

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	UCGP922007-URC001
<b>Claimant:</b>	Environmental Safety and Health Consulting Services, Inc.
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$76,058.62
<b>Action Taken:</b>	Offer in the amount of \$74,401.11

### **EXECUTIVE SUMMARY:**

On October 29, 2020 at approximately 12:10 pm local time, Forefront Emergency Management made a notification to the National Response Center (NRC), via report # 1291052 and reported that an unknown amount of oil was found coming from a storage tank.<sup>1</sup> The oil discharged into Lake Fortuna, a navigable waterway of the United States.<sup>2</sup>

United States Coast Guard (USCG) Sector New Orleans Incident Management Division (IMD), operating in the capacity as the Federal On Scene Coordinator (“FOSC”), responded to the incident and found oily product leaking from a damaged storage tank on an offshore platform actively releasing crude oil into Lake Fortuna, a navigable waterway of the United States.<sup>3</sup> The source was determined to be the Saratoga Test Facility (NWF561).<sup>4</sup> The FOSC contacted Lobo Operating, LLC (“Lobo” or “RP”) to advise of the damaged storage tank and of the subsequent discharge. Lobo took responsibility for the discharge and hired Environmental Safety and Health Consulting Services, Inc. (“ES&H” or “Claimant”) to respond.<sup>5</sup> ES&H personnel deployed a containment boom around the facility and completed cleanup operations.<sup>6</sup> The FOSC oversaw and monitored the removal and cleanup operations performed by ES&H throughout the response.<sup>7</sup>

In accordance with the Oil Pollution Act of 1990, Lobo Operating, Inc. (“Lobo” or “Operator/Permittee”) and Saratoga Resources Inc. (“Saratoga” or “Owner/Lessee”) are identified as the responsible parties (RP)<sup>8</sup> for the incident that resulted in a discharge of oil from the Saratoga Test Facility (NWF561).<sup>9</sup> Saratoga Resources Inc. (“RP”), is the owner/lessee of the facility and Lobo Operating Inc. the operator/permittee are both identified as the responsible parties (RP) as defined by the Oil Pollution Act of 1990.<sup>10</sup> ES&H presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$76,058.62 on December

<sup>1</sup> USCG MISLE Activity # 7087401 dated October 30, 2020.

<sup>2</sup> NRC Report # 1291052 dated October 30, 2020.

<sup>3</sup> Email from FOSC to NPFC dated December 29, 2021 regarding incident details.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> IAP’s pdf, ICS 201 – 2A, page 3 of 115.

<sup>7</sup> Email from FOSC to NPFC dated December 29, 2021 regarding incident details.

<sup>8</sup> 33 U.S.C. § 2701.

<sup>9</sup> Email from FOSC to NPFC dated December 29, 2021 regarding incident details.

<sup>10</sup> Contract Operator Agreement dated March 7, 2017, Exhibit A.

15, 2021.<sup>11</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 \$74,401.11 is compensable and offers this amount as full and final compensation of this claim.

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

### ***Incident***

On October 29, 2020, USCG Sector New Orleans performed an overflight of the lake Fortuna area after Hurricane Zeta and discovered a discharge of what appeared to be oily product leaking from a damaged storage tank on an offshore platform.<sup>12</sup> Sector New Orleans IMD contacted a representative of Lobo Operating and the RP took responsibility for the discharge and hired ES&H to respond.<sup>13</sup> ES&H arrived on scene and placed absorbent booms between the platform and the containment boom. ES&H utilized a pump connected to a fuel operated tote tank that continued to vacuum product during the evening, while the response team was not present.<sup>14</sup>

### ***Recovery Operations***

The RP contacted Forefront Emergency Management who made proper notifications and then hired the ES&H. to perform cleanup operations.<sup>15</sup> ES&H arrived on scene on October 30, 2020 and performed an assessment of the incident and noticed the tank on the south side of the facility had collapsed and was partially hanging over the water with minimal oil remaining inside. ES&H personnel deployed a containment boom around the facility.<sup>16</sup> On October 31, 2020, it was determined that the middle tank was leaking so ES&H personnel attempted to slow the release using absorbent pads, a skimmer, and a vacuum pump to aid in recovery operations.

On November 1, 2020, ES&H utilized a wash pump to wash oil from the surface of the platform and collected the oily-water mixture via a suction pump. The oily-water was stored in a tote tank. The first tote tank was completely filled with 250-gallons of oily-water mixture and all future oily-water was directed into a second tote tank that held 350-gallons.<sup>17</sup>

On November 3, 2020, ES&H personnel noticed dark patches of material within the containment on the south and west sides of the facility. Personnel observed oil on the surface of the platform, on the surface of the water, and appeared to be originating from an area between the collapsed tank and the middle tank. ES&H collected the saturated absorbents from the waterway and from the platform of the facility. An oiled Clapper Rail was observed perched on top of the containment boom on the south side of the platform. ES&H personnel safely retrieved

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<sup>11</sup> ES&H Claim Submission Optional OSLTF Claim Form dated December 13, 2021.

<sup>12</sup> Email from FOSC to NPFC dated December 29, 2021 regarding incident details.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Email between Claimant and NPFC dated January 4, 2022 confirming no contract is in place between RP and Claimant.

<sup>16</sup> Lobo Incident Action Plan (IAP) for Invoice 1-57908 page 3 of 115.

<sup>17</sup> Lobo Incident Action Plan (IAP) for Invoice 1-57908 page 29 of 115.

the bird and placed it into a secure container. Louisiana Department of Wildlife and Fisheries took possession of the bird and transported it to Wildlife Response Services, LLC.<sup>18</sup>

Two bales of absorbent boom were deployed outside of the platform prior to overnight operations and recovery. Personnel stored the equipment and collected all pollution bags, placing them on ES&H's response vessel. Scare cannons were deployed to deter avian activity during overnight operations.<sup>19</sup> All personnel departed the facility and no sheening was observed outside of containment area at the end of the day.

Mr. (b) (6), Representative for Lobo, requested ES&H keep the roll-off boxes on rent at their location after November 9th in anticipation of any additional residual product that may be released from the site.<sup>20</sup>

### ***Responsible Party***

The Saratoga Test Facility (NWF561) is owned by Saratoga Resources Inc. and Lobo Operating, Inc. is the operator/permittee. Both entities were determined to be the responsible parties (RP) for the oil spill incident.<sup>21</sup>

The NPFC issued a Responsible Party (RP) Notification letter dated December 21, 2021 to Lobo Operating, Inc.<sup>22</sup> The NPFC used the last known address provided by online records for Saratoga Resources, Inc. The notifications were sent through United States Postal Service (USPS) certified mail. Mr. (b) (6) confirmed receipt of the operator/permittee's RP Notification Letter. The notification sent to Saratoga Resources Inc. was returned to the NPFC by USPS on January 18, 2022 via Covington, Louisiana because the forwarding order for this address was no longer valid.<sup>23</sup>

A Responsible Party Notification letter notifies the owner/lessee and/or operator/permittee 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 Claims Manager received a phone call from Mr. (b) (6), representative for Lobo Operating, Inc., who provided additional information regarding the status of the Saratoga Test Facility NWF561. Mr. (b) (6) emailed the Contract/Operator Agreement with Saratoga Resources Inc., to the NPFC and explained its efforts to date to reimburse the Claimant.<sup>24</sup>

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<sup>18</sup> Wildlife Response Documentation Response Report Summary dated November 3, 2020 and IAP's Invoice 1-57908 page 63 of 115.

<sup>19</sup> Lobo Incident Action Plan (IAP) for Invoice 1-57908 page 64 of 115.

<sup>20</sup> Email between Claimant and NPFC dated January 18, 2022 Re Additional Information.

<sup>21</sup> Email between FOOSC and NPFC dated January 3, 2022.

<sup>22</sup> NPFC RP Notification Letter dated December 21, 2021.

<sup>23</sup> USPS Undeliverable RP Notification Letter confirmation for Saratoga Resources, Inc.

<sup>24</sup> Phone Call Conversation Log between RP and NPFC dated January 5, 2022 and Contract Operator Executed Agreement dated March 17, 2017.

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

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

Claimant submitted its claim for removal costs to the responsible party on December 28, 2020.<sup>27</sup> Mr. (b) (6) of Lobo Operating responded to the NPFC's RP Notification letter on January 5, 2022 whereby it stated that tried to discuss payment with ES&H however they were frustrated with Lobo due to non-payment.<sup>28</sup>

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

On December 15, 2021, the NPFC received a claim for uncompensated removal costs from Environmental Safety and Health Consulting Services, Inc. in the amount of \$76,058.62 dated December 13, 2021. The claim included the Oil Spill Liability Trust Fund Modified Claim Form, Invoice 1-57908, Invoice 1-58535, IAP's (Invoice 1 57908), Invoice 1 57908 Supervisor Logs, map of the incident site, Photo Documentation, Spill Response Notification Form, Wildlife Response Documentation, Written Notifications to Agencies, and email correspondence with the RP.

The NPFC made multiple requests for additional information to ES&H who provided the following: 2020 Emergency Response Rate Schedule, 3<sup>rd</sup> Party payment receipts 10-59846 2, 10-59846, 10-60692, 10-60989, 4 photos demonstrating boom storage locations, replacement boom quote from manufacturer, and email responses answering NPFC questions.

## **IV. DETERMINATION PROCESS:**

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

When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for

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<sup>25</sup> 33 U.S.C. § 2701 *et seq.*

<sup>26</sup> 33 CFR 136.103.

<sup>27</sup> ES&H claim submission dated December 13, 2021.

<sup>28</sup> January 5, 2022 email from NPFC to Lobo recapping phone conversation regarding liability.

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."<sup>29</sup> 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."<sup>30</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>31</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>32</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>33</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>34</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>35</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>36</sup>

The NPFC analyzed each of these factors and determined that the majority of costs incurred and submitted by ES&H herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate state published rates and all approved costs were supported by adequate documentation and outlined in the Lobo Operating Incident Action Plans for the incident response.

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<sup>29</sup> *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).

<sup>30</sup> 33 U.S.C. § 2701(31).

<sup>31</sup> 33 U.S.C. § 2701(30).

<sup>32</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

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

<sup>34</sup> 33 CFR 136.105.

<sup>35</sup> Email from USCG FOSCR (b) (6) dated December 29, 2021 demonstrates the response actions performed by ES&H were determined to be consistent with the NCP. After reviewing all available incident documentation, the amounts claimed by ES&H are supported by the record. The FOSCR also confirmed through email that the actions performed by the OSRO were determined to be consistent with the National Contingency Plan.

<sup>36</sup> 33 CFR 136.203; 33 CFR 136.205.

The amount of compensable costs is \$74,401.11, while \$1,657.51 was deemed not compensable for the following reasons:

1. NPFC requested the Containment Boom original purchase receipt from the claimant however ES&H was unable to provide the receipt. ES&H provided a quote from Abasco, the boom manufacturer, in support of the purchase price for the replacement boom.<sup>37</sup> According to the boom manufacturer, the shelf life for the boom when stored properly should exceed 10 years.<sup>38</sup> ES&H stated the approximate age of the damaged boom was one year<sup>39</sup>, which resulted in a 90% depreciated reimbursable replacement price of  $\$4,825 \times 90\% = \$4,342.50$ . As such, the NPFC denies \$1,657.50; and
2. A \$.01 denial adjustment has been applied for an unidentified difference in total costs claimed vice costs supported.<sup>40</sup>

**Overall Denied Costs = \$1,657.50<sup>41</sup>**

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Ecology's request for uncompensated removal costs is approved in the amount of **\$74,401.11**.

This determination is a settlement offer,<sup>42</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>43</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>44</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

**(b) (6)**  
Claim Supervisor: **(b) (6)**

<sup>37</sup> Email from Claimant to NPFC Re Additional Information dated January 18, 2022.

<sup>38</sup> Email from Abasco Boom Manufacturer Representative dated January 20, 2022.

<sup>39</sup> Email from Claimant to NPFC Re Boom Age and Damage dated January 21, 2022.

<sup>40</sup> See, Enclosure (3) line 176 on invoice # 1-57908.

<sup>41</sup> See, Enclosure (3) for itemization of the costs charged and adjudicated.

<sup>42</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>43</sup> 33 CFR § 136.115(b).

<sup>44</sup> 33 CFR § 136.115(b).

Date of Supervisor's review: *1/31/2022*

Supervisor Action: *Approved*

Supervisor's Comments: