

## CLAIM DETERMINATION

<b>Claim Number:</b>	919021-0001
<b>Claimant:</b>	Oil Recovery Co., Inc.
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$6,162.65
<b>Action Taken:</b>	Offer in the amount of \$6,162.65

### **EXECUTIVE SUMMARY:**

The M/V VISHVA VINAY (“VISHVA” or “vessel”) discharged approximately 5 liters of oily sludge water into the Mobile River, a navigable waterway of the United States. Shipping Corporation of India, Ltd., (“India, Ltd.” or “RP”) who owned and operated the vessel is the responsible party (RP) as defined by the Oil Pollution Act of 1990.<sup>1</sup> Nord-Sud Shipping, Inc. (“Nord-Sud”) serves as the U.S. Correspondent for India, Ltd. Oil Recovery Co., Inc. (“Oil Recovery” or “Claimant”), was hired by Nord-Sud on behalf of India, Ltd. as the Oil Spill Response Organization (OSRO) for the incident. Having not received payment from the RP after ninety days,<sup>2</sup> Oil Recovery presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$6,162.65.<sup>3</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that the requested \$6,162.65 is compensable and offers this amount as full and final compensation of this claim.<sup>4</sup>

### **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

#### ***Incident***

On May 9<sup>th</sup>, 2018, the M/V Vishva Vinay discharged approximately 5 liters of oily sludge into the Mobile River, a navigable waterway. The Oil Recovery Company was hired by the responsible party to clean up the discharge. However; while the sludge was being transferred from the M/V Vishva Vinay to the Oil Recovery Company truck, another vessel passed by in the channel causing the M/V Vishva Vinay to lose tension on two of its mooring lines. This caused the coupling on the hose nearest to the Oil Recovery Company truck to break off allowing for the contents of the hose to be discharged back into the waterway. Seeing as oil was discharged back into the Mobile River, a navigable waterway of the United States, it was necessary for the oil to be cleaned up out of the waterway. Oil Recovery Company also cleaned off the hull of the M/V Vishva Vinay because it also had oil product on the hull due to the second discharge.<sup>5</sup>

CG Sector Mobile arrived on site, serving as Federal On Scene Coordinator’s Representative (FOSCR) for the oil spill incident and determined that the discharged into a navigable waterway

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<sup>1</sup> 33 U.S.C. § 2701(32).

<sup>2</sup> 33 CFR 136.103(c).

<sup>3</sup> Oil Recovery Co., Inc. claim submission dated April 11, 2019.

<sup>4</sup> 33 CFR 136.115.

<sup>5</sup> May 15, 2019 email from PO ██████████, FOSCR, to NPFC.

and required cleanup.<sup>6</sup> In compliance with the FOSCR's determination, Nord-Sud hired the Oil Recovery Co., Inc. on behalf of India Ltd., who responded on May 9, 2018 and placed sorbent pads in the water, and cleaned the side of the vessel.<sup>7</sup> The cleanup activities were completed on May 9, 2018.<sup>8</sup>

### ***Responsible Party***

The owner of the M/V VISHVA VINAY is Shipping Corporation of India, Ltd., a foreign based company.<sup>9</sup> The US Coast Guard Sector Mobile identified India, Ltd. as the RP on May 9, 2018.<sup>10</sup> Nord-Sud Shipping, Inc. serves as the U.S. Correspondent for India, Ltd.

O'Brien's Response Management ("O'Briens") serves as the vessel's official Oil Spill Response Company<sup>11</sup>, and Lamorte, Burns & Co., Inc., served as the vessel's Pollution & Indemnity insurer (P&I Club).<sup>12</sup> Lamorte, Burns & Co., Inc. replied to a request for payment of costs on February 22, 2019, informing Oil Recovery that the RP had appointed Fowler Rodriguez Counselors at Law to assist in the payment of claims associated with the oil spill incident.<sup>13</sup>

### ***Recovery Operations***

Oil Recovery Co., Inc. received notification from Nord-Sud on behalf of the RP, requesting it to handle the spill response at which time they mobilized to the spill location on May 9, 2018.<sup>14</sup> Upon arrival, they placed sorbent pads in the water to absorb the oil and cleaned the sides of VISHVA that had oil residue from the discharge.<sup>15</sup> Oil Recovery's completed all response actions on May 9, 2018.<sup>16</sup>

## **II. CLAIMANT AND RP:**

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>17</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>18</sup>

Oil Recovery presented its costs to the RP for \$8,154.29 on May 10, 2018. Nord-Sud agreed to pay the pumpoff costs totaling \$1,991.64,<sup>19</sup> which left the remaining total of costs in the amount of \$6,162.65.

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<sup>6</sup> USCG Notice of Federal Interest dated May 9, 2018.

<sup>7</sup> May 15, 2019 email from PO [REDACTED], FOSCR, to NPFC..

<sup>8</sup> Oil Recovery Co. Inc. of Alabama Work Order #18 015 11 dated May 9, 2018.

<sup>9</sup> USCG Port State Control Report of Inspection- Form A dated May 9, 2018.

<sup>10</sup> May 15, 2019 email from PO [REDACTED], FOSCR, to NPFC.

<sup>11</sup> In this capacity, O'Brien's worked as the RP's Spill Management Team (SMT).

<sup>12</sup> Email from O'Briens Response Management to Oil Recovery Co., Inc. dated February 8, 2019.

<sup>13</sup> Email from Lamorte, Burns & Co., Inc. to Oil Recovery Co., Inc. dated February 22, 2019.

<sup>14</sup> Oil Recovery Co., Inc. Work Order #18-015-11 dated May 9, 2018.

<sup>15</sup> May 15, 2019 email from PO [REDACTED], FOSCR, to NPFC..

<sup>16</sup> Oil Recovery Co., Inc. claim submission dated April 11, 2019.

<sup>17</sup> 33 U.S.C. § 2701 *et seq.*

<sup>18</sup> 33 CFR 136.103.

<sup>19</sup> Email reply from Nord-Sud Shipping to Oil Recovery Co., Inc. dated May 10, 2018.

Nord-Sud forwarded the additional costs totaling \$6,162.65 to the vessel's official Oil Spill Response Company, O'Brien's. On February 8, 2019, O'Brien's stated that the costs submitted had been forwarded to the vessel's P&I club and provided Oil Recovery with contact information for Lamorte, Burns & Co., Inc.<sup>20</sup> On February 22, 2019, Lamorte, Burns & Co., Inc. informed Oil Recovery that the vessel's owners had appointed Fowler Rodriguez to assist in the payment of costs associated with the spill.<sup>21</sup> On February 28, 2019, [REDACTED] of Fowler Rodriguez notified Oil Recovery that he was no longer with the law firm and that Fowler Rodriguez ceased doing business at the end of 2018.<sup>22</sup> The Claimant has received no further communications from the RP..

### **III. CLAIMANT AND NPFC:**

When a RP has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.<sup>23</sup> On April 24, 2019, the NPFC received a claim for uncompensated removal costs from Oil Recovery dated April 11, 2019. The costs presented to the NPFC are in the amount of \$6,162.65. The amount of costs presented to Nord on behalf of the RP come to a total amount of \$8,154.29. Those costs are broken down via email as : \$1,991.64 for pump off services and \$6,162.65 for spill response. The email states costs associated with damages to a truck and hoses will be sent later.<sup>24</sup> The claim to the NPFC consists of \$2,641.25 for labor, \$2,771.40 for equipment and \$750.00 for disposal; totaling \$6,162.65.<sup>25</sup>

The items cited on the daily work report and field tickets correspondent with the oil spill response matched the costs submitted. However, the Invoice submitted with Oil Recovery's original claim submission contained damaged truck part costs totaling \$510.18 that were not included in the submission and labor costs totaling \$2,405.00; \$236.25 less than the \$2,641.25 claimed. An Oil Recovery representative explained to the NPFC via telephone that they had submitted a modified version of the original invoice which had been edited after O'Brien's reviewed and audited the costs and subsequently disapproved a \$236.25 difference in labor costs.<sup>26</sup> In support of their claim, Oil Recovery provided an email from O'Brien's dated May 14, 2018 that verifies their disapproval of the costs<sup>27</sup> and submitted a copy of the original invoice dated May 11, 2018 that identifies labor costs in the amount of \$2,641.25 identified in the original claim submission.<sup>28</sup> The Claimant has chosen not to present the additional \$510.18 for the damaged truck and hose parts listed on the original invoice provided in their claim submission.

### **IV. DETERMINATION PROCESS:**

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<sup>20</sup> Email from O'Briens Response Management to Oil Recovery Co., Inc. dated February 8, 2019.

<sup>21</sup> Email from Lamorte, Burns & Co., Inc. to Oil Recovery Co., Inc. dated February 22, 2019.

<sup>22</sup> Email from [REDACTED] to Oil Recovery Co., Inc. dated February 28, 2019.

<sup>23</sup> 33 CFR 136.103.

<sup>24</sup> Email from Oil Recovery Co., Inc. to Nord-Sud Shipping dated May 10, 2018.

<sup>25</sup> Oil Recovery Co., Inc. claim submission received April 24, 2019.

<sup>26</sup> Phone Conversation between [REDACTED] and Claims Manager [REDACTED] dated April 25, 2019.

<sup>27</sup> Email from O'Brien's Response Management to Oil Recovery Co., Inc. dated May 11, 2018.

<sup>28</sup> Original Invoice #36367 dated May 11, 2018.

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>29</sup> 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.<sup>30</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>31</sup> 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.<sup>32</sup> A responsible party's liability is strict, joint, and several.<sup>33</sup> When enacting 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."<sup>34</sup> 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."<sup>35</sup> 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."<sup>36</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.<sup>37</sup> The NPFC has promulgated a comprehensive set of

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<sup>29</sup> 33 CFR Part 136.

<sup>30</sup> 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).

<sup>31</sup> 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).

<sup>32</sup> 33 U.S.C. § 2702(a).

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

<sup>34</sup> *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.).

<sup>35</sup> 33 U.S.C. § 2701(31).

<sup>36</sup> 33 U.S.C. § 2701(30).

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

regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>38</sup> 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.<sup>39</sup>

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 FOOSC or determined by the FOOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.<sup>40</sup>

The NPFC analyzed each of these factors and determined that the costs incurred by Oil Recovery and submitted to the NPFC 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.<sup>41</sup> All approved costs are supported by adequate documentation which included invoices and proofs of payment.

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Oil Recovery's request for uncompensated removal costs in the amount of \$6,162.65 is approved.

Because this determination is a settlement offer<sup>42</sup>, the claimant has 60 days in which to accept; the failure to do so automatically voids the offer.<sup>43</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>44</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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<sup>38</sup> 33 CFR Part 136.

<sup>39</sup> 33 CFR 136.105.

<sup>40</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>41</sup> Oil Recovery Co., Inc. Rate Schedule revised January 2012.

<sup>42</sup> 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).

<sup>43</sup> 33 CFR §136.115(b).

<sup>44</sup> *Id.*

[REDACTED]

Claim Supervisor:

Date of Supervisor's review: *5/20/19*

Supervisor Action: *Approved*