

CLAIM SUMMARY / DETERMINATION

Claim Number:	0920015-0001
Claimant:	Oil Mop, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$6,609.00
Action Taken:	Offer in the amount of \$6,609.00

EXECUTIVE SUMMARY:

On March 10, 2019 and March 11, 2019, United States Coast Guard (USCG) Marine Safety Unit (MSU) Port Arthur received notification from the National Response Center (NRC) via four (4) separate NRC reports # 1239712, 1239717, 1239744, and 1239776.¹ Pollution Investigators were dispatched from MSU Port Arthur to investigate the incident. An oil spill was discovered to have originated at DCP Metals where the spill discharged into the Sabine Pass Ship Channel, a navigable waterway of the United States.²

In accordance with the Oil Pollution Act of 1990 (OPA), Offshore Equipment, LLC is identified as the responsible party (RP) for the incident by the Federal On Scene Coordinator (FOSC).³ Oil Mop, LLC (claimant) presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$6,609.00 on March 27, 2020.⁴ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$6,609.00 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On March 10, 2019, MSU Port Arthur, in its capacity as the FOSC, mobilized Pollution Investigators who arrived on scene and traced a sheen back to DCP Metal Solutions. Upon talking to witnesses, it was determined that employees from Offshore Equipment were refueling equipment when the nozzle of the hose that was attached to a pump onboard a MODU pontoon that was being scapped, became stuck and discharged approximately 30 gallons of diesel fuel onto the deck of the MODU pontoon, resulting in a spill into the Sabine Pass Ship Channel, a navigable waterway of the US.^{5,6}

Texas General Land Office (TGLO), in its capacity as the State On Scene Coordinator (SOSC) arrived on scene at DCP Metal Solutions and performed a joint investigation into the

¹ See, NRC Reports #1239712, #1239717, #1239744, and #1239776 dated March 10 and 11, 2019, respectively.

² USCG MISLE Case # 1164629 opened March 11, 2019.

³ USCG Notice of Federal Interest issued to Offshore Equipment, LLC dated April 1, 2019.

⁴ Oil Mop claim submission # 920015-0001 dated March 27, 2020.

⁵ USCG MISLE Case # 1164629 opened March 11, 2019.

⁶ Witness statement dated March 10, 2019 by USCG ENS (b) (6), Pollution Investigator.

incident with the FOSC, as well as performed oversight of the response activities that were performed by Oil Mop, LLC who was hired by Offshore Equipment, LLC (RP).⁷⁸

Responsible Party

Offshore Equipment, LLC has been identified by the FOSC as the responsible party liable under OPA.⁹ The FOSC issued Notice of Federal Interest to the RP.¹⁰ A Notice of Federal Interest notifies the owner and/or operator of vessels or facilities that their vessel or facility was determined to be the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

Recovery Operations

The RP hired Oil Mop, LLC as its response contractor to deploy containment boom and cleanup the discharge of diesel fuel from the waterway.¹¹ Oil Mop personnel worked from March 10, 2019 through March 12, 2019 when they were cleared by TGLO.¹²

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)¹³ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.¹⁴ The claimant presented its claim to Offshore Equipment, LLC on May 14, 2019 via OMI Invoice # SINV1905432.¹⁵ To date, the RP has not settled the claim.

III. CLAIMANT AND NPFC:

When a RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.¹⁶ On March 27, 2020, the claimant submitted its claim to the NPFC for \$6,609.00.¹⁷

IV. DETERMINATION PROCESS:

⁷ TGLO investigation package for TGLO Spill Case # 2019-0808.

⁸ Oil Mop, LLC General Service Agreement dated March 12, 2019 between Oil Mop, LLC and Offshore Equipment, LLC.

⁹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

¹⁰ USCG Notice of Federal Interest issued to Offshore Equipment, LLC dated April 1, 2019..

¹¹ Oil Mop, LLC General Service Agreement dated March 12, 2019 between Oil Mop, LLC and Offshore Equipment, LLC.

¹² TGLO Response Officer daily field logs attached to TGLO investigation package for TGLO Spill Case # 2019-0808.

¹³ 33 U.S.C. § 2701 *et seq.*

¹⁴ 33 CFR 136.103.

¹⁵ OMI Invoice # SINV1905432 dated May 14, 2019 in the amount of \$9,109.00 less a down payment of \$2,500.00 and leaving a balance due of \$6,609.00.

¹⁶ 33 CFR 136.103.

¹⁷ Oil Mop claim submission # 920015-0001 dated March 27, 2020.

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 decision. This determination is issued to satisfy that requirement.

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, 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 makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

An RP 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.²¹ An RP's liability is strict, joint, and several.²² 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."²³ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs 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."²⁴ 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."²⁵

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁶ The NPFC has promulgated a comprehensive set

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).

²¹ 33 U.S.C. § 2702(a).

²² See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

²³ *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).

²⁴ 33 U.S.C. § 2701(31).

²⁵ 33 U.S.C. § 2701(30).

²⁶ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁷ 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.²⁸

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.²⁹
- (d) That the removal costs were uncompensated and reasonable.³⁰

Upon adjudication of the claim, the NPFC has confirmed that the costs claimed were billed in accordance with the rate schedule in place at the time services were rendered.³¹ The NPFC verified that the work performed was overseen by both the USCG and TGLO and has been properly coordinated.³²

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Oil Mop, LLC's request for uncompensated removal costs is approved in the amount of **\$6,609.00**.

This determination is a settlement offer,³³ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁴ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁵ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

²⁷ 33 CFR Part 136.

²⁸ 33 CFR 136.105.

²⁹ In conjunction with the FOSC TGLO oversaw the work as well.

³⁰ 33 CFR 136.203; 33 CFR 136.205.

³¹ OMI 2018 Rate Schedule and March 12, 2019 General Services Agreement between OMI and Offshore Equipment, LLC.

³² TGLO Response Officer daily field logs attached to TGLO investigation package for TGLO Spill Case # 2019-0808.

³³ 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 uncompensated 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).

³⁴ 33 CFR § 136.115(b).

³⁵ 33 CFR § 136.115(b).

Claim Supervisor: (b) (6) (b) (6)

Date of Supervisor's review: *4/17/2020*

Supervisor Action: *Offer Approved*

Supervisor's Comments: