

CLAIM SUMMARY / DETERMINATION

Claim Number:	920024-0001
Claimant:	OMI Environmental Solutions
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$16,889.22
Action Taken:	Offer in the amount of \$16,861.16

EXECUTIVE SUMMARY:

On August 13, 2018, at approximately 1000, Energy XXI discharged an unknown amount of natural gas from an underwater bulk pipeline due to equipment failure.¹ Witt Obriens, a private enterprise, made notification to the National Response Center (NRC), via report # 1221386 that an unknown amount of natural gas was discharged into the intercoastal waterway. The discharged product entered Kent Bayou, a navigable waterway of the United States.²

United States Coast Guard (USCG) Marine Safety Unit (MSU) Morgan City was notified by the National Response Center (NRC). OMI Environmental Solutions (“OMI” or “claimant”) was hired by Energy XXI (“Responsible Party or “RP”) under their Master Service Agreement.³

Energy XXI is the owner and operator of the facility and the responsible party (RP) as defined by the Oil Pollution Act of 1990.⁴

On September 27, 2018⁵, OMI presented its uncompensated removal costs to the RP. Having not received payment from the RP after ninety days, OMI presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$16,889.22 on May 20, 2020.⁶ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$16,861.16 of the requested \$16,889.22 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On August 13, 2018, Energy XXI facility at Kent Bayou Field discharged an unknown amount of natural gas from an underwater bulk pipeline due to a valve failure.⁷ USCG MSU

¹ NRC Report # 1221386 dated August 13, 2018.

² NRC Report # 1221386 dated August 13, 2018.

³ Master Service Agreement dated July 11, 2006.

⁴ MISLE Case History Report 1164800 Involved Subjects.

⁵ OMI Invoice Number N1809-336 dated September 27, 2018.

⁶ NPFC OSLTF Claim Form dated May 20, 2020 and received May 20, 2020.

⁷ MISLE Case History Report 1164800 Incident Data.

Morgan City determined there was no further action was necessary on their part.⁸ The RP took control of the spill and activated OMI to perform clean-up operations.⁹ On August 16, 2018 OMI began recovery operations and mobilized personnel to the scene where oil was pumped into drums and returned to Energy XXI's facility for processing.¹⁰

Responsible Party

Energy XXI is the owner and operator of the facility in Kent Bayou Field and was designated the responsible party (RP) for the oil spill incident.¹¹

The NPFC was unable to issue a Responsible Party (RP) Notification letter in light of the current COVID pandemic in the US. 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.

Recovery Operations

On August 16, 2018, Energy XXI Kent Bayou Field facility discharged an unknown amount of natural gas from an underwater pipeline due to a valve failure.¹² Upon arrival to the scene OMI brought supplies and prepared area for divers to come and repair line.¹³ From August 18, 2018 through August 21, 2018 oil cleaning operations continued and pumped hot salt water out of the area where divers entered to repair pipeline and clean up oil with pads.¹⁴ The claimant's cleanup operations were complete on August 21, 2020.

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁵ require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.¹⁶

The claimant initially presented its claim in the form of an invoice to Energy XXI on September 27, 2018. Energy XXI was merged with Cox Oil on October 18, 2018.¹⁷ OMI's invoice was not included in the merger¹⁸, as such, OMI's debt was left unpaid. Having not

⁸ MISLE Case History Report 1164800 Incident Data.

⁹ OMIES Site Safety and Health Plan dated August 16, 2018.

¹⁰ OMIES Site Safety and Health Plan dated August 16, 2018.

¹¹ MISLE Case History Report 1164800 Involved Subjects.

¹² MISLE Case History Report 1164800 Incident Data.

¹³ OMI Invoice N1809-336; OMI Field Service Ticket dated August 16, 2020.

¹⁴ OMI Invoice N1809-336; OMI Field Service Tickets dated August 18, 2020 through August 21, 2020.

¹⁵ 33 U.S.C. § 2701 *et seq.*

¹⁶ 33 CFR 136.103.

¹⁷ Oil & Gas 360 News Article; Cox Oil Announces Completion of Energy XXI Acquisition.

¹⁸ Energy XXI Gulf Coast, Inc. Schedule 14A Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 dated August 3, 2018.

received payment from the RP after ninety days, OMI presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$16,889.22 on May 20, 2020.¹⁹

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.²⁰ On May 20, 2020 the NPFC received a claim for uncompensated removal costs from OMI dated May 20, 2020. The claim included the OSLTF claim form, initial invoice, Master Service Agreement between the RP and OMI, OMI 2012 Emergency rate schedule, field service logs, and hardware store receipts. Additional information provided by the claimant to the NPFC included OMIS Site Safety and Health Plan, handwritten employee's timesheets and email answering NPFC's questions.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²¹ 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.²² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²³ 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.²⁴ An RP's liability is strict, joint, and several.²⁵ 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

¹⁹ NPFC OSLTF Claim Form dated May 20, 2020.

²⁰ 33 CFR 136.103.

²¹ 33 CFR Part 136.

²² 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)).

²³ 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).

²⁴ 33 U.S.C. § 2702(a).

²⁵ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

favoring those responsible for the spills.”²⁶ 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.”²⁷ 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.”²⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.²⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁰ 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.³¹

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.³²

OMI had an established Master Service Agreement that allowed both the RP and the claimant to have an understanding of their relationship in these types of situations that warranted OMI’s removal and clean-up actions at the Energy XXI’s facilities.³³ As such, based upon the preponderance of credible evidence, the actions undertaken by OMI Environmental Services are determined by the NPFC to be consistent with the National Contingency Plan (NCP) and deemed necessary to mitigate the effects of the spill on the surface waters of Kent Bayou.³⁴

²⁶ *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).

²⁷ 33 U.S.C. § 2701(31).

²⁸ 33 U.S.C. § 2701(30).

²⁹ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁰ 33 CFR Part 136.

³¹ 33 CFR 136.105.

³² 33 CFR 136.203; 33 CFR 136.205.

³³ Master Service Agreement dated July 11, 2006.

³⁴ The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4)

Upon receipt of the claim submission, the NPFC requested additional information and clarification from the Claimant on June 3, 2020.³⁵

After a complete review of all documentation and after contacting the FOSCR that was on scene, the NPFC was able to corroborate the actions undertaken by the claimant and confirm that the FOSCR determined OMI's actions to be properly coordinated with the FOSC. The NPFC has determined that the invoiced costs were billed in accordance with the contract and rate schedule in place at the time services were rendered and the NPFC has determined that the claimant demonstrated proper presentment of costs to the claimant. OMI originally filed an action in Court but was able to provide small claims court documentation indicating that the case was dismissed without prejudice, allowing the claimant to request reimbursement from the NPFC Claims Program.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$16,861.16 while \$28.06 are deemed non-compensable for the following reasons:³⁶

Equipment, Supplies, and Miscellaneous

1. OMI's invoice number N1809-336 Lunch at Gibson One Stop Food, this receipt does not demonstrate itemized purchase and the NPFC is unable to determine which items were included in this purchase. The claimant stated the vendor only provided this receipt to the employee and was unable to provide another receipt.³⁷

Overall Denied Costs = \$28.06³⁸

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, OMI Environmental Solutions request for uncompensated removal costs is approved in the amount of **\$16,861.16**.

This determination is a settlement offer,³⁹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁰ The NPFC reserves the right to revoke a

³⁵ Email between Claimant and NPFC dated June 4, 2020.

³⁶ Enclosure 3 to this determination provides a detailed analysis of these costs.

³⁷ Email between Claimant and NPFC dated June 4, 2020.

³⁸ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

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 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).

⁴⁰ 33 CFR § 136.115(b).

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>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review:</p> <p>Supervisor Action:</p> <p>Supervisor's Comments:</p>

⁴¹ 33 CFR § 136.115(b).