

CLAIM SUMMARY / DETERMINATION

Claim Number:	920018-0001
Claimant:	Environmental Safety and Health Consulting Services, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$10,666.75
Action Taken:	Offer in the amount of \$10,666.75

EXECUTIVE SUMMARY:

On March 16, 2016, United States Coast Guard (USCG) Marine Safety Unit (MSU) Houma received an NRC notification via NRC report #1142899¹, describing a discharge at the CNO Test Facility in Leeville Louisiana. The discharge occurred when the high level indicator on the crude oil separator failed and discharged approximately 22 gallons of crude oil into Lake Jesse, a navigable waterway of the United States.² Shoreline Southeast LLC (“Shoreline” or “RP”), is the owner and operator of the facility and is the responsible party (RP) as defined by the Oil Pollution Act of 1990.³

Environmental Safety and Health Consulting Services, Inc. (“ES&H” or “claimant”), commenced cleanup operations on March 23, 2016 after being contacted by the RP. After performing its pollution response activities, ES&H presented its uncompensated removal costs to the RP on April 27, 2016.⁴

Having not received payment from the RP after ninety days, ES&H presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$10,666.75 on May 4, 2020.⁵ In its claim submission, ES&H stated that the RP filed Chapter 11 bankruptcy after the incident occurred.⁶ On June 20, 2019, while adjudicating ES&H claim # 919023-0001 for an ES&H claim associated with an unrelated ES&H invoice, the NPFC made contact with Arent Fox LLP, as Counsel to the Official Committee of Unsecured Creditors of Shoreline and the Creditor Trust, and requested a copy of bankruptcy documents. On June 25, 2019, Arent Fox LLP provided the NPFC a copy of ES&H’s proof of claim dated January 11, 2017 and advised a Final Decree for the bankruptcy was entered on May 15, 2018 and the case concluded with no payment made nor due to ES&H.⁷ The NPFC has thoroughly reviewed all

¹ National Response Center Incident Report # 1142899.

² MISLE Case History ID # 1019712, Incident Data.

³ MISLE Case History ID # 1019712, Subject of Investigation.

⁴ NPFC Optional OSLTF claim form, question #5 dated May 4, 2020; ES&H invoice # 1-42047 dated April 27, 2016.

⁵ NPFC OSLTF Claim Form dated May 4, 2020.

⁶ NPFC Optional Claim Form, question #6 dated May 4, 2020.

⁷ June 25, 2019 email from Arent Fox LLP to NPFC with ES&H Proof of Claim. Bankruptcy Counsel advised the NPFC that the unsecured creditors had the option to receive a distribution through either (1) a convenience class; or (2) class 7. Counsel stated ES&H was not listed as a convenience class unsecured creditor that had received a distribution from the Bankruptcy Plan. Counsel further advised that there were no funds to make distributions to class 7 members and as such, unless ES&H was paid outside of the Bankruptcy Plan by Shoreline, ES&H was not

documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$10,666.75 of the requested \$10,666.75 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On March 22, 2016, the high level indicator on the crude oil separator failed at the CNO Test Facility in Leeville Louisiana, causing the discharge of approximately 22 gallons of crude oil into Lake Jesse. According to the RP's Incident Action Plan (IAP), the spill occurred on March 15, 2016 but was not identified until March 22, 2016.⁸ The discharge created an oil sheen measuring 35 feet by 35 feet.⁹ USCG Sector Houma issued a Notice of Federal Interest (NOFI) to Shoreline Southeast LLC on March 15, 2016.¹⁰ The RP's field personnel deployed a containment boom around the newly discovered impacted area of vegetation.¹¹ The RP contacted ES&H and a crew mobilized to the incident location for remedial activities on March 23, 2016.

Responsible Party

Shoreline Southeast LLC is the owner and operator of the CNO Test Facility and was designated the responsible party (RP) for the oil spill incident.¹²

The NPFC issued a Responsible Party (RP) Notification letter dated May 7, 2020 to the Office of the United States Trustee Shoreline Southeast LLC.¹³ A Responsible Party Notification letter notifies the owners and/or operators that a claim was presented to the National Pollution Funds Center (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.

The NPFC used the address referenced in the bankruptcy documentation.¹⁴ The notification was sent through the US Postal Service certified mail and the NPFC has not received confirmation of receipt of the letter as of the date of this Determination.

Recovery Operations

On March 22, 2016, approximately at 2:30 pm the RP notified ES&H about the discharge that occurred at the CNO Test Facility. Shoreline Southeast field personnel shut in flow to the

paid. Finally, Counsel stated that the Final Decree for the bankruptcy was entered on May 15, 2018 and the case has since concluded.

⁸ Incident Action Plan; Summary of Current Actions Incident Briefing ICS 201 – 2B dated March 23, 2016.

⁹ MISLE Case History ID # 1019712, Incident Data.

¹⁰ USCG Notice of Federal Interest addressed to Shoreline Southeast LLC. dated March 15, 2016.

¹¹ Incident Action Plan; Summary of Current Actions Incident Briefing ICS 201 – 2C dated March 23, 2016.

¹² MISLE Case History ID # 1019712, Subject of Investigation.

¹³ NPFC RP Notification Letter dated May 7, 2020.

¹⁴ Shoreline Energy Chapter 11 Bankruptcy Notice dated November 2, 2016.

separator to secure the source of the release and deployed absorbent boom around the released product to contain the product.¹⁵ On March 23, 2016, ES&H OSRO crew mobilized to the incident location for remedial activities and conducted an assessment to determine the conditions and establish an action plan. ES&H response personnel deployed absorbent boom along the areas of impacted marsh vegetation to the north/northwest of the CNO Test Facility to mitigate sheening.¹⁶

On March 24, 2016, ES&H and the RP agreed to perform passive recovery operations through maintenance and monitoring to recover the remaining product as it washed out of the impacted vegetation during tidal fluctuations and rainfall events.¹⁷ On March 28, 2016, ES&H replaced absorbent materials, removed emulsified products from the incident and bags of emulsified product brought pollution bags to the RP's office in Leesville, LA for disposal.¹⁸ On April 6, the RP's facility personnel removed and replaced all of the 950' of absorbent boom and disposed of the pollution.¹⁹ Both, the RP and ES&H, agreed the RP would be responsible of proper disposal of the pollution recovered by ES&H and RP's field personnel throughout the incident actions.²⁰

On April 18, 2016, ES&H personnel assessed the impacted marsh and oyster lease and determined that no sheening or product was observed at these locations.²¹ The claimant retrieved all of the containment boom and placed it in pollution bags and took the DOT drums located at Shoreline Southeast LLC offices for proper disposal.²² On April 18, 2016, the claimant's recovery operations were complete.²³

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)²⁴ require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.²⁵

Having not received payment from the RP after ninety days, ES&H presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$10,666.75 on May 4, 2020.²⁶

III. CLAIMANT AND NPFC:

¹⁵ Incident Action Plan; Summary of Current Actions Incident Briefing ICS 201 – 2A dated March 23, 2016.

¹⁶ Incident Action Plan; Summary of Current Actions Incident Briefing ICS 201 – 2C dated March 23, 2016.

¹⁷ Incident Action Plan; Summary of Current Actions Incident Briefing ICS 201 – 2E dated March 28, 2016.

¹⁸ Incident Action Plan; Summary of Current Actions Incident Briefing ICS 201 – 2G dated April 7, 2016.

¹⁹ Incident Action Plan; Summary of Current Actions Incident Briefing ICS 201 – 2H dated April 7, 2016.

²⁰ Email regarding Additional Information between NPFC and Claimant dated May 12, 2020.

²¹ Incident Action Plan; Summary of Current Actions Incident Briefing ICS 201 – 2I dated April 18, 2016.

²² CNO Test Facility Incident – Formatted Photos dated April 18, 2016.

²³ Incident Action Plan 4-18-16.

²⁴ 33 U.S.C. § 2701 *et seq.*

²⁵ 33 CFR 136.103.

²⁶ NPFC OSLTF Claim Form dated May 4, 2020.

When an RP has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.²⁷ On May 4, 2020, the NPFC received a claim for uncompensated removal costs from Shoreline Southeast LLC dated May 4, 2020. The claim included the OSLTF claim form, Spill Response Notification Form, ES&H Invoice, CNO Test Facility Incident Action Plan dailies, Supervisor Logs, containment boom status and photos recording daily activities. Additional information provided by the claimant to the NPFC included 2016 Emergency Response Rate Schedule, and Service Agreement between RP and ES&H.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁸ 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.²⁹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁰ 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.³¹ An RP's liability is strict, joint, and several.³² 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."³³ 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

²⁷ 33 CFR 136.103.

²⁸ 33 CFR Part 136.

²⁹ 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)).

³⁰ 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).

³¹ 33 U.S.C. § 2702(a).

³² See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³³ *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).

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.”³⁴ 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.”³⁵

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁶ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁷ 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.³⁸

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.

Upon review and adjudication of the claim submission, the NPFC made a request for additional information to ES&H, the USCG MSU Houma, and obtained joint Bankruptcy information from NPFC claim # 919023-0001.

Upon receipt of all information, the NPFC determined that based on the preponderance of the evidence provided by both the United States Coast Guard FOSC and the information from the Shoreline Bankruptcy case, that the totality of the response actions performed by ES&H between March 22, 2016 and April 18, 2016 are supported by the record.

On November 2, 2016, Shoreline Energy LLC et al., filed Chapter 11 in United States Bankruptcy Court for the Southern District of Texas.³⁹ Arent Fox LLP was Counsel to the Official Committee of Unsecured Creditors of Shoreline and the Creditor Trust. The NPFC contacted Arent Fox LLP to inquire whether ES&H’s invoice,⁴⁰ which was submitted to the NPFC for reimbursement, would receive payment under the confirmation plan.⁴¹ Arent Fox LLP

³⁴ 33 U.S.C. § 2701(31).

³⁵ 33 U.S.C. § 2701(30).

³⁶ *See generally*, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁷ 33 CFR Part 136.

³⁸ 33 CFR 136.105.

³⁹ Official Form 309F (For Corporation or Partnership) Notice of Chapter 11 Bankruptcy Case # 16-35571 (DRJ), filed November 2, 2016.

⁴⁰ ES&H invoice #1-42047.

⁴¹ Email from the NPFC claim # 919023-0001 to Arent Fox LLP dated June 20, 2019.

replied⁴² to the NPFC via claim # 919023-0001 by providing the proof of claim for an unsecured claim which was filed by ES&H⁴³ and indicated that ES&H is not on the list of general unsecured creditors that received a convenience class distribution from the Creditor Trust and provided the order and motion.⁴⁴

Based on the NPFC's request and receipt of bankruptcy documents filed in the referenced case, it conducted a review of the bankruptcy file⁴⁵ documents combined with a statement provided by Arnet Fox LLP that indicated that the bankruptcy file contains no information indicating ES&H was not paid nor was due to be paid post-confirmation of the plan.⁴⁶

The NPFC has determined that the costs invoiced were billed in accordance with the contracted rates between the parties, including all subcontractors and third party services. All costs approved for payment were verified as being invoiced at the appropriate rate sheet 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 and proofs of payment.

MSU Houma was the Federal On-Scene Coordinator (FOSC) for the incident and oversaw the response and removal operations.⁴⁷ NPFC contacted MSU Houma and they determined the actions were necessary to minimize/mitigate effect of the incident and the actions were conducted consistently with the NCP.⁴⁸

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Environmental Safety and Health Consulting Services, Inc. request for uncompensated removal costs is approved in the amount of **\$10,666.75**.

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

⁴² Email from Arent Fox LLP to the NPFC dated June 25, 2019 on NPFC claim # 919023-0001.

⁴³ United States Bankruptcy Court, Southern District of Texas, MML ID: 3165643, Official Form 410 Proof of Claim, stamped Claim Number 14 dated January 12, 2017.

⁴⁴ United States Bankruptcy Court Southern District of Texas, Houston Division, Order Granting Amended Motion Approving Distributions to Holders of Allowed Convenience Class Claims and Deeming Certain Claims to be Class 7 Claims [Docket No. 668] filed September 26, 2017.

⁴⁵ Email from Arent Fox LLP to NPFC dated June 26, 2019 via NPFC claim # 919023-0001.

⁴⁶ Email from Arent Fox to NPFC dated June 25, 2019 via claim # 919023-0001.

⁴⁷ MISLE Case History ID # 1019712.

⁴⁸ Email response from MST2 (b) (6) to NPFC dated May 12, 2020.

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).

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.

(b) (6)
Claim Supervisor: (b) (6)
Date of Supervisor's review: <i>5/22/2020</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

⁵⁰ 33 CFR § 136.115(b).

⁵¹ 33 CFR § 136.115(b).