

CLAIM SUMMARY / DETERMINATION

Claim Number:	921001-0001
Claimant:	OMI Environmental Solutions
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$63,423.36
Action Taken:	Offer in the amount of \$62,987.04

EXECUTIVE SUMMARY:

On February 11, 2020 at approximately 11:05 pm local time, Witt Obriens made notification to the National Response Center (NRC), via report # 1268532 that the fishing vessel *MY JULIE* was sinking and discharging diesel fuel into the Sabine Pass waterway, a navigable waterway of the United States.¹

United States Coast Guard (USCG) Marine Safety Unit (MSU) Port Arthur, in its capacity as the Federal On Scene Coordinator (FOOSC) for this incident was notified by the State On Scene Coordinator (SOSC), Texas General Land Office (TGLO) who responded to the scene and discovered the motor vessel *MY JULIE* discharging oil into the Sabine Pass, a navigable waterway of the United States.² In accordance with the Oil Pollution Act of 1990, the owner of the FV *MY JULIE* was identified as the Responsible Party (RP) for the incident.³

OMI Environmental Solutions (“OMI” or “claimant”), commenced on-water cleanup operations after being hired by the RP.⁴ On March 12, 2020⁵ and June 18, 2020⁶, 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 \$63,423.36 on September 28, 2020.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$62,987.04 of the requested \$63,423.36 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On February 12, 2020, the fishing vessel *MY JULIE* sank while moored at K & B Marine on the Sabine Neches waterway. The vessel sank at its mooring and discharged approximately

¹ NRC Report # 1268532 dated January 12, 2020.

² Email from (b) (6), FOOSC to the NPFC dated October 13, 2020, providing incident information.

³ USCG Notice of Federal Interest (NOFI) dated January 13, 2020 and TGLO Letter of State Interest dated January 12, 2020.

⁴ OMI Environmental Solutions General Service Agreement dated February 11, 2020.

⁵ NPFC OSLTF Claim Form dated September 28, 2020, OMI Invoice Number SINV2001875 dated March 12, 2020.

⁶ NPFC OSLTF Claim Form dated September 28, 2020, OMI Invoice Number SINV2004946 dated June 18, 2020.

⁷ NPFC OSLTF Claim Form dated September 28, 2020 and received October 1, 2020.

20,000 gallons of diesel from its fuel tanks.⁸ On January 13, 2020, MSU Port Arthur reported to the scene and found the vessel had been boomed and had sank at the dock.⁹ On January 13, 2020, the Federal On Scene Coordinator's Representative (FOSCR) issued a Notice of Federal Interest to (b) (6).¹⁰ TGLO also issued a Letter of State Interest to (b) (6) dated January 12, 2020.¹¹

Responsible Party

St Joseph VII LLC is owned by (b) (6) and is identified as the owner and operator of the vessel *MY JULIE* and was designated the responsible party (RP) for the oil spill incident.¹²

The NPFC issued a Responsible Party (RP) Notification letter dated October 5, 2020 to Mr. (b) (6).¹³ A Responsible Party Notification letter notifies the owner and/or operator 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 used the last known address provided by the claimant.¹⁴ The notification was sent through United States Postal Service (USPS) certified mail and the USPS confirmed Mr. (b) (6) receipt of the RP Notification Letter.

Recovery Operations

On February 12, 2020 the vessel *MY JULIE* was discharging oil into the Sabine Neches waterway. MSU Port Arthur arrived and found the vessel almost fully submerged with rigging and partial cabin outside the water.¹⁵ OMI was contracted by the RP to perform clean up and dewatering operations.¹⁶ OMI collected approximately 20,000 gallons of diesel with the sorbents used.¹⁷ OMI contained the vessel with an absorbent boom and vacuumed diesel and water off the vessel in an effort to float the vessel as it was sunk where it was moored.¹⁸ After multiple attempts to lift and float the vessel, the RP and Mr. (b) (6) were able to float the vessel on February 14, 2020 by pumping water off the vessel and using a crane.¹⁹

⁸ Email from FOSCR to NPFC dated November 12, 2020 regarding OMI actions.

⁹ Email from FOSCR to NPFC dated November 12, 2020 regarding OMI actions.

¹⁰ Notice of Federal Interest dated January 13, 2020 and signed by (b) (6).

¹¹ TGLO Letter of State Interest to (b) (6) dated January 12, 2020.

¹² Notice of Federal Interest dated January 13, 2020 and signed by (b) (6).

¹³ NPFC RP Notification Letter dated October 5, 2020.

¹⁴ General Service Agreement between OMI Environmental Solutions and St. Joseph LLC signed by (b) (6) dated February 11, 2020.

¹⁵ Email from FOSCR to NPFC dated November 12, 2020 regarding OMI actions.

¹⁶ Email from FOSCR to NPFC dated November 12, 2020 regarding OMI actions.

¹⁷ Email from FOSCR to NPFC dated November 12, 2020 regarding OMI actions.

¹⁸ Texas General Land Office Case File 2020-0116, Incident Report, Response Chronology for response Officer: (b) (6), page 30.

¹⁹ Texas General Land Office Case File 2020-0116, Incident Report, Response Chronology for response Officer: (b) (6), page 32-38.

On February 14, 2020 the pollution response was determined complete. OMI stayed at the scene to oversee the salvage of the vessel.²⁰ After the vessel was salvaged, the cause for the sinking was determined to be a rotted 4” sewage water intake pipe.²¹ The vessel had a lien and the insurance company withdrew from the response on January 22, 2020 by issuing a check to the RP for \$400,000.²² After Mr. (b) (6) fulfilled the policy and received the full amount of the policy, Great American Insurance Company (GAIC) was no longer involved in the response.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 initially presented its claim in the form of an invoice to St. Joseph VII LLC on March 12, 2020 and June 18, 2020, respectively. Throughout the response, the claimant was informed that the RP’s insurance company, Great American Insurance Company, had withdrawn from the response and disbursed the full policy amount to the RP. OMI invoiced the RP again on December 19, 2019.²⁶

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 \$63,423.36 on September 28, 2020.²⁷

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.²⁸ On October 1, 2020 the NPFC received a claim for uncompensated removal costs from OMI dated September 28, 2020. The claim included the OSLTF claim form, initial invoices, contract between the RP and OMI, OMI 2018 Emergency rate schedule, daily work activity logs, meals receipts and daily supervisor log. Additional information provided by the claimant to the NPFC included OMI’s job files and checklists accounting for equipment and staff, resubmission of second invoice to RP.

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.

²⁰ Email from FOSCR to NPFC dated November 12, 2020 regarding OMI actions.

²¹ PolRep referenced MISLE Case # 1205591 dated January 12, 2020.

²² PolRep referenced MISLE Case # 1205591 dated January 12, 2020.

²³ Texas General Land Office Case File 2020-0116, Incident Report, Response Chronology for response Officer: (b) (6), page 15.

²⁴ 33 U.S.C. § 2701 *et seq.*

²⁵ 33 CFR 136.103.

²⁶ PolRep referenced MISLE Case # 1205591 dated January 12, 2020.

²⁷ NPFC OSLTF Claim Form dated September 28, 2020.

²⁸ 33 CFR 136.103.

²⁹ 33 CFR Part 136.

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, 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

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)).

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.

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;
- (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

Upon receipt of the claim submission, the NPFC requested additional information and clarification from the claimant on October 2, 2020.⁴²

After a complete review of all documentation and after contacting the FOSCR and the SOSC who were both 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. 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.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$62,987.04 while \$436.32 are deemed non-compensable for the following reasons:⁴³

Personnel

1. OMI's invoice number SINV2001875 charged \$95.89 for crew meals for February 12, 2020. After reviewing the receipt submitted, NPFC is unable to verify the items charged under this receipt. The \$19.18 identified as a 20% markup is also denied.
2. OMI's invoice number SINV2001875 charged \$80.21 for crew meals for February 13, 2020. After reviewing the receipt submitted, NPFC is unable to verify the items charged under this receipt. The \$16.04 identified as a 20% markup is also denied.
3. OMI's invoice number SINV2001875 charged \$150.00 for profiling, manifest preparation and load scheduling. This item is denied as the rate schedule does not provide pricing.
4. OMI's invoice number SINV2004946 charged \$75.00 for profiling, manifest preparation and load scheduling. This item is denied as the rate schedule does not provide pricing.

³⁹ 33 CFR 136.105.

⁴⁰ Email from the FOSCR to NPFC dated October 13, 2020, Re FOSC Coordination, the FOSCR confirmed actions performed by OMI were consistent with the National Contingency Plan.

⁴¹ 33 CFR 136.203; 33 CFR 136.205.

⁴² Email from OMI to NPFC dated October 12, 2020.

⁴³ Enclosure 3 to this determination provides a detailed analysis of these costs.

Overall Denied Costs = \$436.32⁴⁴

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 **\$62,987.04**.

This determination is a settlement offer,⁴⁵ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁶ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁷ 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: <i>11/17/2020</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor's Comments:</p>

⁴⁴ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

⁴⁵ 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).

⁴⁶ 33 CFR § 136.115(b).

⁴⁷ 33 CFR § 136.115(b).