

CLAIM SUMMARY / DETERMINATION

Claim Number:	920016-0001
Claimant:	Oil Mop LLC dba OMI Environmental Solutions
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6), (b)
Amount Requested:	\$23,846.78
Action Taken:	Offer in the amount of \$23,684.40

EXECUTIVE SUMMARY:

On April 23, 2018, a crane operated by Brotex International Metals (“Brotex”) flipped over while unloading a barge loaded with chain.¹ The overturned crane discharged approximately ten gallons of engine and hydraulic oil into the Sabine-Neches River, a U.S. navigable waterway.² The U. S. Coast Guard (“USCG”) and Texas General Land Office (“TGLO”) were notified and responded to the incident. The crane is owned by JRPS, LLC.³

USCG Marine Safety Unit (MSU) Port Arthur was the Federal On-Scene Coordinator (“FOSC”) for the incident.⁴ MSU Port Arthur IMD issued a Notice of Federal Interest (“NOFI”) to Mr. (b) (6), (b), owner of JRPS, LLC, on April 23, 2018.⁵

TGLO was the State On-Scene Coordinator (“SOSC”) for the incident. TGLO confirmed that JRPS, LLC is the owner of the crane and Henry and Son Construction rented the crane to Brotex International. The operator of the crane, Mr. (b) (6), (b), is an employee of Henry and Son Construction.⁶ Brotex hired the Claimant, OMI Environmental Solutions (“OMI”), under a General Service Agreement to contain and cleanup the oil from the water.⁷

On April 2, 2020, OMI presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$23,846.78.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$23,684.40 of the requested amount is compensable and offers this amount as full and final compensation of this claim. The NPFC denies \$162.38 for erroneous charges invoiced on OMI invoice # SINV1901499.⁹

¹ NRC Report # 1210118 dated April 23, 2018.

² Marine Safety Unit Port Arthur SITREP dated May 18, 2018.

³ Marine Safety Unit Port Arthur SITREP dated May 18, 2018.

⁴ Sector Houston/Galveston MISLE Case Id: 1124327 Case Report dated, May 1, 2018.

⁵ USCG Notice of Federal Interest (NOFI) dated April 23, 2018.

⁶ TGLO Spill Case # 2018-1453, Incident Report, page 11 of 49.

⁷ OMI General Service Agreement # 2313181184 dated April 23, 2018.

⁸ OMI OSLTF claim form dated April 2, 2020.

⁹ July 23, 2020 Email from OMI to NPFC whereby they issued a Credit Memo in the amount of \$162.38 for erroneous Adler Tank charges. It is important to note that while OMI reversed the charges, OMI did not amend their sum certain on the overall claim submission resulting in the denied amount.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On April 23, 2018, a Manitowoc crawler crane operator and yard worker were offloading salvage chain from the M/V DUTCHMAN which was located at Versatile Marine's dock facility in Sabine Pass, Texas, at the time of the incident.¹⁰ Brotex leases the dock facility from Versatile Marine.¹¹ As the crane was lifting anchor chain off of the M/V DUTCHMAN, it overturned and landed on the deck of the vessel.¹² The crane is owned by JRPS, LLC, and it was being operated by Henry and Son Construction, under the direction of Mr. (b) (6), (b) of Brotex International at the time of the incident.¹³ The incident was a result of being over-loaded and resulting in the crane flipping over onto the starboard deck of the vessel.¹⁴ Crewmembers from the M/V DUTCHMAN deployed absorbent pads between the dock bulkhead (wall) and the vessel to contain the spilled oil from the overturned crane.¹⁵ It was estimated that the crane was potentially holding 10 gallons of lube oil, 30 gallons of hydraulic oil, and 20 gallons of diesel fuel on board.¹⁶

Texas Parks and Wildlife Department arrived on-scene to investigate the potential wildlife that may have been impacted due the incident.¹⁷ Jefferson County Sheriff's Office, Marine Response patrolled the area and found no oil or sheen in the surrounding waterway.¹⁸

Responsible Party

JRPS, LLC is identified as the responsible party ("RP"), because it is the owner of the crane that discharged oil and is liable under OPA.^{19,20,21}

The NPFC issued a Responsible Party Notification Letter to the RP on May 22, 2020.²² On June 15, 2020, the NPFC's letter was returned and marked as, "Attempted – Not Known" "Unable to Forward."²³ An RP Notification letter notifies the owners and/or operators that a claim was presented to the NPFC seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

¹⁰ Texas General Land Office, Incident Report 2018-1453, page 11 of 49.

¹¹ Texas General Land Office Incident Report 2018-1453, page 11 of 49.

¹² Texas General Land Office Incident Report 2018-1453, page 8 of 49.

¹³ Texas General Land Office Incident Report 2018-1453, pages 11 & 12 of 49.

¹⁴ U.S. Coast Guard, Report of Marine Casualty, CG Form 2692, dated April 24, 2018, page 2 of 3, question 25.

¹⁵ Texas General Land Office Incident Report # 2018-1453, page 10 of 49.

¹⁶ Texas General Land Office Incident Report # 2018-1453, page 10 of 49.

¹⁷ Texas General Land Office Incident Report # 2018-1453, page 11 of 49.

¹⁸ Texas General Land Office Incident Report # 2018-1453, page 11 of 49.

¹⁹ Marine Safety Unit SITREP, dated May 12, 2018.

²⁰ See, H.R. Rep. No 101-653, at 102(1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

²¹ USCG Notice of Federal Interest (NOFI) dated April 23, 2018.

²² RP Notification Letter, dated May 22, 2020.

²³ NPFC RP Notification Letter to JRPS, LLC, "Attempted – Not Known." "Unable to Forward," dated June 15, 2020.

Recovery Operations

On April 23, 2018, OMI arrived on scene with personnel, a 26' response boat, and equipment. Oil Mop deployed 200' of 18" containment boom and absorbent pads to soak up the oil product.²⁴ OMI also provided roll off services as well as box rentals. Weeks Marine was hired to place the crane, up-right, by utilizing winch trucks.²⁵ An excavator was brought in to move the chain to another location on the facility to allow room for the salvage operations.²⁶ On February 5, 2019, twenty-five pounds of petroleum contaminated solids were taken to Republic Services at Golden Triangle Landfill in Texas for disposal.²⁷

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁸ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from NPFC.²⁹

OMI was hired by Brotex and billed Brotex for the costs incurred during the oil spill response. JRPS, LLC has been identified as the Responsible Party (RP) for the incident by the FOOSC.³⁰ The NPFC instructed OMI to make proper presentment of costs to the identified RP and provided the appropriate address.³¹ On April 14, 2020, OMI presented its uncompensated costs to JRPS, LLC, in the amount of \$23,856.78.³² On April 17, 2020, OMI's certified letter was signed for, indicating, the RP received OMI's costs. It was at this point proper presentment was established.³³ After the regulatory ninety-day waiting period had elapsed, the NPFC began adjudicating the claim which included OMI's invoices for its personnel, equipment, boom, and materials, totaling \$23,846.78.

III. CLAIMANT AND NPFC:

When an RP denies payment on a claim, or fails to respond within the 90 day response time period, a Claimant may elect to present its claim to the NPFC.³⁴ On April 2, 2020, the NPFC received a claim for \$23,846.78 from OMI, dated April 1, 2020.³⁵ The NPFC began the adjudication process of the claim submission on July 16, 2020.

²⁴ OMI Invoice # N1810-095

²⁵ Marine Safety Unit Port Arthur SITREP dated May 18, 2018.

²⁶ Sector Houston/Galveston MISLE Case Id: 1124327 Case Report dated, May 1, 2018.

²⁷ See, Uniform Hazardous Waste Manifest Tracking # 014124538JJK, dated February 5, 2019.

²⁸ 33 U.S.C. § 2701 *et seq.*

²⁹ 33 CFR 136.103.

³⁰ USCG Notice of Federal Interest (NOFI) dated April 23, 2018.

³¹ April 13, 2020 Email to OMI providing RP name and address to make proper presentment of costs.

³² OMI letter to JRPS, LLC, dated April 14, 2020.

³³ Copy of certified mail card from OMI to JRPS, LLC dated April 17, 2020.

³⁴ 33 CFR 136.103.

³⁵ OMI claim submission, dated April 1, 2020.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁶ 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.³⁷ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁸ 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.³⁹ An RP's liability is strict, joint, and several.⁴⁰ 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."⁴¹ 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."⁴² 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."⁴³

³⁶ 33 CFR Part 136.

³⁷ 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)).

³⁸ 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).

³⁹ 33 U.S.C. § 2702(a).

⁴⁰ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴¹ *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).

⁴² 33 U.S.C. § 2701(31).

⁴³ 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 (NCP).⁴⁴ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁵ 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.⁴⁶

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.⁴⁷

Upon review and adjudication of the claim submission, the NPFC worked closely with the Claimant to ensure it made proper presentment of its costs to the RP. The NPFC also made requests for additional supporting information to the Claimant. On July 23, 2020, the Claimant realized that it erroneously charged six (6) extra days of tank rental on invoice SINV1901499 for the Adler Tank charges. The Claimant issued a Credit Memo for the erroneous charges which resulted in invoice SINV1901499 being reduced by \$162.38.⁴⁸ Lastly, OMI provided proof that its third party vendors were paid for in full.

Based on the supporting documentation and information provided and/or obtained from various sources, the NPFC has determined that OMI's invoiced costs were billed in accordance with the quoted and/or billed rates between the parties. All costs approved for payment by the NPFC were verified as being invoiced at the appropriate pricing, including but not limited to, any approved third party or out of pocket expenses. All approved costs were supported by adequate documentation which include invoices, and rate schedules.

The NPFC denied \$162.38 in erroneous charges for Adler Tank costs that OMI issued a credit memo for. It is important to note that while OMI recognized its error and adjusted the invoicing appropriately, it did not reduce its requested sum certain to the NPFC resulting in the denied amount.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Oil Mop LLC dba OMI Environmental Solutions' request for uncompensated removal costs is approved in the amount of **\$23,684.40**.

⁴⁴ See generally, 33 U.S.C. §271 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁵ 33 CFR Part 136.

⁴⁶ 33 CFR 136.105.

⁴⁷ 33 CFR 136.203; 33 CFR 136.205.

⁴⁸ OMI Credit Memo No. SCM2000304 in the amount of \$162.38 dated July 23, 2020.

This determination is a settlement offer,⁴⁹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁰ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵¹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor:	(b) (6), (b)	(b) (6), (b)(b) (6), (b) (b) (6), (b)(b) (6), (b)
Date of Supervisor's review:	<i>8/10/2020</i>	
Supervisor's Comments:	<i>Approved</i>	

⁴⁹ 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).

⁵⁰ 33 CFR § 136.115(b).

⁵¹ 33 CFR § 136.115(b).