

CLAIM DETERMINATION

Claim Number:	E17607-0005
Claimant:	Treo Staffing, LLC
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$3,891.52
Action Taken:	Offer in the amount of \$2,237.33

EXECUTIVE SUMMARY:

A 400-barrel above ground storage tank (AST) discharged oil into a wetland which connects with the Intracoastal Waterway. Metairie Energy Company (“Metairie” or “RP”) who owned and operated both the field of discharge and the AST is the responsible party (RP) as defined by the Oil Pollution Act of 1990.¹ A&M Associates, Inc. was hired by the RP as the Spill Manager for the incident. A & M hired Treo Staffing, LLC (“Treo” or “claimant”), as a subcontractor who provided temporary employees that assisted with oil spill removal and response. Treo presented its uncompensated removal costs to the RP. Having not received payment from the RP after ninety days,² Treo, presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$3,747.65.³ On December 20, 2018, Treo Staffing sent an email to the NPFC amending its sum certain to \$3,891.52.⁴ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, the NPFC has determined that \$2,237.33 of the requested \$3,891.52 is compensable under the Oil Pollution Act and the remaining \$1,654.19 is not compensable because \$391.10 in costs were not supported by the existing service agreement or supporting documentation; \$357.20 in costs claimed as part of Treo invoice # 32617-73 were previously paid by A&M to Treo via A&M check # 005270 therefore this amount is denied as not uncompensated; and the remaining \$905.89 in legal fees are denied as a non-OPA compensable removal cost. NPFC offers \$2,237.33 to Treo Staffing, LLC., as complete compensation for its claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

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

¹ 33 U.S.C. § 2701(32).

² 33 CFR 136.103(c).

³ Treo Staffing OSLTF claim form dated November 5, 2018.

⁴ December 20, 2018 email from Treo to NPFC changing sum certain from \$3,747.65 to \$3,891.52.

as Tank #2, is associated with oil well Gay Union Corporation #37, serial number 75284 in the Bayou Choctaw Oil and Gas Field.⁵ 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.⁶ 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 2016.⁷

Responsible Party

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.⁸ Metairie Energy Corp. is the operator of the lease associated with this discharge; therefore, they are the 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.¹⁰

Recovery Operations

On January 31, 2017, A & M Associates, Inc. (A&M) received notification from the RP, Mr. [REDACTED], requesting it 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 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.¹¹

On November 9, 2017, the NPFC received a removal costs claim from A&M for reimbursement of uncompensated removal costs. Included in A&M's claim were subcontractor costs associated with work performed by Treo Staffing, LLC (Treo) temporary employees that were used to augment the A & M Associates, Inc. staff during oil spill response. A&M hired Treo as a subcontractor on February 3, 2017 to provide experienced personnel to assist A&M

⁵ USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.2 "Site Description".

⁶ USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.2.2 "Description of Threat".

⁷ USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.3 "Preliminary Removal Assessment/Removal Site Inspection Results".

⁸ USEPA Notice of Federal Interest (NOFI) dated January 31, 2017.

⁹ Metairie Energy Company, Inc. corporate filing information via Louisiana Secretary of State Business filings website.

¹⁰ LADNR Lease Facility Inspection Report dated August 29, 2016 for well serial # 75284 operated by Metairie Energy Company, Inc.

¹¹ See NPFC Claim # E17607-003 claim submission dated November 9, 2017. Incident Action Plan for the period of 1/31/17 – 2/1/17..

with spill response activities.¹² Some of the labor costs billed to A&M for project duties performed by Treo employees in the capacity of contract labor, remained unpaid by the A&M to Treo. A&M notified the NPFC that all costs unpaid to Treo were a result of the RP ceasing payment to A&M which resulted in its inability to pay the remaining costs to Treo Staffing, LLC.¹³

On March 13, 2018, the NPFC issued a letter to Treo Staffing, LLC notifying them that the RP has ceased paying A&M, and that all unpaid costs incurred by Treo associated with Metairie Energy oil spill incident should be presented to Metairie Energy Corporation.¹⁴ The NPFC informed Treo Staffing, LLC that it could submit its costs to the NPFC if the RP did not respond within 90 days from the date the RP received Treo's request for payment, or if the RP denied the claim.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

Treo presented a letter to the RP itemizing the final amount requested for \$3,891.52¹⁸ This submission was inclusive of all costs for Treo's labor, legal fees and included time invoices, all Daily Job Calculation Worksheets, Echols & Associates, LLC invoices and a copy of the certified mail sent by legal counsel requesting payment of debt from the RP. The RP has not settled the claim.¹⁹

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.²⁰ On November 15, 2018, the NPFC received a claim for uncompensated removal costs from Treo dated November 5, 2018. The costs presented to the NPFC in the amount of \$3,747.65 did not match those submitted to the RP and could not be substantiated using the information submitted with the claim. On December 20, 2018, Treo withdrew the costs and resubmitted their claim for \$3,891.52.²¹ The revised sum certain to the NPFC on December 20, 2018, now matched the amount requested of the RP via a Treo letter dated April 19, 2018, that indicated the costs claimed were for Treo labor costs totaling \$2,985.53, and costs accrued from attorney fees in the amount of \$905.99. The total amount claimed is \$3,891.52.²²

¹² Treo Staffing, LLC and A&M Associates, Inc. service agreement document dated February 4, 2017.

¹³ See NPFC claim # E17607-003 dated November 9, 2017 by A&M Associates, Inc.

¹⁴ Treo Staffing, LLC notification letter dated March 13, 2018.

¹⁵ *Id.*

¹⁶ 33 U.S.C. § 2701 *et seq.*

¹⁷ 33 CFR 136.103.

¹⁸ Treo request for compensation letter to Metairie Energy dated April 19, 2018.

¹⁹ Treo claim submission dated November 5, 2018.

²⁰ 33 CFR 136.103.

²¹ December 20, 2018 email from Treo to NPFC amending sum certain to \$3,891.52.

²² December 20, 2018 email from Treo to NPFC amending sum certain to \$3,891.52.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²³ 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.²⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁵ 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.²⁶ A responsible party's liability is strict, joint, and several.²⁷ 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."²⁸ 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."²⁹ 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."³⁰

²³ 33 CFR Part 136.

²⁴ 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).

²⁵ 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).

²⁶ 33 U.S.C. § 2702(a).

²⁷ See, H.R. Rep. No. 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

²⁸ *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.).

²⁹ 33 U.S.C. § 2701(31).

³⁰ 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.³¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³² 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.³³

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.
- (d) That the removal costs were uncompensated and reasonable.³⁴

The NPFC analyzed each of these factors and determined the majority of the contract labor costs incurred by Treo and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC has determined that the OPA compensable approved costs were billed in accordance with the contracted rates between the parties. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing. All approved costs were supported by adequate documentation which included invoices and proofs of payment.³⁵

The amount of compensable costs is \$2,237.33 while \$1,654.19 is deemed non OPA compensable for the following reasons:³⁶

1. The costs related to Treo's 1.5% monthly service charge for overdue costs is denied as these costs are not for spill response and are not OPA compensable removal costs. Total monthly service charges denied are \$231.18;
2. The costs related to Treo personnel gas allowances is denied because the service agreement failed to identify gas allowances as an agreed upon reimbursement and the daily records did not provide adequate support for the hours and costs specified and as such, are deemed unsubstantiated. Total gas allowance denied costs are \$160.00;
3. A&M made payment to Treo in the amount of \$1,000.00 on November 29, 2017 via check 005270. Treo cites distributing \$642.98 towards Invoice 31217-73, and distributing the additional \$357.02 towards Invoice 32617-73. The NPFC cannot

³¹ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³² 33 CFR Part 136.

³³ 33 CFR 136.105.

³⁴ 33 CFR 136.203; 33 CFR 136.205.

³⁵ See A&M Associates claim # E17607-0003 for incident specific information that is relevant to this claimant as a subcontractor of A & M Associates, LLC.

³⁶ Enclosure 3 to this determination provides a detailed analysis of these costs.

pay Treo for costs already paid by A&M. The \$357.02 that are part of Invoice # 32617-73 are denied as not uncompensated removal costs.

4. The costs related to legal fees are denied because the costs are not associated with the removal of oil and are not OPA compensable removal costs. Total legal fees denied are \$905.99.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Treo's request for uncompensated removal costs in the amount of \$3,891.52 is approved in the amount of \$2,237.33.

Because this determination is a settlement offer³⁷, the claimant has 60 days in which to accept; the failure to do so automatically voids the offer.³⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *2/14/19*

Supervisor Action: *Offer approved*

³⁷ 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).

³⁸ 33 CFR §136.115(b).

³⁹ *Id.*