

CLAIM SUMMARY / DETERMINATION¹

| | |
|--------------------------|-----------------------------------|
| Claim Number: | UCGP923006-URC001 |
| Claimant: | Legacy Environmental, LLC |
| Type of Claimant: | OSRO |
| Type of Claim: | Removal Costs |
| Claim Manager: | (b) (6) |
| Amount Requested: | \$6,699.91 |
| Action Taken: | Offer in the amount of \$4,599.11 |

EXECUTIVE SUMMARY:

On May 27, 2022, Legacy Environmental, LLC (“Legacy” or “Claimant”) was notified of an oil spill, located at the BCF Resources facility in New Iberia, Louisiana that had entered the waters of Bayou Colin, Louisiana.² Legacy was hired by the owner/operator of the facility, BCF Resources, LLC, (“BCF” or “Responsible Party”) to perform cleanup operations and to mitigate the spill.³ On June 1, 2022, Louisiana Department of Environmental Quality (LDEQ) was notified of the spill incident and arrived on scene to investigate the incident and oversee cleanup operations as the State On-Scene Coordinator (SOSC).⁴ LDEQ reported that the spill was caused by a corroded, inactive line that leaked oil into a surrounding marsh. LDEQ estimated that approximately 20-25 gallons of crude oil impacted a marsh area of approximately 100 x 50 feet, at the time of their report.⁵

The United States Environmental Protection Agency Region 6 (“USEPA” or “FOSC”) is the predesignated Federal On-Scene Coordinator (FOSC) based on the location of this incident. The FOSC determined that the incident posed a substantial threat of discharge of oil into the Dauterive Lake, Louisiana, a navigable waterway of the United States.⁶ BCF Resources, LLC; owner/operator of the BCF Resources facility in New Iberia, Louisiana, was identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.⁷

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 with 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 Legacy claim submission with Attachments dated February 23, 2023, see pg. 2 of 5; and *See*, LDEQ Incident Report #208859, pages 2-3 of 9.

³ Legacy claim submission with Attachments dated February 23, 2023, see pg. 2 of 5.

⁴ Legacy claim submission with Attachments dated February 23, 2023; *See*, LDEQ Incident Report #208859, pg. 3 of 9.

⁵ *Id.*

⁶ To ensure that Legacy met its burden with respect to the cleanup activity, the NPFC coordinated with USEPA Region 6, as the Federal On-Scene Coordinator (FOSC) for this incident. After analyzing the incident and the actions taken by Legacy, the FOSC opined that the response actions undertaken by Legacy and its subcontractors were consistent with the National Contingency Plan. *See*, email from USEPA to NPFC, dated July 25, 2023.

⁷ 33 U.S.C. § 2701(32).

On May 27, 2022, Legacy dispatched personnel on scene, using 100 feet of 10 inch oil containment boom to contain the spill.⁸ Legacy left their boom on site to prevent further discharge into the surrounding marsh, and returned on scene on June 9, 2022, to begin excavating the areas affected by the spill.⁹ Legacy hired American Recovery, LLC (American Recovery) and Republic Services as subcontractors to aide in the disposal of oil and waste.¹⁰ All excavation and removal of contaminated liquid and soils took place between June 9, 2022 and June 10, 2022.¹¹

LDEQ revisited the spill site on June 15, 2022, and noted the area had been fully remediated, with no signs of any remaining oil in the water, on the banks, or in nearby vegetation.¹² Legacy left roll-off boxes on scene until August 18, 2022, as a precautionary measure.¹³ Samples taken from the waste placed in disposal roll-offs support that the spilled substance was crude oil.¹⁴

On March 10, 2023, Legacy presented its removal cost claim to the National Pollution Funds Center (NPFC) for \$6,699.91.¹⁵ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,599.11 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:

Incident

On May 27, 2022, Legacy was notified of an oil spill located at the BCF Resources facility in New Iberia, Louisiana that had entered the waters of Bayou, Colin Louisiana.¹⁶ Legacy was hired by the owner/operator of the facility, BCF Resources, LLC, to perform cleanup operations.¹⁷

On June 1, 2022, LDEQ was notified of the spill incident and arrived on scene to investigate to incident.¹⁸ LDEQ reported that the spill was caused by a corroded, inactive line that leaked oil into a surrounding marsh. LDEQ estimated that approximately 20-25 gallons of crude oil impacted a marsh area of appx 100 x 50 feet, at the time of their report.¹⁹ LDEQ stated that the containment boom was placed on each side of the affected area to prevent the migration of oil. Absorbents were also placed on the water's

⁸ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pg. 14 of 28, for Legacy Daily Report, dated May 27, 2022.

⁹ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pg. 15 of 28, for Legacy Daily Report, dated June 9, 2022.

¹⁰ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pg. 27 of 28, for American Recovery Invoice and pg. 28 of 28, for Republic Services Waste Manifest.

¹¹ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pg. 15 of 28, for Legacy Daily Report, dated June 9, 2022, and pg. 19 of 28, for Legacy Daily Report, dated June 10, 2022.

¹² Legacy claim submission with Attachments dated February 23, 2023; *See*, LDEQ Incident Report #208859, pg. 3 of 9.

¹³ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pages 21-22 of 28, and pg. 25 of 28.

¹⁴ Email from Legacy to NPFC dated August 15, 2023; *See*, American Recovery, LLC Invoice 4000198917 pg. 5 of 6, for Republic Services Non-Hazardous Waste Manifest.

¹⁵ Legacy claim submission with Attachments dated February 23, 2023.

¹⁶ Legacy claim submission with Attachments dated February 23, 2023, see pg. 2 of 5; and *See* LDEQ Incident Report #208859, pages 2-3 of 9.

¹⁷ Legacy claim submission received March 10, 2023, pg. 2 of 5.

¹⁸ Legacy claim submission with Attachments: *See*, LDEQ Incident Report #208859, pg. 3 of 9.

¹⁹ Legacy claim submission with Attachments: *See*, LDEQ Incident Report #208859, pg. 3 of 9.

surface. LDEQ reported that the line was immediately plugged upstream upon discovery of the oil as a precaution.²⁰

Responsible Party

The spill in this case occurred at an onshore facility as defined by the Oil Pollution Act of 1990 (OPA).²¹ OPA defines the Responsible Party (RP) for a discharge from an onshore facility as “any person or entity owning or operating such facility.”²² BCF Resources, LLC is the confirmed owner/operator of the BCF Resources facility located in New Iberia, Louisiana at the time when the spill incident occurred.²³ As such, BCF is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.²⁴

Recovery Operations

On May 27, 2022, Legacy dispatched personnel on scene, using 100 feet of a 10 inch oil containment boom to contain the spill.²⁵ Legacy left their boom on site between May 28, 2022 through June 8, 2022, to prevent further discharge into the surrounding marsh.²⁶ Legacy returned on scene on June 9, 2022, and began excavating the areas affected by the spill.²⁷ Legacy hired American Recovery and Republic Services as subcontractors to aide in disposal of oil and waste.²⁸ All excavation of contaminated soil was placed in roll-off boxes. Disposal of both contaminated soil and liquid took place between June 9, 2022 and June 10, 2022.²⁹

LDEQ revisited the spill site on June 15, 2022, noted the area had been fully remediated with no signs of any remaining oil in the water, on the banks, or in nearby vegetation.³⁰ Legacy and LDEQ reported no further oil releases at the site after June 15, 2022. Legacy left roll-off boxes on scene until August 18, 2022, as a precautionary measure.³¹

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)³² require all claims for removal costs must be presented to the responsible party before seeking

²⁰ Legacy claim submission with Attachments: *See*, LDEQ Incident Report #208859, pg. 3 of 9.

²¹ An “onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 2701(24).

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

²³ Legacy claim submission with Attachments dated February 23, 2023.

²⁴ 33 U.S.C. § 2701(32).

²⁵ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pg. 14 of 28, for Legacy Daily Report, dated May 27, 2022.

²⁶ Legacy claim submission with Attachments dated February 23, 2023; *See*, LDEQ Incident Report #208859, pg. 3 of 9.

²⁷ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pg. 15 of 28, for Legacy Daily Report, dated June 9, 2022.

²⁸ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pg. 27 of 28, for American Recovery Invoice and pg. 28 of 28, for Republic Services Waste Manifest.

²⁹ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pg. 15 of 28, for Legacy Daily Report, dated June 9, 2022, and pg. 19 of 28, for Legacy Daily Report, dated June 10, 2022.

³⁰ Legacy claim submission with Attachments dated February 23, 2023; *See*, LDEQ Incident Report #208859, pg. 3 of 9.

³¹ Legacy claim submission with Attachments dated February 23, 2023; *See*, Invoice and Documentation pages 21-22 of 28, and pg. 25 of 28.

³² 33 U.S.C. § 2701 *et seq.*

compensation from the NPFC.³³ Legacy submitted all costs affiliated with the BCF Resources facility cleanup operation to the responsible party via 3 separate invoices sent on July 17, 2022,³⁴ August 13, 2022,³⁵ and November 12, 2022.³⁶

The RP paid \$12,400.00 toward Legacy's removal costs on Invoice 22-0384 in the amount of \$14,604.66,³⁷ but has not paid any remaining costs on Invoice 22-0384, nor were any costs paid by BCF on Invoice 22-0456 in the amount of \$1,400.00 or on Invoice 22-0644 in the amount of \$5,607.25.³⁸

III. CLAIMANT AND NPFC:

On March 10, 2023, the NPFC received a claim for \$6,699.91 from Legacy.³⁹ When the claim was received, it included a cover page, a signed OSLTF claim form, LDEQ's Incident Report #208859, photographs of the spill incident, Invoice #22-0384 dated 7/17/2022 in the amount of \$14,604.66, Invoice #22-0456 dated 8/13/2022 in the amount of \$1,400.00, Invoice #22-0644 dated 11/12/2022 in the amount of \$5,607.25, Legacy Daily Reports dated May 27, 2022, June 9, 2022, and June 10, 2022, and a series of emails exchanged between Legacy and BCF.⁴⁰

On July 18, 2023 and July 19, 2023, the NPFC requested additional information from Legacy.⁴¹ On August 15, 2023, Legacy provided an explanation of the credits it issued in the amount of \$2,512.00; it explained the costs that were paid by BCF in the amount of \$12,400.00; it provided a copy of the RP payment; it included Legacy invoices that displayed the costs claimed and were dated when sent to BCF; it provided a copy of all subcontractor invoices and payments associated with the costs claimed; it provided the 2022 Legacy Rate Sheet; the 2023 Legacy Rate Sheet; an additional copy of the LDEQ's Incident Report #208859; and the contact information for (b) (6), BCF's representative associated with the May 27, 2022, spill incident.⁴²

The NPFC issued a RP Notification letter to BCF Resources, LLC dated July 19, 2023.⁴³ A RP Notification letter notifies the RP that a claim was presented to the NPFC that is seeking reimbursement of uncompensated removal costs or damages incurred as result of the incident in which the recipient is the identified or suspected RP.⁴⁴ On July 25, 2023, the NPFC requested BCF provide any information that confirmed if a release agreement had been signed between BCF and Legacy in exchange for the payment that was made. NPFC requested confirmation of all payments made to Legacy in response to the spill incident occurring on May 27, 2022, along with an explanation as to why additional payments had not been made.⁴⁵ The NPFC resent those requests to BCF employee, (b) (6), on August 16, 2023.⁴⁶ As of the date of this letter, BCF has not responded to the RP Notification Letter or to any of the NPFC's email requests for information.

³³ 33 CFR 136.103.

³⁴ Email from Legacy to NPFC dated August 15, 2023. *See*, Invoice #22-0384 dated July 17, 2022.

³⁵ Email from Legacy to NPFC dated August 15, 2023. *See*, Invoice #22-0456 dated August 13, 2022.

³⁶ Email from Legacy to NPFC dated August 15, 2023. *See*, Invoice #22-0644 dated November 12, 2022.

³⁷ Email from Legacy to NPFC dated August 15, 2023. *See*, check #2422 pg. 2 of 2, dated August 15, 2022.

³⁸ Email from Legacy to NPFC dated August 15, 2023.

³⁹ Legacy claim submission with Attachments dated February 23, 2023.

⁴⁰ Legacy claim submission with Attachments dated February 23, 2023.

⁴¹ Email from NPFC to Legacy dated July 18, 2023; *See also*, Email from NPFC to Legacy dated July 19, 2023.

⁴² Email with attachments from Legacy to NPFC dated August 15, 2023.

⁴³ NPFC letter to BCF Resources LLC emailed on July 19, 2023.

⁴⁴ *See*, RP Notification Letter dated July 19, 2023.

⁴⁵ Email from NPFC to BCF Resources dated July 25, 2023.

⁴⁶ Email from NPFC to (b) (6) dated August 16, 2023.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁴⁷ 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.⁴⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁴⁹ 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.⁵⁰ An RP's liability is strict, joint, and several.⁵¹ 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."⁵² 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."⁵³ 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."⁵⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁵⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁵⁶ The claimant bears

⁴⁷ 33 CFR Part 136.

⁴⁸ 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)).

⁴⁹ 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).

⁵⁰ 33 U.S.C. § 2702(a).

⁵¹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁵² *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).

⁵³ 33 U.S.C. § 2701(31).

⁵⁴ 33 U.S.C. § 2701(30).

⁵⁵ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁵⁶ 33 CFR Part 136.

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.⁵⁷

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.⁵⁸
- (d) That the removal costs were uncompensated and reasonable.⁵⁹

The NPFC analyzed each of these factors and determined that the majority of costs incurred and submitted by Legacy 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.

Based on the location of this incident, the FOSC is the USEPA Region 6.⁶⁰ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁶¹

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$4,599.11 while \$2,100.80 is denied for the following reasons:⁶²

Invoice 22-0384:

1. Third party markup – the Legacy 2022 rate sheet on page 7 of 7 identifies markup as 15%. Based on the rate sheet and its associated terms and conditions, the NPFC has denied \$27.50 on 6/9/22 as the claimant applied a 20% markup in accordance with the incorrect rate sheet and the NPFC also denied \$27.50 on line 62 for the same reason. Total denied - \$55.00;⁶³
2. Unsubstantiated calculation – Roll off Box trucking charge by Legacy on 6/9/22 in the amount of \$877.50⁶⁴, has been reduced to the Gulf Coast Responders Invoice in the amount of \$617.50. All amounts in excess of \$617.50 are denied as unsupported since Legacy has not provided an explanation and calculation for the fuel surcharge difference. Total denied is \$260.00⁶⁵; and

⁵⁷ 33 CFR 136.105.

⁵⁸ The NPFC coordinated with USEPA Region 6, as the Federal On-Scene Coordinator (FOSC) for this incident. After analyzing the incident and the actions taken by Legacy, the FOSC opined that the response actions undertaken by Legacy and its subcontractors were consistent with the National Contingency Plan. *See*, email from USEPA to the NPFC dated July 25, 2023.

⁵⁹ 33 CFR 136.203; 33 CFR 136.205.

⁶⁰ 40 CFR 300.120(a)(2).

⁶¹ Email from USEPA to the NPFC certifying that all actions and costs were consistent with the NCP dated July 25, 2023.

⁶² Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

⁶³ *Id @* Invoice 22-0384 tab, lines 48 and 61

⁶⁴ *See*, Legacy Invoice 22-0384, page 11 of 28. The amount charged on Legacy's invoice does not correlate to the Gulf Coast Responders LLC invoice # 9482 in the amount of \$926.25 and as such, the NPFC denies the difference as unexplained and unsupported by the record.

⁶⁵ *See*, Enclosure 3, Invoice 22- 0384, line 55.

3. Fuel surcharge – The claimant has not provided specificity as to which of its line items comprise the fuel surcharge total claimed nor has the claimant specified what USDOE percentage calculation it has applied to arrive at its fuel surcharge amount claimed therefore the NPFC has allowed the USDOE fuel surcharge percentage of 35.5% for the following:
 - Jon Boats found on lines 33, 49, and 59 of the NPFC spreadsheet,
 - 4x4 Pickup trucks found on lines 34, 52, and 62 of the NPFC spreadsheet, and
 - Long Reach excavator found on line 60 of the NPFC spreadsheet.

Based on the foregoing, the NPFC denies \$730.00 in excessive USDOE fuel surcharge allowance in accordance with the 35.5% USDOE allowable calculation for the time in question.

As such, the NPFC denies a total of **\$1,045.80** on Invoice 22-0384.⁶⁶

Invoice 22-0644:

1. Unsubstantiated calculation – Roll off Box trucking charge by Legacy on 8/18/22 in the amount of \$1,282.50⁶⁷, has been reduced to match the Gulf Coast Responders Invoice in the amount of \$902.50⁶⁸. All amounts in excess are denied as unsupported since Legacy has not provided an explanation and calculation for the fuel surcharge difference. Total denied is \$380.00⁶⁹ and Roll off Box trucking charge by Legacy on 6/13/22 in the amount of \$1,012.50⁷⁰, has been reduced to match the Gulf Coast Responders Invoice in the amount of \$712.50⁷¹. All amounts in excess are denied as unsupported since Legacy has not provided an explanation and calculation for the fuel surcharge difference. Total denied is \$300.00⁷². Disposal charge by Legacy on 10/13/22 in the amount of \$730.08⁷³, has been reduced to match American Recovery, LLC Invoice in the amount of \$608.40⁷⁴. All amounts in excess are denied as unsupported since Legacy has not provided an explanation and calculation for the rate difference. Total denied is \$121.68⁷⁵; and an Analytical charge by Legacy on 10/13/22 in the amount of \$418.51⁷⁶, has been reduced to match American Recovery, LLC Invoice in the amount of \$348.76⁷⁷. All amounts in excess are denied as unsupported since Legacy has not provided an explanation and calculation for the rate difference. Total denied is \$69.75. Total denied for this category of costs is \$871.43; and
2. Fuel surcharge – The claimant has not provided specificity as to which of its line items comprise the fuel surcharge total claimed nor has the claimant specified what USDOE

⁶⁶ *Id @* Invoice 22-0384 tab.

⁶⁷ *See*, Legacy Invoice 22-0644, page 2 of 5.

⁶⁸ *See*, Gulf Coast Responders, LLC invoice # 9880 dated 9/22/22.

⁶⁹ *See*, Enclosure 3, Invoice 22- 0644, line 21.

⁷⁰ *See*, Legacy Invoice 22-0644, page 2 of 5.

⁷¹ *See*, Gulf Coast Responders, LLC invoice # 9880 dated 9/22/22.

⁷² *See*, Enclosure 3, Invoice 22-0644, line 22.

⁷³ *See*, Legacy Invoice 22-0644, page 2 of 5.

⁷⁴ *See*, American Recovery, LLC invoice # 4000198917 dated 10/25/22.

⁷⁵ *See*, Enclosure 3, Invoice 22- 0644, line 24.

⁷⁶ *See*, Legacy Invoice 22-0644, page 2 of 5.

⁷⁷ *See*, American Recovery, LLC invoice # 4000198917 dated 10/25/22.

percentage calculation it has applied to arrive at its fuel surcharge amount claimed therefore the NPFC has allowed the USDOE fuel surcharge percentage as follows:

- NPFC allowed the DOE fuel surcharge percentage of 29.5% for line 21 based on a date of service of 8/18/22 which equates to $\$902.50 \times 29.5\% = \266.24 , and
- NPFC allowed the DOE fuel surcharge percentage of 33.5% for line 22 based on a date of service of 6/13/22 which equates to $\$712.50 \times 33.5\% = \238.69 .

Based on the foregoing, the NPFC denies \$183.57 in excessive USDOE fuel surcharge allowance in accordance with the 29.5% USDOE allowable calculation and the 33.5% USDOE allowable calculation for the time in question.

The NPFC denies a total of **\$1,055.00** on Invoice 22-0644.⁷⁸

Overall Denied Costs: \$2,100.80⁷⁹

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Legacy's request for uncompensated removal costs is approved in the amount of \$4,599.11.

This determination is a settlement offer,⁸⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁸¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁸² 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: **8/28/23**

Supervisor Action: ***Offer approved***

⁷⁸ See, Enclosure 3, Invoice 22-0644 @ line 27.

⁷⁹ See, Enclosure 3, Invoice Summary tab @ line 8.

⁸⁰ 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).

⁸¹ 33 CFR 136.115(b).

⁸² *Id.*