

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP23004-URC001
Claimant:	Environmental Safety & Health Consulting Services, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$30,078.04
Action Taken:	Offer in the amount of \$30,078.04

EXECUTIVE SUMMARY:

On October 29, 2020, the National Response Center (NRC) notified United States Coast Guard (USCG) Marine Safety Unit (MSU) Houma regarding two barrels of crude oil that was released from an S2 Energy Operating, LLC., Lapeyrouse Field Facility storage tank, following a severe weather event related to Hurricane Zeta. It was reported that the crude oil went into a ditch and marsh area.² In its role as Federal On Scene Coordinator (FOSC), Marine Safety Unit (MSU) Houma arrived on scene and observed that hurricane force winds had pushed over two storage tanks which resulted in a discharge of approximately 17 barrels of crude oil. The crude oil entered the Bayou Petite Caillou and threatened Lake Boudreaux, a navigable waterway of the United States.³ Environmental Safety & Health Consulting Services, Inc. (“ES&H” or “Claimant”) was hired and arrived on scene the same day with personnel and equipment.⁴

On October 29, 2020, Louisiana Department of Environmental Quality (LDEQ), Emergency Responder, arrived on scene and conducted hurricane-related facility assessments and to ensure safety and cleanup of the oil spill incident.⁵

In accordance with the Oil Pollution Act of 1990 (OPA),⁶ S2 Energy Operating LLC., Lapeyrouse Commingling Facility has been identified as the responsible party (“S2 Energy” or “RP”).⁷ Forefront Emergency Management (Forefront) acts as S2 Energy’s Emergency Spill Response Management.⁸

¹ 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.

² NRC Report Number 1290939 dated October 29, 2020.

³ USCG MSU Houma MISLE Case History Report Id: 1244713. P. 3/5

⁴ LDEQ Incident Report # 199708. Pgs 23/48.

⁵ LDEQ Incident Report # 199708.

⁶ 33 U.S.C. § 2701(32).

⁷ USCG SITREP dated March 3, 2023.

⁸ See, Forefront Emergency Management IAP Report dated October 29, 2020.

On March 2, 2023, the National Pollution Funds Center (NPFC) received ES&H's claim submission for \$30,078.04 in removal costs.⁹ ES&H provided their invoice # 1-58100, dated January 25, 2021 for \$68,462.83.¹⁰ The RP paid \$38,384.79¹¹ towards the invoice, leaving an invoice balance of \$30,078.04.

The NPFC has thoroughly reviewed all documentation that was submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$30,078.04 is compensable and offers this amount as full compensation of this claim.¹²

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On October 29, 2020, due to Hurricane Zeta's winds and flood waters, two S2 Energy Operating storage tanks discharged 17 barrels of crude oil. The two storage tanks (tanks 3 and 4) fell over and discharged product into the secondary containment.¹³ High water related to heavy rainfall and elevated tides carried the oil outside of the secondary containment and impacted a gravel parking lot, a vegetated area east of the spill site and the surface waters of a small pond to the northeast of the spill site.¹⁴ The oil then entered Bayou Petite Caillou and threatened Lake Boudreaux, a navigable waterway of the United States.¹⁵

At 0835 on October 29, 2020, Forefront Emergency Management reported the oil spill to the National Response Center via NRC Case # 1290939.¹⁶

At 1036 on October 29, 2020, MSU Houma arrived on scene and observed that S2 Energy Operating, LLC., discharged approximately 17 barrels from the Laperouse Field Facility and created a sheen on the water's surface that was reported to be 300 feet in width and black in color. MSU Houma directed the response and cleanup activities and generated MISLE Case History Report # 1244713.¹⁷

At 1130 on October 29, 2020, LDEQ Emergency State Responder arrived on scene and conducted hurricane related facility response inspections and oversaw the immediate safety and cleanup of the oil and damages.¹⁸

Responsible Party

⁹ See, OSLTF Form, Signed by Claimant, Dated March 2, 2023.

¹⁰ ES&H Invoice #1-58100, Dated January 25, 2021, p. 1.

¹¹ See, Screen Shot of Two RP Payments Towards ES&H Invoice # 1-58100.

¹² 33 CFR 136.115.

¹³ See, EM from (b) (6) and Facility Schematic.

¹⁴ See, LDEQ Incident Report # 199708. P. 2/48 dated February 1, 2021.

¹⁵ See, USCG MSU Houma IMD MISLE Case History Report Id: 1244713.

¹⁶ See, NRC Case # 1290939 dated October 29, 2020.

¹⁷ USCG MSU Houma MISLE Case History Report Id: 1244713.

¹⁸ LDEQ Incident 199708 dated February 1, 2021.

The spill in this case occurred at an offshore facility as defined by the Oil Pollution Act of 1990 (OPA).¹⁹ OPA defines the Responsible Party (RP) for a discharge from an offshore facility as “the person or entity that owned or operated such facility immediately prior to such abandonment.”²⁰ S2 Energy Operating, LLC (S2 or Responsible Party); is the confirmed owner/operator of the S2 Lapeyrouse Field Facility at the time when the spill incident occurred.²¹ As such, S2 is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.²²

On March 8, 2023, the NPFC issued an RP Notification Letter to S2 Energy’s Attorney, Mr. (b) (6) of Heller, Draper & Horn, LLC., via certified mail.²³ An RP Notification letter notifies the owner/operator that a claim was presented to the NPFC seeking reimbursement of uncompensated removal costs incurred as a result of a discharge of oil to navigable waters of the United States.

On March 8, 2023 Mr. (b) (6) notified the NPFC that his client is in Chapter 11 Bankruptcy in New Orleans.²⁴

Recovery Operations

On October 29, 2020, ES&H was contracted as the Oil Spill recovery Organization (OSRO) and utilized a vacuum truck to recover free-standing liquids from within the secondary containment and surrounding areas impacted outside of the containment walls. Sorbent boom and pads were deployed to aid in oil recovery and to prevent oil from migrating. Between October 29, 2020 and December 9, 2020, ES&H initiated product recovery during higher water events to prevent driving oil into the soils due to foot traffic and to utilize higher water levels to aid in product recovery.²⁵

All sorbent materials were placed inside pollution bags and transported to a certified waste facility for disposal.²⁶ Free standing liquids recovered by vacuum truck were offloaded to facility storage to be reprocessed by the facility. ES&H scraped the top layer of impacted soils on a portion of the facility property and also used hand tools to recover a portion of vegetation that was impacted by the spill. All recovered soils were placed inside of a frac tank for disposal at a certified facility.²⁷

II. CLAIMANT AND RP:

¹⁹ An “offshore facility” means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.” 33 U.S.C. § 2701(22).

²⁰ 33 U.S.C. § 2701(26), 33 U.S.C. § 2701(32).

²¹ ES&H claim submission dated March 2, 2023.

²² 33 U.S.C. § 2701(32).

²³ NPFC RP Notification Letter dated March 8, 2023.

²⁴ See, (b) (6) Email to NPFC dated March 8, 2023..

²⁵ See, Louisiana Department of Environmental Quality Incident Report # 199708. p. 2/48 dated February 1, 2021.

²⁶ River Birch LLC., Non-Hazardous Special Waste Or Asbestos Manifest # 296559, 294822, and 294823.

²⁷ See, Louisiana Department of Environmental Quality Incident Report # 199708. p. 2/48.

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁸ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²⁹

In accordance with 33 U.S.C. § 2713(a), ES&H presented its claim to S2 Energy for \$68,462.83 on January 25, 2021.³⁰ On June 21, 2021, S2 Energy made a \$34,231.42 payment toward ES&H's Invoice balance and on August 2, 2022, S2 Energy made a second payment of \$4,153.27 toward the invoice balance.³¹ S2 Energy paid a total of \$38,384.79 towards ES&H's Invoice # 1-58100 which left a remaining balance of \$30,078.04.³²

III. CLAIMANT AND NPFC:

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.³³ On March 2, 2023, the NPFC received ES&H's claim submission for \$30,078.04 in uncompensated removal costs. The claim included an OSLTF Claim Form, ES&H Invoice # 1-58100, a screen shot of S2 Energy's two payments toward ES&H Invoice # 1-58100, Forefront Emergency Management Spill Response Notification Form, Forefront Emergency Management Written Notification to Agencies, Forefront / S2 Energy Incident Action Plan (IAP), Photographs of the Incident and Response, United States Bankruptcy Court for the Eastern District of Louisiana Official Form 204, ES&H 2020 Emergency Response Rate Schedule, and the Forbearance Agreement Between and Among ES&H and S2 Energy.³⁴

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁵ 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.³⁶ The NPFC may rely upon, is not bound by the findings of fact, opinions,

²⁸ 33 U.S.C. § 2701 *et seq.*

²⁹ 33 CFR 136.103.

³⁰ ES&H Invoice #1-58100, Dated January 25, 2021, p. 1.

³¹ *See*, Screen Shot of Two Payments Toward ES&H Invoice # 1-58100.

³² The RP, S2 Energy Operating, LLC, filed a Chapter 11 bankruptcy in the United States Bankruptcy Court of the Eastern District of Louisiana via Case # 23-10066. Additionally, prior to filing for bankruptcy, S2 entered a Forbearance Agreement with ES&H. The Forbearance Agreement noted S2's agreement to pay a specified total of \$182,253.75 to ES&H, which included all costs in the amount of \$30,078.04, submitted in ES&H's claim.

³³ 33 CFR 136.103.

³⁴ *See*, Environmental Safety & Health Consulting Services, Inc., claim submission received on March 2, 2023, in the electronic claim file.

³⁵ 33 CFR Part 136.

³⁶ *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.³⁷ 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:

Under OPA, 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.³⁸ An RP's liability is strict, joint, and several.³⁹ 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."⁴⁰ 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."⁴¹ 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."⁴²

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴³ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁴ 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.⁴⁵

During review and adjudication of the claim submission, the NPFC made several requests for additional information summarized and broken down as follows:

- Information request to the claimant between March 3, 2023 and April 25, 2023:
 - (a) ES&H Daily Field Reports;
 - (b) Information Regarding the S2 Energy-Lapeyrouse Commingling Facility;

³⁷ 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).

³⁸ 33 U.S.C. § 2702(a).

³⁹ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

⁴⁰ *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).

⁴¹ 33 U.S.C. § 2701(31).

⁴² 33 U.S.C. § 2701(30).

⁴³ See generally, 33 U.S.C. § 2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁴ 33 CFR Part 136.

⁴⁵ 33 CFR 136.105.

- (c) Asked for Oil Spill Analyses;
 - (d) Disposal Manifests;
 - (e) Information Regarding the Oil that Spilled; and
 - (f) Proof of Payment.
- Information request to the SOSOC/LDEQ between March 6, 20203 and March 14, 2023:
 - (a) LDEQ Incident Report # 199708;
 - (b) Information Regarding the S2 Energy-Lapeyrouse Commingling Facility;
 - (c) Information Regarding the Oil that Spilled;
 - (d) Inquired as to Who Directed the Response;
 - (e) Information Regarding the Product in the Tanks; and
 - (f) Information Regarding the Berm and the Oil inside the Berm.
 - Information request to the FOSC between march 7, 2023 and March 23, 2023:
 - (a) FOSC Coordination for the Actions Performed During the Cleanup;
 - (b) Information Regarding the Facility;
 - (c) Information Regarding the Oil that Spilled;
 - (d) Information Regarding the Product in the tanks;
 - (e) Facility Site Map;
 - (f) Inquired as to Who Directed the Response; and
 - (g) Information Regarding the Berm and the Oil inside the Berm;
 - Information request to the RP between March 3, 2023 and March 23, 2023:
 - (a) Schematic of the Tank Farm;
 - (b) Copy of Oil Spill Analyses;
 - (c) Information Regarding the Products inside of the Tanks;
 - (d) Spilled Contents Mixed with Other Oils;
 - (e) Asked Who Directed the Oil Removal from the Berm; and
 - (f) Requested the Facility Safety Data Sheet.

In support of the claim submission, the NPFC received the following information resulting from its requests for additional information:

- Information provided by the claimant between March 3, 2023 and April 25, 2023:
 - (a) ES&H Field Logs;
 - (b) Pace analytical Oil Spill Analysis'
 - (c) Inormation Regarding the S2 Energy – Laperouse Commingling Facility;
 - (d) Information Regarding the oil held in the Tanks
 - (e) Information Regarding the oil that Spilled; and
 - (f) Copies of Cancelled Checks.
- Information provided by the SOSOC/LDEQ between March 6, 20203 and March 14, 2023:
 - (a) LDEQ Incident Report # 199708;
 - (b) Information Regarding the S2 Energy-Lapeyrouse Commingling Facility;
 - (c) Information Regarding the oil held in the Tanks;
 - (d) Information Regarding the oil that Spilled;

- (e) Information Regarding the Berm and the Oil inside the Berm; and
 - (f) Link to Google Earth Map of Facility.
- Information provided by the FOSC between March 7, 2023 and March 23, 2023:
 - (a) Pictures;
 - (b) Information Regarding the S2 Energy-Lapeyrouse Commingling Facility;
 - (c) Site Map;
 - (d) National Hurricane Center Tropical Cyclone Report for Hurricane Zeta;
 - (e) Information Regarding the oil held in the Tanks;
 - (f) Information Regarding the oil that Spilled; and
 - (g) Coordination of the Response Activities.
 - Information provided by the RP between March 3, 2023 and March 23, 2023:
 - (a) Safety Data Sheet;
 - (b) Schematic of the Lapeyrouse Commingling Facility;
 - (c) Information Regarding the S2 Energy-Lapeyrouse Commingling Facility;
 - (d) Identified which Tanks Spilled;
 - (e) Information Regarding the oil held in the Tanks; and
 - (f) Information Regarding the the oil that Spilled.

In support of the claimed costs and the response activities performed between October 29, 2020 and January 25, 2021, the NPFC relied heavily on all of the additional support documentation that was provided by the claimant, FOSC, SOSC, and the RP. The additional support documentation that was received by the NPFC and outlined in the determination substantiates that pollution mitigation and response actions were reasonable, necessary and have been coordinated with the FOSC and determined to be consistent with the National Contingency Plan. (NCP). The NPFC's Summary of Costs spreadsheet provides a line by line adjudication of the claimant's costs and identifies the source of the information used and the NPFC's decision to pay each item listed.⁴⁶

Upon completion of its adjudication, the NPFC has determined that all of the removal costs incurred by ES&H and submitted herein are compensable removal costs based on the supporting documentation provided by various entities and that the actions taken were properly coordinated with the FOSC and the actions taken were determined to be reasonable, necessary, and consistent with the NCP.

The amount of compensable costs is **\$30,078.04**.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Environmental Safety & Health Consulting Services, Inc. request for uncompensated removal costs is approved in the amount of **\$30,078.04**.

⁴⁶ NPFC Summary of Costs Spreadsheet.

This determination is a settlement offer,⁴⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁹ 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)
Date of Supervisor's review:	7/10/23
Supervisor Action:	<i>Offer Approved</i>

⁴⁷ 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).

⁴⁸ 33 CFR § 136.115(b).

⁴⁹ 33 CFR § 136.115(b).