

CLAIM SUMMARY / DETERMINATION

Claim Number:	N18026-0001
Claimant:	Oil Mop LLC (OMI)
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b), (b) (6)
Amount Requested:	\$7,187.20
Action Taken:	Offer in the amount of \$7,187.19

EXECUTIVE SUMMARY:

On January 23, 2018 at 1030 local time, a discovery of an unknown amount of crude oil was discovered and had discharged from a tank battery in Bullycamp oil field marsh.¹ The incident was reported to the National Response Center (NRC) via report # 1202800 dated January 25, 2018.² United States Coast Guard (USCG) Marine Safety Unit (MSU) Houma Pollution Investigators responded to the incident on January 25, 2018 and discovered that the incident occurred due to a burst pipe and discovered that the discharge created a sheen in Bullycamp Oil field, a tributary to Bayou LaFourche, a navigable waterway of the United States.³ The owner of the tank battery is Redrock Energy Group (Redrock or RP), was identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.⁴

On On January 26, 2018, Oil Mop Environmental Solutions (OMI or Claimant) was hired by Mr (b), (b) (6) of Redrock Energy.⁵ OMI arrived on scene and began response efforts removing the sheen in the tank battery and on the waters of Bullcamp Oil field.⁶ On July 12, 2018, MSU Houma in its capacity as the Federal On Scene Coordinator (FOSC) determined that the environmental threat was no longer a concern and the response was determined complete.⁷

On March 28, 2018, OMI presented its removal costs claim to the RP via OMI invoice # N1803-291 in the total amount of \$16,687.20.⁸ OMI stated that the RP paid a deposit of \$9,500.00 which was applied to the overall invoiced amount resulting in a remaining balance of \$7,187.20.⁹ OMI presented its claim to the National Pollution Funds Center (NPFC) for \$7,187.20.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$7,187.19 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:

¹ USCG MISLE Case # 1114400 Narrative Summary dated January 23, 2018.

² NRC Report # 1202800 dated January 25, 2018.

³ USCG MISLE Case # 1114400 Narrative Summary dated January 23, 2018.

⁴ 33 U.S.C. § 2701(32) and USCG MISLE Case # 1114400.

⁵ OMI General Services Agreement dated January 26, 2018.

⁶ NRC Incident Report #1267185, dated December 23, 2019.

⁷ USCG POLREP Three dated July 12, 2018.

⁸ OMI invoice # N1803-291 dated March 28, 2018.

⁹ OMI OSLTF claim form dated May 21, 2020.

¹⁰ OMI claim submission, dated May 21, 2020.

Incident

On January 23, 2018 at 1030 local time, a discovery of an unknown amount of crude oil was discovered and had discharged from a tank battery in Bullycamp oil field marsh.¹¹ The incident was reported to the National Response Center (NRC) via report # 1202800 dated January 25, 2018.¹² United States Coast Guard (USCG) Marine Safety Unit (MSU) Houma Pollution Investigators responded to the incident on January 25, 2018 and discovered that the incident occurred due to a burst pipe and discovered that the discharge created a sheen in Bullycamp Oil field, a tributary to Bayou LaFourche, a navigable waterway of the United States.¹³ The owner of the tank battery is Redrock Energy Group (Redrock or RP), was identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.¹⁴

On January 26, 2018, Oil Mop Environmental Solutions (OMI or Claimant) was hired by Mr. (b), (b) (6) of Redrock Energy.¹⁵ OMI arrived on scene and began response efforts removing the sheen in the tank battery and on the waters of Bullcamp Oil field.¹⁶ On July 12, 2018, MSU Houma in its capacity as the Federal On Scene Coordinator (FOSC) determined that the environmental threat was no longer a concern and the response was determined complete.¹⁷

Responsible Party

The FOSC responded to the discharge on January 25, 2018 and discovered that the discharge occurred due to a burst pipe. The gauge Technician working for Redrock Energy Group that was on site at the time of the incident, stated that five (5) barrels of crude oil had discharged and created a sheen in Bullycamp Oil field, a tributary of Bayou LaFourche, a navigable waterway of the United States.¹⁸ The FOSC identified Redrock Energy Group, owned by Mr. (b), (b) (6), as the Responsible Party (RP).¹⁹

The NPFC issued a Responsible Party Notification Letter to the RP on June 1, 2020.²⁰ 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 received a voice mail message from Mr. (b), (b) (6) (RP) in response to the RP letter he received via email.²¹

Ms. (b), (b) (6) of the NPFC returned Mr. (b), (b) (6) call on June 3, 2020 and discussed the nature of the claim with the RP. Mr. (b), (b) (6) confirmed his inability to pay the remaining balance without an extended payment plan that OMI would not agree to. The NPFC advised that the claim would be adjudicated in accordance with the governing claims regulations

¹¹ USCG MISLE Case # 1114400 Narrative Summary dated January 23, 2018.

¹² NRC Report # 1202800 dated January 25, 2018.

¹³ USCG MISLE Case # 1114400 Narrative Summary dated January 23, 2018.

¹⁴ 33 U.S.C. § 2701(32) and USCG MISLE Case # 1114400.

¹⁵ OMI General Services Agreement dated January 26, 2018.

¹⁶ NRC Incident Report #1267185, dated December 23, 2019.

¹⁷ USCG POLREP Three dated July 12, 2018.

¹⁸ USCG SITREP dated September 1, 2020 as part of USCG MISLE Case # 1114400.

¹⁹ USCG SITREP dated September 1, 2020 as part of USCG MISLE Case # 1114400.

²⁰ RP Notification Letter, dated June 1, 2020.

²¹ Voice message from RP to NPFC dated June 3, 2020.

and if he did not pay the amount owed prior to the finalization of the claim, he would be liable for any paid costs.²² To date, the invoice balance remains unpaid by the RP.

Recovery Operations

On January 26, 2018, OMI was hired to handle the cleanup and removal of the oil spill release into the Bullycamp Oil field.²³

OMI's cleanup operations entailed placing absorbent booms into secondary containment to absorb residual product, and pumping oil from the affected tank. OMI also provided boom to the RP at its request.²⁴

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁵ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from NPFC.²⁶

OMI states that the RP made an initial payment of \$9,500.00 but has not been able to pay the remaining costs after receiving the OMI invoice seeking payment of the remaining costs.

III. CLAIMANT AND NPFC:

When an RP denies payment on a claim, or fails to respond within the 90 day response time period, a claimant may elect to present its claim to the NPFC.²⁷ On May 26, 2020, the NPFC received a claim for \$7,187.20 from OMI, dated May 21, 2020.²⁸

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁹ 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.³⁰ The NPFC may rely upon, is not bound by the findings of fact, opinions,

²² June 3, 2020 recap of phone conversation between RP and NPFC that was sent to the RP via email.

²³ OMI claim submission # N18026-0001 dated May 21, 2020.

²⁴ OMI Invoice #N1803-291 dated March 28, 2018.

²⁵ 33 U.S.C. § 2701 *et seq.*

²⁶ 33 CFR 136.103.

²⁷ 33 CFR 136.103.

²⁸ OMI claim submission, dated May 21, 2020.

²⁹ 33 CFR Part 136.

³⁰ *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)).

or conclusions reached by other entities.³¹ 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.³² An RP's liability is strict, joint, and several.³³ 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."³⁴ 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."³⁵ 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."³⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁸ 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.³⁹

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;

³¹ 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).

³² 33 U.S.C. § 2702(a).

³³ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁴ *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).

³⁵ 33 U.S.C. § 2701(31).

³⁶ 33 U.S.C. § 2701(30).

³⁷ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁸ 33 CFR Part 136.

³⁹ 33 CFR 136.105.

- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.⁴⁰
- (d) That the removal costs were uncompensated and reasonable.⁴¹

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.

The NPFC denies \$.01 of an unidentified difference handwritten on the OMI Invoice for January 26, 2018, changing that invoice amount from \$10,022.99 to \$10,023.00.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Oil Mop's request for uncompensated removal costs is approved in the amount of **\$7,187.19**.

This determination is a settlement offer,⁴² the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴³ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁴ 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>11/13/2020</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

⁴⁰ USCG MISLE Case # 1114400.

⁴¹ 33 CFR 136.203; 33 CFR 136.205.

⁴² 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).

⁴³ 33 CFR § 136.115(b).

⁴⁴ 33 CFR § 136.115(b).