

CLAIM DETERMINATION

Claim Number:	E17607-0006
Claimant:	Tanner Services, LLC
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,980.00
Action Taken:	Offer in the amount of \$1,980.00

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 Tanner Services, LLC (“Tanner” or “claimant”), as a subcontractor to provide materials for use during the response and cleanup. Tanner presented its uncompensated removal costs to the RP. Having not received payment from the RP after ninety days,² Tanner, presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$1,980.00.³ 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 \$1,980.00 is compensable and offers this amount as full and final compensation of this claim.⁴

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 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

¹ 33 U.S.C. § 2701(32).

² 33 CFR 136.103(c).

³ Tanner Services claim submission dated December 10, 2018.

⁴ 33 CFR 136.115.

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”.

(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 FOISC, 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.⁸⁹ 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 FOISC.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 Tanner Services, LLC (Tanner). A&M hired Tanner as a subcontractor on March 20, 2017 to provide materials, as well as delivery and distribution of the materials relative to the oil spill response.¹² Costs claimed by A&M for duties performed by Tanner remained unpaid therefore the NPFC did not compensate A&M Associates in its claim submission for the costs associated with Tanner Services, LLC. The NPFC informed A&M that all costs unpaid could not be approved for payment by the OSLTF. A&M notified the NPFC that all costs unpaid to Tanner were a result of the RP ceasing payment to A&M which resulted in its inability to to pay Tanner Services, LLC.¹³

On March 13, 2018, the NPFC issued a letter to Tanner Services, LLC. notifying them that the RP ceased paying A&M, and that all unpaid costs incurred by Tanner associated with the

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.

¹² Email Tanner to NPFC dated February 7, 2019.

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

Metairie Energy oil spill incident should be presented to Metairie Energy Corporation.¹⁴ The NPFC informed TannerServices, 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 its 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 Tanner presented its invoice to the RP for \$1,980.00¹⁸ on June 6, 2018.¹⁹ The RP has not settled the claim.

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 January 18, 2019, the NPFC received a claim for uncompensated removal costs from Tanner dated December 10, 2018. The costs presented to the NPFC in the amount of \$1,980.00 matched those submitted to the RP on June 6, 2018, and the claim included Tanner's delivery and supply costs totaling \$1,980.00. The total amount claimed is \$1,980.00.²¹

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²² 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.²³ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁴ 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.

¹⁴ Tanner Services, LLC notification letter dated March 13, 2018.

¹⁵ *Id.*

¹⁶ 33 U.S.C. § 2701 *et seq.*

¹⁷ 33 CFR 136.103.

¹⁸ Tanner letter dated June 5, 2018.

¹⁹ Tanner claim submission dated December 10, 2018..

²⁰ 33 CFR 136.103.

²¹ Tanner claim submission dated December 10, 2018 for Tanner Invoice # E19908A dated March 21, 2017.

²² 33 CFR Part 136.

²³ *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).

²⁴ *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).

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.²⁵ A responsible party's liability is strict, joint, and several.²⁶ 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."²⁷ 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."²⁸ 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."²⁹

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.³⁰ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³¹ 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.³²

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.³³

²⁵ 33 U.S.C. § 2702(a).

²⁶ See, H.R. Rep. No. 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁷ *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.).

²⁸ 33 U.S.C. § 2701(31).

²⁹ 33 U.S.C. § 2701(30).

³⁰ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³¹ 33 CFR Part 136.

³² 33 CFR 136.105.

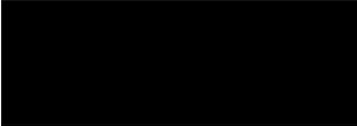
³³ 33 CFR 136.203; 33 CFR 136.205.

The NPFC analyzed each of these factors and determined the material costs incurred by Tanner Services, LLC and submitted herein are compensable removal costs based on the supporting documentation provided when combined with the corroborating facts documented in A & M Associates's NPFC claim # E17607-0003 that substantiates the need for sand replacement following the removal of above ground storage tanks and petroleum contaminated soils.³⁴ The NPFC has determined that the costs invoiced 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.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Tanner's request for uncompensated removal costs in the amount of \$1,980.00 is approved.

Because this determination is a settlement offer³⁵, the claimant has 60 days in which to accept; the failure to do so automatically voids the offer.³⁶ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁷ 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: <i>2/13/19</i>
Supervisor Action: <i>Approved</i>

³⁴ USEPA Polrep #3 dated July 11, 2017.

³⁵ 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).

³⁶ 33 CFR §136.115(b).

³⁷ *Id.*