

CLAIM SUMMARY / DETERMINATION

Claim Number:	921005-0001
Claimant:	Environmental Safety and Health Consulting Services, Inc. (ES&H)
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b), (b) (6)
Amount Requested:	\$36,330.75
Action Taken:	Offer in the amount of \$36,330.75

EXECUTIVE SUMMARY:

At approximately 0659 local time on February 19, 2020 a discharge of an unknown amount of crude oil was discovered and suspected of coming from an unmanned platform at Main Pass Block 4.¹ United States Coast Guard (USCG) Sector New Orleans was the Federal On-Scene Coordinator Representative (FOSCR) for the incident and received notification from (b), (b) (6) of Forefront Emergency Management, LP (Forefront), in its capacity as the Facility's Qualified Individual (QI).² The FOSC was provided updates on the response actions and situation.³ Upon inspection, it was determined that the incident occurred due to a flange failure on the heater treater⁴ and that an estimated fifteen (15) of crude oil discharged into the Gulf of Mexico, a navigable waterway of the United States.⁵

In accordance with the Oil Pollution Act of 1990, Yuma Exploration & Production Company ("Yuma" or "RP") was identified as the responsible party (RP)⁶ for the incident that occurred at its Main Pass Block 4 facility located near Hopedale, LA, St. Bernard Parish.⁷ Yuma proceeded to shut the facility's affected line in.⁸ Environmental Safety and Health Consulting Services, Inc. (ES&H or claimant) was hired by Yuma personnel and performed pollution response activities.⁹ After performing its pollution response activities, ES&H presented its uncompensated removal costs to the RP on March 20, 2020.¹⁰

Having not received payment from the RP, ES&H presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$36,330.75.¹¹ In its claim submission, ES&H stated that the RP filed Chapter 11 bankruptcy after the incident occurred.¹² On November 17, 2020, the NPFC made contact with Ms. (b), (b) (6) of Forshey & Prostok, LLP, as the Bankruptcy Trustee for case -41456-mxm7 and requested a status of the Yuma Exploration & Production Company status through the United States Bankruptcy Court for the

¹ Forefront EM Spill Response Notification Form.

² Forefront EM letter to Louisiana Department of Environmental Quality dated February 24, 2020,

³ United States Coast Guard Sector New Orleans SITREP dated November 4, 2020.

⁴ Forefront EM Spill Notification Form.

⁵ MISLE Case #1209603 dated February 19, 2020.

⁶ 33 U.S.C. § 2701.

⁷ Forefront EM Spill Notification Form.

⁸ United States Coast Guard Sector New Orleans SITREP dated November 4, 2020.

⁹ ES&H Master Service Agreement with Yuma Exploration & Production Company dated November 30, 2018.

¹⁰ NPFC Optional OSLTF claim form, question #5 dated October 23, 2020; ES&H invoice # 1-55928 dated March 20, 2020.

¹¹ 33 CFR 136.103(c)(2); Optional OSLTF Claim Form signed by (b), (b) (6) dated October 23, 2020.

¹² NPFC Optional Claim Form, question #6 dated October 23, 2020.

Northern District of Texas, Fort Worth Division.¹³ On December 1, 2020, Ms. (b), (b) (6) provided the NPFC an update on Yuma's bankruptcy status and advised the NPFC that Yuma Exploration & Production is no longer a debtor in bankruptcy. She further stated that the case was dismissed and that as she understands it, the entire board of directors and the CRO resigned shortly before the case was dismissed. Ms. (b), (b) further informed the NPFC that she does not know if Yuma E&P has any employees at this time.¹⁴

Ms. (b), (b) informed the NPFC that it may want to seek legal advice about whether this claim can be asserted against Yuma Energy, Inc., which is (as she understands it) the parent company of Yuma E&P. Yuma Energy, Inc is still in chapter 7 and that it doesn't have liquid assets yet, but it might in the future. Email from Ms. (b), (b), Bankruptcy Trustee to (b), (b) (6), NPFC dated December 1, 2020.

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$36,330.75 is compensable and offers this amount as full and final compensation of this claim.¹⁵

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On February 19, 2020, Yuma reported a crude oil release from a flange failure on the heater treater¹⁶ and stated that the incident occurred at its Main Pass Block 4 facility located near Hopedale, LA, St. Bernard Parish¹⁷ to Forefront Emergency Management, L.P. (Forefront).¹⁸ The claimant reported to the National Response Center that crude oil had been released into the Gulf of Mexico due to the flange equipment failure of the heater treater on the Yuma Explorer platform at their facility, located at Main Pass Block 4 in St. Bernard, Louisiana.¹⁹

Responsible Party

Owner and operator of the facility²⁰ was identified as Yuma Exploration & Production Company.²¹ As such, it is the responsible party for the incident.

Recovery Operations

United States Coast Guard Sector New Orleans was the Federal On-Scene Coordinator (FOSC) and was provided notification and updates regarding the response and removal operations.²² The Claimant was hired by Yuma to provide emergency clean-up and containment

¹³ Email from Ms. (b), Bankruptcy Trustee to (b), (b) (6), NPFC dated December 1, 2020.

¹⁴ Email from Ms. (b), Bankruptcy Trustee to (b), (b) (6), NPFC dated December 1, 2020.

¹⁵ 33 CFR 136.113(b)

¹⁶ Forefront EM Spill Notification Form.

¹⁷ Forefront EM Spill Notification Form.

¹⁸ Forefront EM Spill Notification Form.

¹⁹ National Response Center Report #1271546 dated February 19, 2020.

²⁰ 33 U.S.C. § 2701(32); Forefront EM letter to Louisiana Department of Environmental Quality dated February 24, 2020.

²¹ Forefront EM letter to Louisiana Department of Environmental Quality dated February 24, 2020.

²² United States Coast Guard Sector New Orleans SITREP dated November 4, 2020.

services for the Yuma Exploration & Production Company Main Pass Block 4. Response services were performed from February 19, 2020 through February 23, 2020.²³

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

The claimant presented its claim to Yuma on March 20, 2020.²⁶ The claimant also stated that the RP filed for Chapter 11 Bankruptcy after the incident occurred.²⁷

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after ninety days of receipt, a claimant may elect to present its claim to the NPFC.²⁸ On November 3, 2020, the NPFC received a claim for uncompensated removal costs from ES&H. The claim included ES&H invoice #1-55928 totaling \$36,330.75, ES&H 2020 Rate Schedule, Photos, Signed daily work tickets, ES&H Supervisor log, and Master Service Agreement with Yuma.²⁹

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁰ 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.³¹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³² 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.

²³ ES&H invoice and supporting documentation.

²⁴ 33 U.S.C. § 2701 *et seq.*

²⁵ 33 CFR 136.103.

²⁶ ES&H Invoice #1-55928 dated March 20, 2020; Optional OSLTF Claim Form, Page 1, Section 6, signed by (b), (b) dated October 23, 2020. (b)

²⁷ Optional OSLTF Claim Form, Page 1, Section 6, signed by (b), (b) (6) dated October 23, 2020.

²⁸ 33 CFR 136.103.

²⁹ ES&H claim submission.

³⁰ 33 CFR Part 136.

³¹ *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)).

³² *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.³³ An RP's liability is strict, joint, and several.³⁴ 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."³⁵ 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."³⁶ 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."³⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁹ 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.⁴⁰

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.⁴¹

Upon review and adjudication of the claim submission, the NPFC made requests for additional information to ES&H, the United States Bankruptcy Trustee in the Yuma case, and State of Louisiana Department of Environmental Quality (LADEQ).

³³ 33 U.S.C. § 2702(a).

³⁴ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁵ *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).

³⁶ 33 U.S.C. § 2701(31).

³⁷ 33 U.S.C. § 2701(30).

³⁸ See generally, 33 U.S.C. § 2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁹ 33 CFR Part 136.

⁴⁰ 33 CFR 136.105.

⁴¹ 33 CFR 136.203; 33 CFR 136.205.

In summary, the NPFC requested information from the following entities in order to perform a complete adjudication of the claim and received the following additional information for consideration:

1. Federal On-Scene Coordinator (FOSCR):

- a. Pollution Responder statement from MST1 (b), (b) (6) dated January 28, 2021. The statement provides details regarding the incident; and
- b. MISLE Case #1209603 opened on February 20, 2019.

2. State On-Scene Coordinator (SOSC):

- a. Louisiana Department of Environmental Quality (LADEQ) Incident Report # 195625 updated April 08, 2020;
- b. NRC Report #1271546 dated February 20, 2020; and
- c. Forefront EM written notification letter dated November 24, 2020.

3. Assistant United States Bankruptcy Trustee – (b), (b) (6) of Forshey & Prostok, LLP, for the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

- a. Notice of Chapter 11 Bankruptcy Case – Official Form 201, United States Bankruptcy Court for the Northern District of Texas – Fort Worth Division – Case #20-41456-11, date filed April 15, 2020;
- b. Notice of Chapter 7 Bankruptcy for Yuma Energy and its associated Companies – Official Form 309C; date case converted to Chapter 7 is October 19, 2020; Case # 20-41455-mxmt filed on October 21, 2020;
- c. Order to Dismiss Case for Yuma Exploration & Production Company - United States Bankruptcy Court for the Northern District of Texas – Fort Worth Division – Case #20-41456-mxm7, date filed October 30, 2020;
- d. Email from Ms. (b), (b) (6), Bankruptcy Trustee, dated December 1, 2020 advising Yuma Exploration & Production Company is no longer in Bankruptcy although the NPFC should seek Counsel on whether or not recovery can be asserted against Yuma Energy in its capacity as the parent Company. Trustee advised Yuma Energy in Chapter 7 but may have liquid assets in the future.

4. ES&H

- a. ES&H Invoice # 1-55928;
- b. Signed OSLTF Claim Form;
- c. Forefront EM Spill Response Notification Form;
- d. Photographs;
- e. ES&H invoice supporting documentation totaling \$36,951.64 however only claimed \$36,330.75; and

- f. Forefront EM written notification letter sent to the Louisiana State Police, and Louisiana Department of Environmental Quality.

Upon receipt of all information, the NPFC determined that based on the preponderance of the evidence provided by both the United States Coast Guard FOSCR, that the totality of the response actions performed by ES&H between February 19, 2020 through February 23, 2020 are supported by the record. All of ES&H's removal costs invoiced were billed in accordance with the published rates between the parties.⁴² All costs approved for payment by the NPFC were verified as being invoiced at the appropriate pricing, including, but not limited to, all third party and/or out of pocket expenses. All approved costs are supported by adequate documentation which include invoices/quotes, proofs of payment, and determined to be consistent with the National Contingency Plan (NCP) as determined by the FOSC and that the spill did discharge into a navigable waterway, as determined by the FOSCR upon receipt of the spill location coordinates.⁴³

The NPFC requested information from the SOSC who provided a copy of the Incident Report;⁴⁴ a copy of Forefront EM's written notification letter dated February 24, 2020 addressed to LDEQ.⁴⁵

On April 15, 2020 The Yuma Exploration & Production Company Inc. filed Chapter 11 Bankruptcy in the United States Bankruptcy Court for the Northern District of Texas – Fort Worth Division.⁴⁶ The NPFC contacted Ms. (b), (b) (6) of Forshey & Prostok, LLP, as the Bankruptcy Trustee for Case # 20-41456-mxm7, requesting a status update on the Yuma Bankruptcy. Ms. (b), (b) (6) replied⁴⁷ to the NPFC by stating that the NPFC may want to seek legal advice about whether (b), (b) (6) this claim can be asserted against Yuma Energy, Inc., which is (as she understands it) the parent company of Yuma E&P. Yuma Energy, Inc is still in chapter 7 and that it doesn't have liquid assets yet, but it might in the future.⁴⁸

Based on the NPFC's request and receipt of bankruptcy documents filed in the referenced case, it conducted a review of the bankruptcy file documents combined with a statement provided by Ms. (b), (b) (6), Bankruptcy Trustee.

Based on supporting documentation and information provided, the NPFC has determined that the response was properly coordinated with the FOSCR and SOSC, and has determined to be reasonable, necessary and consistent with the NCP.

The amount of compensable costs is **\$36,330.75**.

VI. CONCLUSION:

⁴² ES&H 2020 Emergency Response Rate Schedule.

⁴³ Sector New Orleans FOSCR email to NPFC regarding FOSC Coordination Request dated January 28, 2021.

⁴⁴ National Response Center (NRC) Report #1271546 dated February 19, 2020.

⁴⁵ Forefront EM written notification letter dated February 24, 2020.

⁴⁶ Notice of Chapter 11 Bankruptcy Case – Official Form 201, United States Bankruptcy Court for the Northern District of Texas – Fort Worth Division – Case #20-41456-11, date filed April 15, 2020

⁴⁷ Email from (b), (b) (6) of Forshey & Prostok, LLP dated December 1, 2020.

⁴⁸ Email from (b), (b) (6) of Forshey & Prostok, LLP dated December 1, 2020.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, ES&H's request for uncompensated removal costs is approved in the amount of **\$36,330.75**.

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 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), (b) (6)
Claim Supervisor: [REDACTED]
Date of Supervisor's review: <i>2/12/2021</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

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).