

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	920026-0001
<b>Claimant:</b>	Oil Mop Environmental Solutions, LLC
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6), (b)(b) (6), (b)
<b>Amount Requested:</b>	\$27,118.04
<b>Action Taken:</b>	Offer in the amount of \$27,118.04

### **EXECUTIVE SUMMARY:**

On July 30, 2019, approximately 10 gallons of naphtha oil discharged from a hose failure during a tank to tank transfer at the Mermentau Energy, LLC facility in Jennings, Louisiana, subsequently causing the release of oil into a storm drain leading into the Bayou Nezpique. The incident resulted in the release of diesel fuel into a tributary of the Mermentau River; a navigable waterway of the United States.<sup>1</sup> Coast Guard (CG) Sector Lake Charles Marine Safety Unit (MSU) was dispatched to serve as Federal On Scene Coordinator (FOSC), and discovered a visible sheen on the Bayou Nezpique.<sup>2</sup> The Federal On Scene Coordinator's Representative (FOSCR) identified Mermentau Energy, LLC (Mermentau or RP) as the responsible party (RP), as defined by the Oil Pollution Act of 1990.<sup>34</sup>

On July 30, 2019, Oil Mop Environmental Solutions, LLC (OMI or Claimant) was directed by Mermentau to recover and remove all oil from the identified spill locations.<sup>5</sup> OMI submitted all paid expenses to the RP on December 6, 2019, January 14, 2020, and January 21, 2020.<sup>6</sup> Claimant states no reply has been provided by the RP.

On May 22, 2020, OMI presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$27,118.04.<sup>7</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$27,118.04 of the requested amount is compensable and offers this amount as full and final compensation of this claim.

### **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

#### ***Incident***

<sup>1</sup> MISLE Case Report, July 31, 2019.

<sup>2</sup> SITREP 1, July 30, 2019.

<sup>3</sup> 33 U.S.C. § 2701(32).

<sup>4</sup> July 31, 2019 Notice of Federal Interest (NOFI) issued to the RP.

<sup>5</sup> General Service Agreement between OMI and Mermentau Energy, July 30, 2019.

<sup>6</sup> Emails from OMI to Mermentau Energy dated December 6, 2019, January 14, 2020 and January 21, 2020.

<sup>7</sup> OMI claim submission, signed March, 27, 2020.

On July 30, 2019, approximately 10 gallons of naphtha oil discharged from a hose failure during a tank to tank transfer at the Mermentau Energy, LLC facility in Jennings, Louisiana.<sup>8</sup> The spill resulted in the discharge of naphtha oil into the Bayou Nezpique, a tributary leading to Mermentau River, a navigable waterway of the United States.<sup>9</sup>

Louisiana Department of Environmental Quality (LDEQ), in its capacity as the State On Scene Coordinator (SOSC), was notified of the spill on July 30, 2019 and at 0830 contacted CG Sector Lake Charles MSU, who served as the FOSC for the spill.<sup>10</sup> A team departed the CG Sector Lake Charles MSU at 0905 to conduct an on scene investigation. The FOSC issued a Notice of Federal Interest letter to the RP, directing Mermentau to cleanup the oil and remove the waste from the spill scene.<sup>11</sup> Mermentau contracted Oil Mop Solutions, LLC (OMI) to handle cleanup and disposal of waste.<sup>12</sup> CG Sector Lake Charles MSU monitored OMI's cleanup activity.<sup>13</sup>

### ***Responsible Party***

The FOSC identified Mermentau Energy, LLC as the RP on July 30, 2019.<sup>14</sup> A Notice of Federal Interest letter notifies the owners and/or operators of vessels or facilities that their vessel or facility may be a potential responsible party as the source of a of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

The NPFC issued a Responsible Party Notification Letter to the Mr. (b) (6), (b) [REDACTED], CEO of Mermentau Energy, LLC, on May 27, 2020.<sup>15</sup> The NPFC has received no notification or response from the RP.

### ***Recovery Operations***

On July 30, 2019, OMI was notified by Mermentau of the oil spill release at the Mermentau Energy, LLC facility in Jennings, Louisiana, and was contracted to assist with cleanup and removal of the spill.<sup>16</sup> OMI arrived on-site and began oil cleanup and vessel removal operations on July 30, 2019.<sup>17</sup>

OMI personnel removed all oil from the waterway. OMI contracted Mobile Mini Tank & Pump Solutions to remove the oil spill waste from the scene in roll off boxes via trucks,<sup>18</sup> for transport to Jeff Davis Landfill for disposal.<sup>19</sup> Samples taken from the site of the spill scene were

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<sup>8</sup> MISLE Case Report, July 31, 2019.

<sup>9</sup> SITREP 1, July 30, 2019.

<sup>10</sup> MISLE Case Report, July 31, 2019.

<sup>11</sup> NOFI Letter, dated July 30, 2019.

<sup>12</sup> General Service Agreement between OMI and Mermentau Energy, July 30, 2019.

<sup>13</sup> MISLE Case Report, July 31, 2019.

<sup>14</sup> NOFI Letter, dated July 30, 2019.

<sup>15</sup> RP Notification Letter, dated May 27, 2020.

<sup>16</sup> General Service Agreement between OMI and Mermentau Energy, July 30, 2019.

<sup>17</sup> OMI Invoice #SINV1908323, dated August 15, 2019.

<sup>18</sup> OMI Invoice #SINV1910295, dated October 15, 2019.

<sup>19</sup> Republic Services Non-Hazardous Waste Manifest 4577657, and Republic Services Non-Hazardous Waste Manifest 4577659.

sent by OMI to GCAL Analytical Laboratories, LLC for analysis.<sup>20</sup> Full cleanup of Mermentau's oil spillage was completed on August 1, 2019, with all sample analysis and disposal completed on September 7, 2019.<sup>21</sup>

## **II. CLAIMANT AND RP:**

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>22</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>23</sup>

OMI submitted its request for compensation to Mermentau for \$27,118.04 on January 14, 2020.<sup>24</sup> OMI forwarded the request to Mermentau on January 16, 2020,<sup>25</sup> and again on January 21, 2020.<sup>26</sup> OMI has received no notification or response from the RP.

## **III. CLAIMANT AND NPFC:**

When an RP denies payment on claim, a claimant may elect to present its claim to the NPFC.<sup>27</sup> On May 22, 2020, the NPFC received a claim for \$27,118.04 from OMI, signed March 27, 2020.<sup>28</sup> The NPFC began the adjudication process of the claim submission on May 27, 2020.

## **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>29</sup> 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.<sup>30</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>31</sup> 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.

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<sup>20</sup> GCAL Report #219080837, dated August 14, 2019, and GCAL Report #219080841, dated August 16, 2019.

<sup>21</sup> OMI Invoice #SINV1911513, dated November 15, 2019.

<sup>22</sup> 33 U.S.C. § 2701 et seq.

<sup>23</sup> 33 CFR 136.103(c)(1).

<sup>24</sup> Email from OMI to Mermentau, dated January 14, 2020.

<sup>25</sup> Email from OMI to Mermentau, dated January 16, 2020.

<sup>26</sup> Email from OMI to Mermentau, dated January 21, 2020.

<sup>27</sup> 33 CFR 136.103.

<sup>28</sup> OMI claim submission, signed March 27, 2020.

<sup>29</sup> 33 CFR Part 136.

<sup>30</sup> 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)).

<sup>31</sup> 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).

## **V. DISCUSSION:**

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.”<sup>32</sup> 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.”<sup>33</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>34</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>38</sup>

The NPFC analyzed each of these factors and determined that the majority of costs incurred and submitted by OMI herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, OMI’s request for uncompensated removal costs is approved in the full amount of \$27,118.04.

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<sup>32</sup> 33 U.S.C. § 2701(31).

<sup>33</sup> 33 U.S.C. § 2701(30).

<sup>34</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>35</sup> 33 CFR Part 136.

<sup>36</sup> 33 CFR 136.105.

<sup>37</sup> Summary of Phone Conversation between CG Sector Lake Charles MSU and NPFC, dated June 25, 2020.

<sup>38</sup> 33 CFR 136.203; 33 CFR 136.205.

This determination is a settlement offer,<sup>39</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>40</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>41</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

	(b) (6), (b)(b) (6), (b) (b) (6), (b)(b) (6), (b)
Claim Supervisor:	(b) (6), (b)
Date of Supervisor's review:	7/1/2020
Supervisor Action:	<i>Offer Approved</i>

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<sup>39</sup> 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).

<sup>40</sup> 33 CFR § 136.115(b).

<sup>41</sup> 33 CFR § 136.115(b).