

CLAIM DETERMINATION

Claim Number:	E17607-0007
Claimant:	Oil Mop, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$12,932.10
Action Taken:	Offer in the amount of \$12,932.10

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 Oil Mop, LLC (“OMI” or “claimant”), was hired by the RP as the Oil Spill Response Organization for the incident. Having not received payment from the RP after ninety days,² OMI, presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$1,079,398.17,³ later denied by the NPFC.⁴ In response to the NPFC’s denial, OMI reviewed multiple sample analysis documents of products discharged by the spill, and submitted all findings with its reconsideration of the claim, later deemed OPA compensable and subsequently adjudicated by the NPFC.⁵ Having not received payment from the RP after ninety days⁶ for costs incurred to review the sample analysis documents, OMI, presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$12,932.10.⁷ 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 \$12,932.10 is compensable and offers this amount as full and final compensation of this claim.⁸

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.⁹ 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

¹ 33 U.S.C. § 2701(32).

² 33 CFR 136.103(c).

³ Oil Mop, LLC claim submission dated May 22, 2017.

⁴ Signed Determination for Claim E17607-0001 dated November 28, 2017.

⁵ Signed Determination for Claim E17607-0001 dated March 2, 2018.

⁶ 33 CFR 136.103(c).

⁷ Oil Mop, LLC claim submission dated February 18, 2019.

⁸ 33 CFR 136.115.

⁹ USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.2 “Site Description”.

to wildlife resources in and around the wetlands.¹⁰ 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 2016.¹¹

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.¹²¹³ 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.¹⁴

Recovery Operations

Oil Mop, LLC (OMI) received notification from the RP, Mr. [REDACTED], requesting it to oversee the spill site as a representative of Metairie Energy, Inc., and mobilized to the spill location on February 1, 2017. Upon arrival, they jointly prepared a response plan and performed an assessment with Metairie Energy, Inc., LOSCO and the USEPA. The spill was estimated to have affected four (4) wetland areas and one (1) culvert area that covered approximately ten (10) acres.¹⁵ OMI's response began on February 2, 2017, and response to the spill continued through April 30, 2017.¹⁶ OMI's removal activities were limited to the contaminated surface water in the surrounding wetlands and on vegetation and debris in the area but did not include soil or sediment removal.

On May 22, 2017, the NPFC received a removal costs claim from OMI for reimbursement of uncompensated removal costs. Included in OMI's claim were sample analysis documentation associated with the products released at the spill site. The NPFC reviewed all documentation and determined these products were not oils as defined by the Oil Pollution Act of 1990, but were CERCLA and hazardous substances.¹⁷

On December 27, 2017, OMI requested reconsideration of its claim and in support of its request provided the NPFC through its legal representative, Mr. [REDACTED] of Breazeale, Sachse & Wilson, LLP, with a letter brief¹⁸ and forty exhibits,¹⁹ including in the claim submission OMI's further review of the sample analysis of products discharged at the spill site. The NPFC reviewed all documents submitted in reconsideration of the claim and concurred with the results finding that the products discharged at the spill site were OPA compensable oils as defined by the Oil Pollution Act of 1990. As such, the NPFC

¹⁰ USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.2.2 "Description of Threat".

¹¹ USEPA Metairie Energy PolRep #1 dated February 02, 2017, section 1.1.3 "Preliminary Removal Assessment/Removal Site Inspection Results".

¹² USEPA Notice of Federal Interest (NOFI) dated January 31, 2017.

¹³ Metairie Energy Company, Inc. corporate filing information via Louisiana Secretary of State Business filings website.

¹⁴ LADNR Lease Facility Inspection Report dated August 29, 2016 for well serial # 75284 operated by Metairie Energy Company, Inc.

¹⁵ See NPFC Claim # E17607-0003 claim submission dated November 9, 2017. Incident Action Plan for the period of 1/31/17 – 2/1/17.

¹⁶ See NPFC Claim # E17607-001 claim submission dated May 22, 2017.

¹⁷ Signed Determination for Claim E17607-0001 dated November 28, 2017.

¹⁸ Breazeale, Sachse & Wilson, LLP letter dated December 27, 2017.

¹⁹ Exhibits A through Y correspondent with Claim E17607-0001.

moved forward with adjudication of the claim and on March 2, 2018, issued an approval of \$1,079,132.88.²⁰

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²¹ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²² OMI presented its invoice to the RP for \$12,932.10 on May 23, 2018.²³ 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.²⁴ On February 18, 2019, the NPFC received a claim for uncompensated removal costs from OMI dated February 18, 2019. The costs presented to the NPFC in the amount of \$12,932.10 matched those submitted to the RP on May 23, 2018, and the claim included \$10,776.75 in costs associated with sample analysis review and a 20% mark-up cost for \$2,155.35, totaling \$12,932.10. The total amount claimed is \$12,932.10.²⁵

IV. DETERMINATION PROCESS:

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

²⁰ Signed Determination for Claim E17607-0001 dated March 2, 2018.

²¹ 33 U.S.C. § 2701 *et seq.*

²² 33 CFR 136.103.

²³ OMI claim submission and Invoice #N1805-500 dated May 23, 2018.

²⁴ 33 CFR 136.103.

²⁵ OMI claim submission dated February 18, 2019 for GHD Invoice # 909104 dated May 23, 2018.

²⁶ 33 CFR Part 136.

²⁷ *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).

²⁸ *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).

²⁹ 33 U.S.C. § 2702(a).

liability is strict, joint, and several.³⁰ 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.”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.
- (d) That the removal costs were uncompensated and reasonable.³⁷

The NPFC analyzed each of these factors and determined the costs incurred by Oil Mop, LLC for sample analysis review and submitted herein are compensable removal costs based on the supporting documentation provided when combined with the corroborating documentation and facts documented in Oil Mop’s NPFC claim # E17607-0001 that substantiates the need for review of sample analysis following the removal of above ground storage tanks and petroleum contaminated soils.³⁸ 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:

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

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 33 CFR 136.203; 33 CFR 136.205.

³⁸ USEPA Polrep #3 dated July 11, 2017.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, OMI's request for uncompensated removal costs in the amount of \$12,932.10 is approved.

Because this determination is a settlement offer³⁹, the claimant has 60 days in which to accept; the failure to do so automatically voids the offer.⁴⁰ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴¹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>2/26/19</i></p> <p>Supervisor Action: <i>Approved</i></p>
--

³⁹ 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).

⁴⁰ 33 CFR §136.115(b).

⁴¹ *Id.*