

CLAIM DETERMINATION

Claim Number:	919019-0001
Claimant:	Environmental Safety and Health Consulting Services, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$59,083.10
Action Taken:	Offer in the amount of \$43,556.75

EXECUTIVE SUMMARY:

On April 9, 2015, Saratoga Resources, Inc. (Saratoga or RP) notified Forefront Emergency Management, LP (Forefront), who notified the National Response Center (NRC) of a discharge of approximately 1 barrel of motor oil from a compressor skid located at its Grand Bay Compressor Station in Plaquemines Parish, Louisiana which substantially threatened the Grand Bay, a navigable waterway of the United States.¹ Forefront made notifications to the United States Coast Guard (USCG) Sector New Orleans Incident Management Division (Sector New Orleans IMD), the United States Environmental Protection Agency (EPA),² and the Louisiana Department of Environmental Quality (LDEQ).³ LDEQ was the State On-Scene Coordinator (SOSC), and Sector New Orleans IMD was the Federal On-Scene Coordinator (FOSC). The RP hired Environmental Safety and Health Consulting Services, Inc. (ES&H or Claimant) to perform the cleanup and response operations. ES&H commenced operations on April 9, 2015.⁴

On September 15, 2015, ES&H presented its uncompensated removal costs to the RP. The RP made partial payment to ES&H on October 13, 2015,⁵ but has since filed Chapter 11 Bankruptcy.⁶ Having not received payment from the RP,⁷ ES&H presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$59,083.10 on March 13, 2019.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$43,556.75 of the requested \$59,083.10 is compensable and offers this amount as full and final compensation of this claim.⁹

¹ National Response Center Report #1113094.

² Saratoga Resources Incident Action Plan for Operational Period 1 prepared by Forefront dated April 9, 2015.

³ Forefront notification letter to Louisiana Department of Environmental Quality dated April 14, 2015.

⁴ Saratoga Resources Incident Action Plan for Operational Period 1 prepared by Forefront dated April 9, 2015.

⁵ See, Saratoga Resources, Inc. receipt #021556 dated October 13, 2015.

⁶ US Bankruptcy Court Case #15-50748 dated October 13, 2015.

⁷ 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. 33 CFR 136.103(c).

⁸ ES&H claim submission.

⁹ 33 CFR 136.115.

I. INCIDENT, RESPONSIBLE PARTY, AND RECOVERY OPERATIONS:

Incident

On April 9, 2015, the United States Coast Guard National Response Center (NRC) received notification that a compressor skid overflowed, discharging approximately 1 barrel of motor oil into the adjacent Roseau Cane Marsh at the Grand Bay Compressor Station in Plaquemines Parish, Louisiana, which substantially threatened the Grand Bay, a navigable waterway of the United States.¹⁰

Responsible Party

Saratoga Resources, Inc. is the owner of the Grand Bay Compressor Station. The EPA identified Saratoga as the RP on April 9, 2015.¹¹ On October 13, 2015, the RP filed Chapter 11 Bankruptcy.¹² Acknowledging the bankruptcy, the NPFC did not issue a RP notification letter.

Recovery Operations

On April 9, 2015, the RP hired Environmental Safety and Health Consulting Services, Inc. (ES&H or Claimant) to perform response and cleanup operations. ES&H, the other relevant parties, and the FOOSC agreed to a plan in which ES&H would perform all remedial activities within the 10' x 30' area and 10' x 10' area of Roseau Cane Marsh impacted.¹³ ES&H was deemed present for cleanup operations and responsive to the oil spill incident by both the SOSOC and EPA.¹⁴ The FOOSC for the oil spill incident supported observation of an oil sheen incident which posed a substantial threat to the environment, and cited an effective response effort by an unconfirmed OSRO.¹⁵

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁶ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.¹⁷

ES&H stated it submitted its request for compensation to the RP for \$67,474.60 via Invoice #1-39325, dated September 15, 2015.¹⁸ The RP presented payment to ES&H in response to Invoice #1-39325 in the amount of \$8,391.50 on October 13, 2015,¹⁹ but has since filed Chapter 11 Bankruptcy.²⁰ The ES&H invoice was created in accordance with ES&H's Master Service

¹⁰ National Response Center Report #1113094.

¹¹ Environmental Protection Agency Facility Inspection Report dated April 9, 2015.

¹² US Bankruptcy Court Case #15-50748 dated October 13, 2015.

¹³ Saratoga Resources Incident Action Plan for Operational Period 1 prepared by Forefront dated April 9, 2015.

¹⁴ Email from Mr. [REDACTED] (SOSOC) to the NPFC dated April 2, 2019, and Email from Mr. [REDACTED] (US EPA) to the NPFC dated April 3, 2019.

¹⁵ Email from MST1 [REDACTED] (FOOSC) to the NPFC dated April 1, 2019.

¹⁶ 33 U.S.C. § 2701 *et seq.*

¹⁷ 33 CFR 136.103.

¹⁸ ES&H Invoice #1-39325 dated September 10, 2015 for \$67,474.60.

¹⁹ *See*, Saratoga Resources, Inc. receipt #021556 dated October 13, 2015.

²⁰ US Bankruptcy Court Case #15-50748 dated October 13, 2015.

Agreement with Saratoga Resources, Inc. dated August 13, 2014, and signed by both parties on August 14, 2014 and August 18, 2014, respectively.²¹ The RP has not settled the claim.

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.²² On March 14, 2019, the NPFC received a claim for uncompensated removal costs from ES&H. The claim included ES&H invoices for its labor, equipment and third party costs totaling \$67,474.60,²³ and the RP's proof of payment on October 13, 2015 in the amount of \$8,391.50.²⁴ The costs claimed total \$59,083.10.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁵ 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.²⁶ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁷ 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:

On March 14, 2019, ES&H submitted a claim to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs for personnel, equipment and associated expenses for \$59,083.10.²⁸

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.²⁹ A responsible party's liability is strict, joint, and several.³⁰ When enacting OPA, Congress

²¹ ES&H/Saratoga Resources, Inc. Master Service Agreement dated August 13, 2014.

²² 33 CFR 136.103.

²³ Original claim submission.

²⁴ See, Saratoga Resources, Inc. receipt #021556 dated October 13, 2015.

²⁵ 33 CFR Part 136.

²⁶ 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).

²⁷ 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).

²⁸ Original ES&H claim submission # 919019-0001.

²⁹ 33 U.S.C. § 2702(a).

³⁰ See, H.R. Rep. No. 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

“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.”³¹ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal cost 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.”³² 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.”³³

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.³⁴ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁵ 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.³⁶

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 FOSC or determined by the FOSC to be consistent with the National Contingency Plan.³⁷
- (d) That the removal costs were uncompensated and reasonable.³⁸

³¹ *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).

³² 33 U.S.C. § 2701(31).

³³ 33 U.S.C. § 2701(30).

³⁴ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁵ 33 CFR Part 136.

³⁶ 33 CFR 136.105.

³⁷ US Coast Guard Sector New Orleans was assigned to this incident. On April 1, 2019, Sector New Orleans IMD verified being at the incident but cited no case completion or logging of photographs in response to the oil spill. To ensure that ES&H met its burden with respect to this factor, the NPFC coordinated with the regional office’s of the U.S. Environmental Protection Agency and Louisiana Department of Environmental Quality which were both present for this incident. After analyzing the spill and the actions taken by ES&H, the EPA and LDEQ opined that the actions taken were consistent with the National Contingency Plan and that ES&H was indeed present in response to the oil spill. We agree. Evidence provided by the Claimant as a justification of costs supports ES&H presence in response to the oil spill between April 1, 2019 through April 21, 2019.

³⁸ 33 CFR 136.203; 33 CFR 136.205.

The NPFC analyzed each of these factors and determined the majority of the costs incurred by ES&H and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined that the costs invoiced were billed in accordance with the contracted rates between the parties, including all third party services. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing, including but not limited to, all third party expenses.³⁹ All approved costs were supported by adequate documentation which included invoices and proofs of payment.

The amount of compensable costs is \$43,556.75 while \$15,526.35 was deemed non-compensable for the following reasons:

1. ES&H Invoice #1-39325 seeks to recover costs for personnel compensation, equipment costs and fuel charges between May 1, 2015 and July 31, 2015.⁴⁰ Upon careful review of photographs, Incident Action Plans (IAP's) and daily field tickets provided in the claim submission, the NPFC deemed the cleanup complete on April 21, 2015.⁴¹ Claimant provided supervisor logs in response to the NPFC's request for evidence supporting the claim of oil spill response post April 21, 2015.⁴² The supervisor logs did not provide sufficient proof of cleanup activity post April 21, 2015 as required by the governing claims regulations, and no additional information was submitted as evidence. All expenses for personnel compensation, equipment costs and fuel charges incurred after April 21, 2015 are, therefore, not compensable.⁴³

Overall Denied Costs = \$15,526.35⁴⁴

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, ES&H's request for uncompensated removal costs in the amount of \$59,083.10 is approved in the amount of \$43,556.75.

³⁹ ES&H Emergency Response Rate Schedule, January 1, 2015.

⁴⁰ Enclosure 3 - Invoice #1-39325, Line Item's 183 through 252.


⁴¹ Saratoga, GB Compressor Station IAP's dated April 9, 2015 through April 21, 2015.

⁴² ES&H Supervisor Logs dated May 1, 2015, May 22, 2015 and June 15, 2015.

⁴³ US Coast Guard Sector New Orleans was assigned to this incident. On April 1, 2019, Sector New Orleans IMD verified being at the incident but cited no case completion or logging of photographs in response to the oil spill. To ensure that ES&H met its burden with respect to this factor, the NPFC coordinated with the regional office's of the U.S. Environmental Protection Agency and Louisiana Department of Environmental Quality which were both present for this incident. After analyzing the spill and the actions taken by ES&H, the EPA and LDEQ opined that the actions taken were consistent with the National Contingency Plan and that ES&H was indeed present in response to the oil spill. We agree. Evidence provided by the Claimant as a justification of costs supports ES&H presence in response to the oil spill between April 1, 2019 through April 21, 2019.

⁴⁴ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

Because this determination is a settlement offer⁴⁵, the claimant has 60 days in which to accept; the failure to do so automatically voids the offer.⁴⁶ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁷ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: 

Date of Supervisor's review: *4/17/19*

Supervisor Action: *Approved*

⁴⁵ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the compensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR §136.115(a).

⁴⁶ 33 CFR §136.115(b).

⁴⁷ *Id.*