²³ In July 2018, the RP notified OMI that it forwarded OMI's invoices to its insurer and asked OMI to revise its invoices to align with the insurer's parameters for acceptance and payment.²⁴ In October 2018, the RP offered to pay OMI \$149,800 to satisfy OMI's billings. The RP stated that if OMI did not accept that amount, it would pay other creditors instead.²⁵ OMI did not agree to the reduced amount, and states in its claim that it was paid nothing by the RP.²⁶

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after ninety days of receipt, a claimant may elect to present its claim to the NPFC.²⁷ On February 12, 2019, the NPFC received a claim for uncompensated removal costs from OMI. The claim included OMI invoices for its labor, equipment and third party costs totaling \$176,088.07.²⁸

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the OSLTF.²⁹ As a result, 5 U.S.C. § 555 (e) requires the NPFC to provide a brief statement explaining its determinations. This determination is issued to satisfy that requirement for the Claimant's claim against the OSLTF.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.³⁰ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³¹ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and finds facts and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

A responsible party is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.³² A responsible party's liability is strict, joint, and several.³³ When enacting the Oil Pollution Act

²³ OMI claim submission cover letter.

²⁴ Letter from Summit to OMIES dated July 17, 2018.

²⁵ Letter from Summit to OMIES dated October 29, 2018.

²⁶ OMI claim submission cover letter.

²⁷ 33 CFR 136.103.

²⁸ OMI claim submission.

²⁹ 33 CFR Part 136.

³⁰ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011) "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." citing *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010).

³¹ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

³² 33 U.S.C. § 2702(a).

³³ See, H.R. Rep. No. 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

(OPA), Congress “explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim’s recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills.”³⁴ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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.”³⁵ The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”³⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.³⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁸ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.³⁹

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the Federal On-Scene Coordinator (FOSC) or determined by the FOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.⁴⁰

The NPFC analyzed each of these factors and determined that the majority of the costs incurred by OMI and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined that the costs invoiced were generally billed in accordance with the contracted rates between the parties.⁴¹ The NPFC audited the third party subcontractor costs in accordance with invoices and proof of payment. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing, and approved third

³⁴ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002)(citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

³⁵ 33 U.S.C. § 2701(31).

³⁶ 33 U.S.C. § 2701(30).

³⁷ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁸ 33 CFR Part 136.

³⁹ 33 CFR 136.105.

⁴⁰ 33 CFR 136.203; 33 CFR 136.205.

⁴¹ OMI 2018 Emergency Rate Schedule.

party expenses were verified. All approved costs were supported by adequate documentation which included invoices and evidence of payment.

The amount of compensable costs is \$166,670.78 while \$9,417.29 was deemed non-compensable for the following reasons:

Invoice N1805-059

1. OMI charged \$110 each for per diem for several employees over several days. According to its rate schedule OMI charges \$110 for per diem if employees travel farther than 50 miles from their home office and require lodging. NPFC requested information to justify why OMI charged per diem for certain employees. OMI stated that they were assigned from offices more than 50 miles from the job site and worked long hours.⁴² However, when asked to identify the home office for each individual employee for which per diem was charged,⁴³ OMI did not respond. The job site was only 15 miles from the OMI office from which OMI deployed.⁴⁴ NPFC denies the \$3,740.00 of per diem charged because OMI has not demonstrated that it was warranted.
2. OMI charged for 24 poly coated suits (\$25.00/each) on April 5, 2018; however, only 17 personnel were on scene. Justification for the seven extra suits was not provided. As such, the extra \$175.00 for poly coated suits is denied.
3. OMI charged \$760.51 for fuel on April 5, 2018. In accordance with the rate schedule, NPFC only allowed cost plus 10% for fuel that was documented by detailed gas station receipts. Only \$473.27 of fuel was properly documented. After the 10% premium adjustment, NPFC allowed \$520.60, resulting in a denial of \$239.91 in unsubstantiated fuel costs and associated markup.
4. OMI charged \$263.35 for fuel on April 6, 2018. In accordance with the rate sheet, NPFC only allowed cost plus 10% for fuel that was documented by detailed gas station receipts. Only \$138.70 of fuel was properly documented. After the 10% premium adjustment NPFC allowed \$152.57, resulting in a denial of \$110.78 in unsubstantiated fuel costs and associated markup..
5. OMI charged \$425.25 for fuel on April 9, 2018. In accordance with the rate sheet, NPFC only allowed cost plus 10% for fuel that was documented by detailed gas station receipts. Only \$192.90 of fuel was properly documented. After the 10% fuel premium adjustment NPFC allowed \$212.14, resulting in a denial of \$213.11 in unsubstantiated fuel costs and associated markup.⁴⁵

⁴² Attachment to email from ██████ to NPFC dated April 11, 2019.

⁴³ Email from NPFC to OMI dated April 12, 2019.

⁴⁴ Attachment to email from ██████ to NPFC dated March 14, 2019.

⁴⁵ Of note, to support a portion of the fuel expense on April 9, 2018, the claimant submitted a photograph of a fueling pump with a handwritten note on it stating "boat fuel 4/9". The photograph does not provide the location, time, or date of the fueling; nor proof that it was paid, as would a detailed receipt. The NPFC has determined that this photograph is not sufficient evidence of a fuel expense.

6. OMI charged \$202.16 for lunch on April 10, 2018. In accordance with the rate schedule, NPFC would only allow cost plus 20% for lunch that was documented by a detailed receipt. The \$25.15 meal purchase for two people in Houma was not in or near the job location. The credit card receipt for the \$143.32 lunches was not detailed and the attached guest check was illegible. All claimed meal costs of \$202.16 on this date are denied.
7. On April 27, 2018, OMI charged for analytical costs of subcontractor EASI, LLC. The invoiced amount by OMI is \$775.00, but OMI's documentation only shows that the invoiced amount from EASI and paid by OMI was \$167.00. The \$608.00 difference is denied as unsubstantiated and not in accordance with the OMI rate schedule terms in place at the time services were rendered.
8. On April 27, 2018, OMI charged for two disposals of \$1,000 each. The disposal invoices and proof of payment were for \$750.00 each. OMI invoiced for 50 yards of waste at \$40.00 per-yard. OMI did not provide documentation that shows the origin of the charged, \$40.00 per-yard rate. Despite Mr. [REDACTED]'s email that states OMI charges cost plus 33.3% for disposal, this charge remains irreconcilable. It does not appear that OMI charged markup, but rather charged a per yard rate that is not in accordance with the rate schedule terms for third party expenses or otherwise substantiated. The two \$250.00 differences totaling \$500.00 are denied.
9. On April 27, 2018, OMI charged \$200.00 for an administrative fee. Neither the rate schedule nor the service contract provide for such a fee. This fee is denied as not in accordance with the rate schedule terms.

Including a \$0.01 reduction for an unexplained handwritten adjustment by OMI, the total amount denied for Invoice N1805-059 is \$5,988.98.

Invoice N1805-328

1. On April 11, 2018, OMI charged \$198.69 for fuel including the 10% markup. However, the actual calculation results in a \$0.01 lower value. The \$0.01 difference is denied.
2. OMI used rounding that resulted in five \$1.50 overcharges over five days when it provided half-price equipment. The \$7.50 total for rounding differences are denied.
3. On April 27, 2018, OMI charged for disposal of \$1,000.00. The disposal invoice was for \$750.00. The disposal invoice and proof of payment were for \$750.00. OMI invoiced for 25 yards of waste at \$40.00 per-yard. As above, OMI did not provide documentation that shows the origin of the charged, \$40.00 per-yard rate. Despite Mr. [REDACTED]'s email that states OMI charges cost plus 33.3% for disposal, this charge remains irreconcilable. It does not appear that OMI charged markup, but rather charged a per yard rate that is not in accordance with the rate schedule terms for third party expenses or otherwise substantiated. The \$250.00 difference is denied.
4. OMI invoiced for the charges of the subcontractor, Kent Energy. OMI lists Kent Energy's ticket #167254-A for \$1,884.23 and ticket #167254-B for \$1,390.81 on

April 18, 2018, for trucks, fuel surcharges, and driver hours to take the roll-off boxes to the disposal facility and back to the site. However, the Kent Energy invoice #26848 covers ticket #167254 without the A and B designations. The total invoiced by Kent Energy was \$1,805.00, covering trucks for two transports of roll-off boxes, but did not charge for everything on the ticket. OMI provided proof of payment of \$1,805.00 to Kent Energy. The respective \$839.23 and \$630.81 differences are denied as not supported by the record. There was also an unexplained \$0.01 adjustment added by OMI. It is denied. Only the \$1,805.00 billed by Kent and paid by OMI is approved.

5. OMI invoiced for the charges of the subcontractor, Kent Energy. OMI lists Kent Energy's charges of \$1,365.80 on April 19, 2018 for a truck, fuel surcharge, and driver hours to transport a roll-off box to the disposal facility and back. However, the Kent Energy invoice #27783 only charged OMI for the cost of the truck at \$760.00. OMI paid Kent \$760.00. The \$605.80 difference is unsubstantiated and denied.
6. OMI invoiced \$250.00 for the charges of the subcontractor, Premier Industrial Services via Premier's invoice #15300 to transport a roll-off box back to Adler Tank Rentals. However, Premier only invoiced and OMI only paid \$125.00. The \$125.00 difference is unsubstantiated and denied.
7. OMI invoiced \$250.00 for the charges of the subcontractor, Premier Industrial Services via Premier's invoice #15638 to transport a roll-off box back to Adler Tank Rentals. However, Premier only invoiced and OMI only paid \$125.00. The \$125.00 difference is unsubstantiated and denied.
8. OMI invoiced \$1,175.00 for two rented roll-off boxes. OMI claimed the costs in accordance with its own rate schedule even though they rented the boxes from Adler Tank Rentals. OMI provided copies of the Adler invoices and proof of payment totaling \$452.25, which the NPFC allows. The \$722.75 difference is denied as it is not in accordance with the rate schedule terms for third party expenses. Additionally, OMI charged a separate tax on the claimed \$1,175.00, which was not paid by OMI on the charged service. The proper tax amount was on the Adler invoices and was allowed in the approved amount paid to Adler above.

Including a \$0.01 reduction for an unexplained rounding difference the total denied for Invoice N1805-0328 is \$3,428.31.

Overall Denied Costs = \$9,417.29⁴⁶

VII. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the NPFC offers OMI \$166,670.78 as full compensation for its uncompensated OPA removal costs.

⁴⁶ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.



Claim Supervisor: [Redacted]

Date of Supervisor's review:

Supervisor Action: *Approved*