

CLAIM SUMMARY / DETERMINATION

Claim Number:	E18617-0001
Claimant:	Magellan Midstream Partners, L.P.
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$17,288.94
Action Taken:	Offer in the amount of \$17,288.94

EXECUTIVE SUMMARY:

On June 22, 2018, ██████████, from the Oklahoma Corporation Commission (OCC), the State On Scene Coordinator (SOSC) for the incident, made notification to the United States Coast Guard's National Response Center (NRC) for the discovery of a slow leak of crude oil on June 21, 2018.¹ The leak was determined to be originating from an abandoned 8-inch steel pipeline that leads into the Washita River, a tributary of the Red River, and a navigable waterway of the United States.² The amount of spilled oil was unknown although a black crude was visible on the water's surface.³ Magellan Midstream Partners, L.P. (Magellan or Claimant), Oklahoma Corporation Commission (OCC) in its capacity as the State On Scene Coordinator (SOSC), and A Clean Environment (ACE) in its capacity as the Oil Spill Response Organization (OSRO), responded to the spill in order to conduct an initial site assessment.⁴ The assessment revealed the presence of four (4) 8-inch pipelines that sat within 25-feet of one another with no apparent holes that would explain the source of the leak.

Magellan hired ACE to handle response actions to mitigate the effects of the incident.⁵ The United States Environmental Protection Agency (USEPA) hired a local subcontractor, Elite Maintenance Services, LLC to excavate and cap the pipeline.⁶ Magellan presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$17,288.94 on March 12, 2019.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$17,288.94 is compensable and offers this amount as full and final compensation for this claim.⁸

¹ NRC Report # 1216089

² United States Environmental Protection Agency Pollution/Situation Report, Arco Pipeline - E18617 – PolRep #1, dated June 29, 2018 from ██████████, OSC, Page 1 of 3, Section 1.1.2 Site Description

³ United States Environmental Protection Agency Pollution/Situation Report, Arco Pipeline - E18617 – PolRep #1, dated June 29, 2018 from ██████████, OSC Page 1 of 3, Section 1.1.2.2 Description of Threat

⁴ Magellan Midstream Partners, L.P. Claim Submission, Page 11 of 28, ACE Incident Report dated June 21, 2018 from ██████████, Project Manager

⁵ United States Environmental Protection Agency Pollution/Situation Report, Arco Pipeline - E18617 – PolRep #1, dated June 29, 2018 from ██████████, OSC Page 1 of 3, Section 2.1.1 Response Actions to Date

⁶ United States Environmental Protection Agency Pollution/Situation Report, Arco Pipeline - E18617 – PolRep #1, dated June 29, 2018 from ██████████, OSC Page 1 of 3, Section 2.1.1 Response Actions to Date

⁷ Optional OSLTF Claim Form submission signed and dated March 5, 2019 by ██████████ received and date-stamped by NPFC on March 12, 2019.

⁸ 33 CFR 136.115.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On June 21, 2018, Magellan believed there was a chance they may be responsible for the spill that was discovered and thought to be one of Magellan's pipelines in the area so Magellan contacted ACE as their response contractor. Initial assessment led to a decision to locate the source of the leak. Further evaluation of the site revealed the source of the spill as the fourth of four pipelines from the west, which was cut in two and stuck in the sand bar with oil leaking into the sand bar from the pipe's end.⁹ Response activities to mitigate the effects of the spill commenced and concluded on July 13, 2018 when USEPA's response contractor completed backfilling on the property where the abandoned pipeline was located and plugged to prevent future discharges.¹⁰

Responsible Party

OCC conducted an investigation into suspected pipeline operators but was unable to determine a viable pipeline owner, and as such, no responsible party was identified.¹¹

Recovery Operations:

██████████ of Magellan met with ACE personnel, OCC rep ██████████ in his capacity as the SOSOC, and ██████████ who was the property owner, for initial planning. ██████████ notified ██████████ of the USEPA to notify the agency of the spill and provide details on the initial remediation efforts.¹³ ACE personnel set absorbent boom out in the area to help with containment of oil trapped in between the pipes. Absorbent W particulate (hydrocarbon-specific cellulose absorbent and filter medium used to remove hydrocarbons from water) was spread over the oil. 100 feet of 4-inch mini contractors boom was set out to contain the oil due to impending rains. Dip nets and 6 mil. bags were used to remove the ABW absorbent that had been placed down.¹⁴ Contaminated materials were then transported to Southern Oklahoma Regional Disposal (SORDD) in Ardmore, Oklahoma and disposed of on July 6, 2018.¹⁵

Per a request from the SOSOC, the USEPA Federal On-Scene Coordinator (FOSC) ██████████ was later mobilized to the site and determined that additional work was needed in order

⁹ Magellan Midstream Partners, L.P. Claim Submission, Page 11 of 28, ACE Incident Report dated June 21, 2018 from ██████████, Project Manager

¹⁰ United States Environmental Protection Agency Pollution/Situation Report, Arco Pipeline - E18617 – PolRep #1, dated June 29, 2018 from ██████████, OSC Page 1 of 3, Section 2.1.1 Response Actions to Date

¹¹ Magellan Midstream Partners, L.P. Claim Submission, Pages 16-17 of 28, June 21, 2018 email from ██████████ to ██████████ of the EPA

¹² Magellan Midstream Partners, L.P. Claim Submission, Page 11 of 28, ACE Incident Report dated June 21, 2018 from ██████████, Project Manager

¹³ Magellan Midstream Partners, L.P. Claim Submission, Pages 16-17 of 28, June 21, 2018 email from ██████████ to ██████████ of the EPA

¹⁴ Magellan Midstream Partners, L.P. Claim Submission, Page 11 of 28, ACE Incident Report dated June 21, 2018 from ██████████, Project Manager

¹⁵ Magellan Midstream Partners, L.P. Claim Submission, Page 24 of 28, Non-hazardous Waste Manifest dated July 6, 2018

to stop the oil from continuing to discharge into the Washita River.¹⁶ USEPA brought in Elite Maintenance Services LLC to excavate and cap the pipeline. Excavation began on July 2, 2018. The pipeline was excavated 100-200 feet north of the river bank. The pipeline was cut using a “clamshell” cutter and the downside (south) portion of the pipe going into the Washita River was vacuumed out to remove the remaining oil. The pipeline was subsequently plugged on both sides of the cut, with final activities concluding on July 13, 2018.¹⁷

II. CLAIMANT

On March 12, 2019, the NPFC received a claim for uncompensated removal costs from Magellan Midstream Partners, L.P. (Magellan or Claimant), in the amount of \$17,288.94. The Claimant provided an Optional OSLTF Claim Form; ACE Invoice # 4791 to Magellan; ACE Daily work reports; ACE Incident Report from [REDACTED] (ACE Project Manager); photos documenting area before, during, and after remediation; January 28, 2019 email printout of an initial June 21, 2018 email from David Lansdale of the Oklahoma Corporation Commission to [REDACTED] that advised EPA of the spill and also that ACE was hired for remediation; June 29, 2018 EPA Pollution / Solution Report from [REDACTED]; July 6, 2018 Non-hazardous Waste Manifest (Waste Tracking Number 06262018-1); June 28, 2018 Oklahoma Dept. of Environmental Quality NHIW (non-hazardous industrial waste) Certification; June 26, 2018 SORD Landfill Generator Waste Profile Sheet.

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁸ 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.¹⁹ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁰ 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.

¹⁶ United States Environmental Protection Agency Pollution/Situation Report, Arco Pipeline - E18617 – PolRep #1, dated June 29, 2018 from [REDACTED], OSC Pages 1-2 of 3, Section 2.1.1 Response Actions to Date

¹⁷ United States Environmental Protection Agency Pollution/Situation Report, Arco Pipeline - E18617 – PolRep #1, dated June 29, 2018 from [REDACTED], OSC Pages 1-2 of 3, Section 2.1.1 Response Actions to Date

¹⁸ 33 CFR Part 136.

¹⁹ 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).

²⁰ 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).

IV. DISCUSSION:

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.²¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²² 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.²³

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.²⁴

Upon initial review of the claim submission, the NPFC made a request for additional information to the Claimant as described below:²⁵

1. Requested a copy of the ACE rate/price schedule that delineated the rates of charges/prices for ACE services and labor provided;
2. Requested documentation/explanation of ACE overtime policy;
3. Requested a copy of the OCC report that was referred to on Magellan's Optional OSLTF Claim Form;

In response to the NPFC's request for additional information, the Claimant provided the following information:²⁶

1. Three (3) attachments, to include a copy of ACE's 2013 rate/price schedule; a copy of the aforementioned OCC report (the June 21, 2018 email from [REDACTED] of the Oklahoma Corporation Commission to [REDACTED]); a copy of an ACE Work Agreement noting labor and equipment costs;
2. The Claimant noted that the attachments would answer the questions.

On April 01, 2019, the NPFC sent a request to ACE for a copy of their 2018 rate/price schedule.²⁷ That same day, ACE provided a copy of the requested document.²⁸

²¹ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²² 33 CFR Part 136.

²³ 33 CFR 136.105.

²⁴ 33 CFR 136.203; 33 CFR 136.205.

²⁵ Email from [REDACTED] to [REDACTED], dated March 21, 2019

²⁶ Email from [REDACTED] to [REDACTED], dated March 21, 2019

²⁷ Email from [REDACTED] to ACE inquiry email address, info@a-clean net, dated April 1, 2019

²⁸ Email from [REDACTED] of ACE to [REDACTED], dated April 1, 2019

NPFC sent a follow-up request to ACE for the following information:²⁹

1. Please provide a copy of its list prices for sorbent materials.
2. Requested clarification of several costs inadequately explained in the rate/price schedule.
3. Requested clarification of the calculation for fuel and disposal costs.

ACE responded on April 30, 2019 by submitting answers to the aforementioned questions, in addition to copies of the following documents:³⁰

1. A copy of ACE's 2018 Material Price List; SORD invoice # 0000688371 and proof of invoice payment (Check Number 172052); July 6, 2018 Non-hazardous Waste Manifest (Waste Tracking Number 06262018-1); June 28, 2018 Oklahoma Dept. of Environmental Quality NHIW (non-hazardous industrial waste) Certification; June 26, 2018 SORD Landfill Generator Waste Profile Sheet;

The NPFC analyzed each of these factors and determined the costs incurred by Magellan Midstream Partners, L.P., and submitted herein, are compensable removal costs based on the supporting documentation provided. The NPFC has determined that the costs invoiced were billed in accordance with the quoted rates between Magellan Midstream Partners, L.P. and A Clean Environment. All costs approved for payment were verified as being invoiced at the appropriate pricing, including but not limited to, all third party or out of pocket expenses. All approved costs were supported by adequate documentation which included invoices/quotes and proofs of payment.

Finally, all response actions performed by ACE were overseen and at the direction of the SOSOC and further referenced in the FOSC's Polrep.

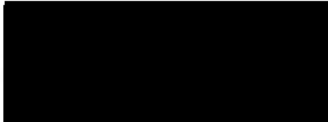
V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Claimant's request for uncompensated removal costs is approved in the amount of \$17,288.94.

²⁹ Email from [REDACTED] to [REDACTED], dated April 9, 2019

³⁰ Email from [REDACTED] to [REDACTED], dated April 30, 2019

Because this determination is a settlement offer³¹, the claimant has 60 days in which to accept; the failure to do so automatically voids the offer.³² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³³ 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: *5/24/19*

Supervisor Action: *Approved*

³¹ 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).

³² 33 CFR §136.115(b).

³³ *Id.*