

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGP922018-URC001
<b>Claimant:</b>	Oil Mop LLC dba OMI Environmental Solutions
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Cost
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$22,398.18
<b>Action Taken:</b>	Offer in the amount of \$21,797.18

### **EXECUTIVE SUMMARY:**

On July 1, 2021 at approximately 13:06pm local time, Red Rock Energy Group (Red Rock or RP) reported a discharge of 5 barrels of crude oil into a marsh area from a ruptured 2-inch flow line at a well site operated by them.<sup>2</sup> Approximately five barrels of oil discharged into Lake Bully Camp, a tributary to Bayou Blue, a navigable waterway of the United States.<sup>3</sup> Red Rock, as the responsible party (RP), hired Oil Mop LLC dba OMI Environmental Solutions (OMI) to clean up the discharged oil. U.S. Coast Guard (USCG) Marine Safety Unit (MSU) Houma, Louisiana responded and directed the response as the Federal On-Scene Coordinator's Representative (FOSCR).<sup>4</sup>

OMI completed cleanup and submitted its invoice totaling \$22,398.18 to Red Rock on August 24, 2021.<sup>5</sup> According to the claimant, Red Rock stated that it could not pay the invoice. On August 30, 2022, OMI presented this claim to the NPFC.<sup>6</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 \$21,797.18 of the requested amount is compensable and offers this amount as full and final compensation of the claim.

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<sup>1</sup> This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant's rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant's rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

<sup>2</sup> National Response Center (NRC) Report # 1309418 dated July 1, 2021.

<sup>3</sup> USCG SITREP dated July 1, 2021.

<sup>4</sup> USCG SITREP dated July 1, 2021.

<sup>5</sup> OMI invoice # SINV2103660 dated August 24, 2021.

<sup>6</sup> Email from OMI to NPFC dated August 30, 2022.

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

### ***Incident***

On July 1, 2021, at approximately 0730, approximately five barrels of crude oil discharged from Red Rock's Bully Camp field facility [SYS-100091226]. The discharge occurred due to a 2-inch flow line rupture from DSCI #146 well [Serial #213950]. The discharged product entered Lake Bully Camp, a tributary to Bayou Blue, a navigable waterway of the United States. The discharged product created a thick rainbow and black sheen on the water's surface, infiltrating the surrounding marsh. The facility operator immediately shut in the well and personnel began using wheel wash from a crew boat to attempt to physically herd the oil into a natural collection point until OMI arrived on scene and deployed boom.<sup>7</sup>

### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.<sup>8</sup> Red Rock Energy Group is an oil producer that operates wells on leases in the Bully Camp field of Louisiana and was identified by the FOSCR as the responsible party ("Responsible Party" or "RP") for the incident.<sup>9</sup> The NPFC sent an RP letter to Red Rock Energy Group, Inc. on September 7, 2022 by certified mail.<sup>10</sup> A Responsible Party Notification letter notifies the RP 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.

### ***Recovery Operations***

OMI responded to the discharge on the first day of the discharge, July 1, 2021 and cleaned up the oil in accordance with the National Contingency Plan, as verified by the Coast Guard FOSCR.<sup>11</sup> OMI completed its response on July 9, 2021. Red Rock was responsible for disposal of the collected oil and sorbents.

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

Red Rock hired OMI to perform the cleanup by executing the OMI General Service Agreement on July 1, 2021.<sup>12</sup> OMI completed cleanup on July 9, 2021, and submitted its invoice totaling \$22,398.18 to Red Rock on August 24, 2021.<sup>13</sup> According to the claimant, Red Rock stated that it could not pay the invoice.<sup>14</sup>

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<sup>7</sup> USCG Pollution Responder statement dated November 22, 2021.

<sup>8</sup> 33 U.S.C. § 2701(32).

<sup>9</sup> USCG Notice of Federal Interest (NOFI) dated July 1, 2021 and USCG SITREP dated July 1, 2021.

<sup>10</sup> NPFC Responsible Party Letter to Red Rock Energy Group, Inc. regarding the incident on July 1, 2021.

<sup>11</sup> Email from FOSCR to NPFC dated September 12, 2022.

<sup>12</sup> OMI General Service Agreement signed by OMI and by Red Rock on July 1, 2021.

<sup>13</sup> OMI invoice # SINV2103660 dated August 24, 2021.

<sup>14</sup> Email from OMI to NPFC dated August 30, 2022.

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

Absent limited circumstances, the Federal Regulations implementing OPA<sup>15</sup> require all claims for removal costs or damages must be presented to the RP(s) before seeking compensation from the NPFC.<sup>16</sup>

OMI submitted its request for compensation to the operator of the lease.<sup>17</sup> When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.<sup>18</sup> OMI seeks reimbursement of removal costs of \$7,959.50 for labor, \$6,570.00 for equipment, \$7,599.00 for supplies and \$269.68 of miscellaneous costs totaling \$22,398.18.<sup>19</sup>

### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>20</sup> 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.<sup>21</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>22</sup> 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.<sup>23</sup> An RP's liability

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<sup>15</sup> 33 U.S.C. § 2701 *et seq.*

<sup>16</sup> 33 CFR 136.103.

<sup>17</sup> OMI Invoice # SINV2103660 dated August 24, 2021.

<sup>18</sup> 33 CFR 136.103.

<sup>19</sup> \$942.00 for disposal is listed on the claim form description, but not included in the sum certain. OMI stated the RP handled disposal.

<sup>20</sup> 33 CFR Part 136.

<sup>21</sup> *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)).

<sup>22</sup> *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).

<sup>23</sup> 33 U.S.C. § 2702(a).

is strict, joint, and several.<sup>24</sup> 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.”<sup>25</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>26</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>27</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>28</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>29</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>30</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.
- (d) That the removal costs were uncompensated and reasonable.<sup>31</sup>

The claimant satisfied these requirements, generally, and NPFC finds most of the claim to be compensable based on FOSC coordination and based on the invoice having been invoiced in accordance with the OMI General Service Agreement signed by OMI and by Red Rock on July 1, 2021. However, certain costs must be reduced or denied. The denied amounts are explained below.

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<sup>24</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>25</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>26</sup> 33 U.S.C. § 2701(31).

<sup>27</sup> 33 U.S.C. § 2701(30).

<sup>28</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>29</sup> 33 CFR Part 136.

<sup>30</sup> 33 CFR 136.105.

<sup>31</sup> 33 CFR 136.203; 33 CFR 136.205.

1. NPFC reduced the cost for a spill recovery tech on July 6, 2021. OMI invoiced his time at eight hours of straight time starting at 0800 at \$45/hr for a total of \$360.00, but the daily field service ticket #22945 and supervisor log show that he only started working at 1100 and worked until 1800. Therefore, he only worked five hours of straight time for a total of \$225.00. NPFC allowed \$225.00 of documented straight time and denies the overbilled amount of **\$135.00**.
2. NPFC reduced the cost for a second spill recovery tech on July 6, 2021. OMI invoiced four hours of overtime from 0700 to 0800 plus 1600 to 1900 at \$67.50/hr totaling \$270.00, but the daily field service ticket #22945 and supervisor log show that he only started at 0800 and worked until 1800. Therefore, he only worked two hours of overtime for a total of \$135.00. NPFC allowed \$135.00 for two hours of documented overtime and denies the overbilled amount of **\$135.00**.
3. NPFC reduced the cost for a third spill recovery tech on July 6, 2021. OMI invoiced four hours of overtime from 0700 to 0800 plus 1600 to 1900 at \$67.50/hr totaling \$270.00, but the daily field service ticket #22945 and supervisor log show that he only started at 0800 and worked until 1800. Therefore, he only worked two hours of overtime for a total of \$135.00. NPFC allowed \$135.00 for two hours of documented overtime and denies the overbilled amount of **\$135.00**.
4. NPFC denied the claimed equipment cost for two 55-gallon poly drums invoiced on July 9, 2021 at a rate of \$98.00/ea for a total of **\$196.00** because the drums are not listed on the daily field service ticket, which details the labor, equipment, other miscellaneous costs and supplies for the day.

The NPFC thus denies a total of \$601.00 of the claimed amount.

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, OMI's request for uncompensated removal costs is approved in the amount of **\$21,797.18**.

This determination is a settlement offer,<sup>32</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>33</sup> The NPFC reserves the right to revoke a

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<sup>32</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>33</sup> 33 CFR § 136.115(b).

settlement offer at any time prior to acceptance.<sup>34</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor:

(b) (6)

Date of Supervisor's review: *10/14/22*

Supervisor Action: *Offer Approved*

Supervisor's Comments:

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<sup>34</sup> 33 CFR § 136.115(b).