

CLAIM SUMMARY / DETERMINATION

Claim Number:	920035-0001
Claimant:	USFS, LLC.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b), (b) (6) (b), (b) (6)
Amount Requested:	\$54,922.60
Action Taken:	Offer in the amount of \$49,728.42

EXECUTIVE SUMMARY:

On March 19, 2020, an oil storage tank was discovered to have discharged 14 barrels of crude oil into the Hubbard Creek Lake, in Breckenridge, Texas.¹ The damage was found to have resulted from the knock down of a separator, as caused by a tornado.²

The Texas Railroad Commission (“TRRC” or “SOSC”) served as the State On-Scene Coordinator for the spill. USFS, LLC. (“USFS” or “claimant”) directed personnel and equipment for removal activities and deployed boom in order to contain the spill.³ Petro Cat, LLC. (“Petro Cat” or “RP”), is the listed owner of the oil storage tank and responsible party (RP) as defined by the Oil Pollution Act of 1990.⁴ USFS presented its uncompensated removal costs to the RP. Having not received payment from the RP after ninety days,⁵ USFS presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$54,922.60.⁶

The United States Environmental Protection Agency (“EPA”) Region VI provided aerial photographs to the NPFC, which support that the spill site coordinates are the entry point to a small pond which connects with the Hubbard Creek Lake via a culvert.⁷ The EPA Region VI’s representative, in his capacity as a Federal On Scene Coordinator (FOSC) for the spill location, concluded that the Hubbard Creek Lake is a navigable waterway of the United States⁸. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$49,728.42 of the requested amount is compensable and offers this amount as full and final compensation of the claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

¹ Summary of Phone Conversation between the NPFC and Petro Cat, LLC., dated September 3, 2020.

² Texas Railroad Commission Site Remediation Summary Sheet, cleanup ID#7B-267756.

³ EES Invoice #3000941 with daily reports, dated March 21 2020 to March 26, 2020.

⁴ 33 U.S.C. § 2701(32).

⁵ 33 CFR 136.103(c).

⁶ USFS, LLC. claim submission, received August 31, 2020.

⁷ Hubbard Creek Lake aerial photograph.

⁸ Email from the EPA Region VI to the NPFC, dated November 12, 2020.

On March 18, 2020, a tornado made official landfall north of Breckenridge, Texas, moving across a path length of 1.53 miles, and demonstrating a maximum width of 12 yards.⁹ On March 19, 2020, a second tornado, moving across a path length of 3.6 miles, and demonstrating a maximum width of 1,050 yards made official landfall northeast of Abilene, Texas and continued moving northeast through the town of Hamby; a town located 50 miles Southwest of Breckenridge, Texas.¹⁰ These tornados are recorded to have caused significant damages to all areas which they passed.

On March 19, 2020, the separator of an oil storage tank owned by Petro Cat, was discovered to have fallen after the tornadoes struck,¹¹ releasing 14 barrels of crude oil into a pond which led into the Hubbard Creek Lake, in Breckenridge, Texas.¹²

Responsible Party

The owner of the oil storage tank is Petro Cat, LLC., which has Mr. (b), (b) (6) listed as the company owner.¹³ As such, the SOSC has identified Petro Cat, LLC as the responsible party for the incident.¹⁴

On September 2, 2020, the NPFC issued a Responsible Party Notification Letter to Petro Cat, LLC.¹⁵ On September 3, 2020, the RP had a phone conversation with the NPFC affirming its status as the owner of the oil storage tank but asserting that the claimant, USFS, left the spill site by the RP's demand on March 22, 2020, and stating that the oil spill removal activities after March 22, 2020 were completed by Petro Cat, LLC.¹⁶

The SOSC validated the RP's statement of asking USFS to demobilize on March 22, 2020. However, the SOSC states that it then advised Petro Cat, LLC that operations could not cease until the threat to the lake was mitigated and stated that the RP agreed to allow four contractors hired for cleanup, including USFS, to return to the spill site and continue cleanup operations on March 23, 2020 under contract with the SOSC.¹⁷ Furthermore, the TRRC provided evidence that Petro Cat, LLC. was unable to complete spill removal themselves and that the RP requested that the SOSC take over cleanup operations due to logistics and financial reasons.¹⁸

Recovery Operations

Claimant asserts that on March 21, 2020, it was notified of the compromise of the oil storage tank; causing the release of oil into a stock pond which overflowed into the Hubbard Creek Lake. The SOSC confirms that the RP hired EES Environmental to respond to the spill and EES subcontracted to Lone Star Environmental, who then also subcontracted with (b), (b) (6)

⁹ List of Tornados in the United States Jan-March 2020.

¹⁰ List of Tornados in the United States Jan-March 2020.

¹¹ Texas Railroad Commission Site Remediation Summary Sheet, cleanup ID#7B-267756.

¹² Summary of Phone Conversation between the NPFC and Petro Cat, LLC., dated September 3, 2020.

¹³ See attached TRRC Oil and Gas Operator online query status report that shows the registered operator as Petrocat Innovations, LLC with Mr. (b), (b) (6) as the Managing Owner.

¹⁴ *Id.*

¹⁵ NPFC RP Notification Letter to Petro Cat, LLC., dated September 2, 2020.

¹⁶ Summary of Phone Conversation between the NPFC and Petro Cat, LLC., dated September 3, 2020.

¹⁷ Email between TRRC personnel cited as 7th Update, dated March 27, 2020.

¹⁸ Email between TRRC personnel cited as 8th Update, dated March 28, 2020.

Environmental. Finally, (b), (b), (b) Environmental subcontracted to USFS.¹⁹ USFS asserts that they were hired for oil spill removal activities and it constructed an underflow dam, deployed 2000' feet of 8" boom, and placed absorbent pads into the pond.²⁰

USFS was initially demobilized from the site by the RP on March 22, 2020, but returned on March 23, 2020. TRRC assumed total control of the clean up activities on March 28, 2020, and retained the services of USFS to complete the spill removal activities.²¹ The USFS remained on scene until the completion of the spill removal, and was paid by TRRC for costs for items and activities between March 29, 2020 through April 27, 2020.²² It is important to note that the costs presented to TRRC is not subject of this claim. USFS stated that the claim filed is strictly for costs incurred during the initial response on or before March 26, 2020, and not related to subsequent takeover by the TRRC.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 responsible party before seeking compensation from the NPFC.²⁵

On April 15, 2020, USFS presented its request for compensation to the RP for \$54,922.60.²⁶ The RP's representative asserts that he was provided a request for payment of the costs submitted to the NPFC, but less than 20 days prior to his receipt of the RP Notification letter mailed on September 2, 2020.²⁷²⁸ As such, Petro Cat, LLC cites their receipt of the costs submitted by the Claimant to the NPFC was on July 27, 2020.

In accordance with OPA, the NPFC notified Petro Cat, LLC that USFS's costs would remain in pre-claim status until after the party responsible was provided 90 days to respond, or after they denied the costs submitted.²⁹ On October 26, 2020, the NPFC moved ahead with the adjudication of the claim, and provided notification of the submissions transfer to claim status to Petro Cat, LLC.³⁰

III. CLAIMANT AND NPFC:

When a RP has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.³¹ On August 31, 2020, the NPFC received a claim for uncompensated

¹⁹ Email between TRRC personnel cited as 7th Update, dated March 27, 2020.

²⁰ USFS, LLC. claim submission, dated August 27, 2020.

²¹ Email between TRRC personnel cited as 8th Update, dated March 28, 2020.

²² TRRC Abilene REVISED Invoice #300986, dated March 29, 2020 through April 27, 2020.

²³ Email from USFS, LLC to the NPFC, dated November 4, 2020.

²⁴ 33 U.S.C. § 2701 *et seq.*

²⁵ 33 CFR 136.103.

²⁶ USFS, LLC. claim submission, dated August 27, 2020.

²⁷ RP Notification Letter, dated September 2, 2020.

²⁸ Summary of Phone Conversation between the NPFC and Petro Cat, LLC., dated September 3, 2020.

²⁹ Summary of Phone Conversation between the NPFC and Petro Cat, LLC, dated September 3, 2020.

³⁰ RP Notification Letter, dated October 26, 2020.

³¹ 33 CFR 136.103.

removal costs from USFS, LLC, dated August 27, 2020.³² The submission of costs was identified as a pre-claim # PRE-00015442, due to information per 33 CFR 136.105 (d) (3), not being identified within USFS's claim submission, and the submissions failure to provide an explanation as to how the spill posed threat to a navigable waterway.³³

On September 3, 2020, Petro Cat, LLC provided the NPFC with information which provided an explanation of their designation as the RP.³⁴ On October 22, 2020, the Claimant provided the longitude and latitude of the spill incident location,³⁵ and on November 12, 2020, an EPA Region VI representative, in his capacity as the Federal On Scene Coordinator (FOSC) for the incident, confirmed the location specified by the Claimant's GPS coordinates as posing a substantial threat to a navigable waterway.³⁶

The costs presented to the NPFC in the amount of \$54,922.60 matched those submitted to the RP on July 27, 2020, but did not meet the mandatory 90 day presentment time period provided to the RP to settle the claim. As such, on October 1, 2020, the NPFC notified USFS that the submission would remain in pre-claim status until the RP's 90 day presentment time period had lapsed, or an official response from the RP was provided.³⁷ On October 26, 2020, after the passage of the 90 day presentment time period to the RP, the NPFC transferred the pre-claim submission into a claim and assigned it to a Claims Manager for review.³⁸

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁹ 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.⁴⁰ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁴¹ 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.

³² USFS, LLC. claim submission, received August 31, 2020.

³³ Acknowledgment Letter, dated September 2, 2020.

³⁴ Summary of Phone Conversation between the NPFC and Petro Cat, LLC., dated September 3, 2020.

³⁵ Email from USFS, LLC. to the NPFC, dated October 22, 2020.

³⁶ Email from the EPA Region VI to the NPFC, dated November 12, 2020.

³⁷ Email to USFS, LLC from the NPFC, dated October 1, 2020.

³⁸ Acknowledgment Letter, dated October 26, 2020.

³⁹ 33 CFR Part 136.

⁴⁰ 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)).

⁴¹ 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:

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.⁴² An RP's liability is strict, joint, and several.⁴³ 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."⁴⁴ 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."⁴⁵ 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."⁴⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁸ 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.⁴⁹

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.⁵⁰

⁴² 33 U.S.C. § 2702(a).

⁴³ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

⁴⁴ *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).

⁴⁵ 33 U.S.C. § 2701(31).

⁴⁶ 33 U.S.C. § 2701(30).

⁴⁷ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁸ 33 CFR Part 136.

⁴⁹ 33 CFR 136.105.

⁵⁰ There was not a FOSC assigned to this incident. To ensure that USFS met its burden with respect to this factor, the NPFC coordinated with the regional office of the U.S. Environmental Protection Agency which would have been the FOSC for this incident if one were assigned. After analyzing the spill and the actions taken by USFS, the EPA opined that the actions taken were consistent with the National Contingency Plan. We agree.

(d) That the removal costs were uncompensated and reasonable.⁵¹

The NPFC analyzed each of these factors and determined the majority of the costs incurred by USFS and submitted 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.

The amount of compensable costs is \$49,728.42 while \$5,194.18 was deemed non-compensable for the following reasons:

1. USFS submitted a request for costs totaling \$4,324.00, for items and/or activities which are not supported by the rate schedule submitted to the NPFC with their claim.⁵² As such, all costs for items whose costs cannot be supported in the amount of \$4,324.00, are denied.⁵³
2. USFS submitted a request for standby personnel costs. A standby hourly rate was not supported by the rate schedule submitted with the claim and thus, the NPFC utilized the standard rate for standby hours of half the supported hourly rates, to determine the rates which can be approved. As such, all costs for standby hours that exceed the standard rate in the amount \$40.00, are denied.
3. USFS submitted a request for Per Diem, Per Employee costs totaling \$210.00, for 3/21/2020.⁵⁴ After reviewing the costs, the NPFC found that 7 employees were claimed at \$30.00 per employee. The rate schedule supports the \$30.00 per employee rate however, only 6 employees are cited on the daily report for 3/21/2020, and only 6 employees are cited on the invoice for 3/21/2020.⁵⁵ As such, 6 employees are approved per diem, and the additional \$30.00, is denied.⁵⁶
4. USFS submitted a request for lodging costs totaling \$1,913.10.⁵⁷ After reviewing the costs, the NPFC found that only \$1,112.92 in lodging costs are supported by the receipts submitted in association with the claim.⁵⁸ The additional costs, totaling \$800.18, are not supported by any of the information submitted with the claim. As such, all costs for lodging which cannot be supported in the amount of \$800.18, are denied.⁵⁹

Overall Denied Costs: \$5,194.18

⁵¹ 33 CFR 136.203; 33 CFR 136.205.

⁵² See Rate Schedule submitted with EES Invoice #3000941.

⁵³ Summary of Costs spreadsheet, dated November 13, 2020.

⁵⁴ EES Invoice #3000941 with daily reports, dated March 21 2020 to March 26, 2020

⁵⁵ EES Invoice #3000941 with daily reports, dated March 21 2020 to March 26, 2020

⁵⁶ Summary of Costs spreadsheet, dated November 13, 2020.

⁵⁷ EES Invoice #3000941 with daily reports, dated March 21 2020 to March 26, 2020.

⁵⁸ See Ridge Motel- Breckenridge receipts submitted with EES Invoice #3000941.

⁵⁹ Summary of Costs spreadsheet, dated November 13, 2020.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, USFS, LLC.'s request for uncompensated removal costs is approved in the amount of **\$49,728.42**.

This determination is a settlement offer,⁶⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁶¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶² Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

	(b), (b) (6)
Claim Supervisor:	(b), (b) (6)
Date of Supervisor's review:	<i>11/18/2020</i>
Supervisor Action:	<i>Offer Approved</i>

⁶⁰ 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).

⁶¹ 33 CFR § 136.115(b).

⁶² 33 CFR § 136.115(b).