

CLAIM SUMMARY / DETERMINATION¹

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| Claim Number: | UCGP23015-URC001 |
| Claimant: | State of Louisiana |
| Type of Claimant: | State |
| Type of Claim: | Removal Costs |
| Claim Manager: | (b) (6) |
| Amount Requested: | \$12,807.20 |
| Action Taken: | Offer in the amount of \$12,715.44 |

EXECUTIVE SUMMARY:

On April 3, 2018, the National Response Center (NRC) notified United States Coast Guard (USCG) Marine Safety Unit (MSU) Houma regarding three barrels of crude oil that was released from a leaking and unsecured crude oil storage tank at the Bay Jaques Offshore Facility located in Bay Jacques, a tributary of Bayou LaFourche, in Lafourche Parish, Louisiana.² In its role as Federal On Scene Coordinator (FOSC), MSU (b) (6) conducted a phone investigation with a representative from Bayou Gauging & Services, to confirm the details of the report and discovered that the cause of the discharge was a steel tank that contained a 1.5 inch hole located on the bottom, caused by corrosion. The leak could not be secured due to the location of the pilings underneath the tank and as a result, 108 barrels of crude oil discharged into the water.³ The crude oil entered Bay Jacques and threatened Bayou LaFourche, ultimately threatening the Gulf of Mexico, a navigable waterway of the United States.⁴

On April 3, 2018, State of Louisiana, (“State” or “Claimant”) was notified via NRC Incident Report # 1208362 which initiated the State’s Case # LA2018 0403 1105 and generated the Louisiana Department of Environmental Quality (LDEQ) Incident Report ID # 183946.⁵

In accordance with the Oil Pollution Act of 1990 (OPA),⁶ Summit Oil and Gas LLC is the operator of Bay Jacques Field LL&E Tank Battery⁷ and has been identified as the Responsible Party (“RP” or Summit).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 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 NRC Incident Report # 1208362 dated April 3, 2018.

³ USCG MSU (b) (6) Pollution Responder Statement dated April 3, 2018.

⁴ NRC Incident Report # 1208362 dated April 3, 2018.

⁵ See, Department of Public Safety Invoice # LA2018_0403_1105_1, dated May 10, 2023 p. 12/55 of claim submission and Louisiana DEQ Incident Report ID # 183946, pgs. 21 – 24/55 of claim submission.

⁶ 33 U.S.C. § 2701(32).

⁷ See, Proof of Ownership Letter to the Honorable (b) (6) dated April 26, 2018.

⁸ See, Department of Homeland Security, U.S. Coast Guard, Notice of Federal Interest (NOFI) dated April 3, 2018.

On April 28, 2023, the National Pollution Funds Center (NPFC) received the State's claim submission for \$12,807.20 in removal costs and \$10,730.63 in natural resource damages (NRD). The total amount claimed was \$23,537.83 in unsettled costs.⁹ On May 4, 2023, the State withdrew the NRD portion of its claim, leaving only the removal costs in the amount of \$12,807.20 to be adjudicated by the NPFC.¹⁰ On May 10, 2023, the State resubmitted their claim package containing only the removal costs and documentation that are subject to the removal costs. The State did not make changes to the OSLTF claim form.¹¹

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On April 3, 2018 at approximately 11:10 local time, a company representative from Summit Oil & Gas, LLC, reported a discharge of an estimated three barrels of crude oil from a leak on an unsecured crude oil storage tank at the Bay Jaques Offshore Facility located in Bay Jacques, a tributary of Bayou LaFourche, in LaFourche Parish, Louisiana. The cause of the discharge was confirmed to be an unsecured leaking steel tank with a 1.5 inch hole in the bottom that was caused by corrosion. The RP was unable to stop the flow of the discharge due to the location of the pilings from underneath the tank.¹²

Responsible Party

The spill in this case occurred at an offshore facility as defined by the Oil Pollution Act of 1990 (OPA).¹³ 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."¹⁴ Summit Oil & Gas, LLC ("Summit Oil" or "Responsible Party"); is the confirmed owner/operator of the Bay Jaque Facility at the time when the spill incident occurred.¹⁵ As such, Summit Oil is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.¹⁶

On May 3, 2023, the NPFC issued an RP Notification Letter to Summit Oil and Gas, LLC., via its legal counsel, Mr. (b) (6), via certified mail.¹⁷ 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.

⁹ See, OSLTF Form signed by Mr. (b) (6) dated April 27, 2023.

¹⁰ See, Email between Mr. (b) (6) and NPFC regarding the withdrawal of the NRD portion of its claim dated May 4, 2023.

¹¹ See, State of Louisiana Claim Submission dated April 27, 2023.

¹² See, USCG MISLE Case History Report Id: 1121166; MISLE Activity Id. 6384399, P 1/42.

¹³ 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).

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

¹⁵ See, Proof of Ownership Letter to the Honorable (b) (6) dated April 26, 2018.

¹⁶ 33 U.S.C. § 2701(32).

¹⁷ NPFC RP Notification Letter dated May 3, 2023.

On May 24, 2023, Mr. J (b) (6) notified the NPFC that Summit Oil & Gas, LLC., wells in Bay Jaque have been included in the Louisiana Department of Natural Resources, Office of Conservation's Orphan Well Program via a letter dated March 8, 2019.¹⁸ Mr (b) (6) letter also served to advise the NPFC that Summit Oil & Gas, LLC is completely insolvent and has sought measures to file for bankruptcy. Further, Summit Oil & Gas, LLC., plans to list the Department of Homeland Security, United States Coast Guard, and the State of Louisiana as creditors.¹⁹

Recovery Operations

At 11:34 on April 3, 2018, an employee from Flash Gas & Oil S.W. Inc., reported the oil spill to the National Response Center via Report # 1208362.²⁰

At 1650 On April 3, 2018, USCG MSU (b) (6) IMD arrived on scene and observed approximately 15 barrels of crude oil had discharged into the water and impacted the vegetation surrounding the area within a half mile in either direction of the waterway. The total amount discharged was 108 barrels and the total amount recovered was 104 barrels via absorbent boom and skimmers. MSU (b) (6) directed the response and cleanup activities and generated MISLE Case History Report # 1121166.²¹

On April 3, 2018, LDEQ Emergency State Responder responded by phone. However, the next day, LDEQ was informed that the release was approximately 100 barrels. Therefore, LDEQ, LOSCO, USCG, and Louisiana Department of Wildlife and Fisheries all arrived on-scene on April 4, 2018.²²

On April 3, 2018, Summit Oil implemented their Facility Response Plan (FRP), alleviating the need for federal funding. OMI was hired as the Oil Spill Removal Organization (OSRO) to contain and recover the oil. At the time of the initial oil spill incident report, Summit Oil reported an incorrect amount of oil that had been discharged into the water. Therefore, the OSRO initially arrived on-scene without enough personnel and equipment. The FOSC determined that additional resources and personnel were required and made arrangements with the OSRO to dispatch additional personnel and equipment.²³

On April 4, 2018, the OSRO arrived at 0630 with 14 personnel, two 26-foot response boats, one 16-foot utility boat, and 1000 feet of 18-inch boom. USCG Pollution Responders provided oversight of the OSRO's response actions. The source of the oil spill was secured after all of the product had been removed and relocated to a different tank.²⁴

¹⁸ See, State of Louisiana Department of Natural Resources Office of Conservation letter dated March 8, 2019; P. 3 – 4/4 of the Gieger, Laborde & Laperouse, L.L.C. letter to the NPFC dated May 24, 2023.

¹⁹ Geiger, Laborde & Laperouse, L.L.C. letter to NPFC dated May 24, 2023.

²⁰ See, NRC Case # 1208362 dated April 3, 2018.

²¹ USCG MISLE Case History Report Id: 1121166.

²² Louisiana Department of Environmental Quality Incident Report, Incident ID: 183946. P. 21-24/55 of claim submission..

²³ USCG Pollution Responder Statement dated April 3, 2018.

²⁴ *Id.*

The total amount discharged was estimated to be 108 barrels of crude oil and the total amount recovered was 104 barrels via sorbent boom and skimmers. There were no additional visible signs of pollution from the facility. Therefore, facility operations were suspended pending inspections and repairs. The FOSC determined the company's response actions were adequate.

II. CLAIMANT AND RP:

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

On April 16, 2019, the State of Louisiana submitted its claim to Summit Oil and Gas, LLC., via a letter and invoice # LA2018_0403_1105_1. The invoice was inclusive of LA State Agency Response and Natural Resource Damage Assessment Expenditures for \$23,537.83.²⁷

On November 19, 2019, the State of LA received a letter from Mr. (b) (6) of Gieger, Laborde & Laperouse, L.L.C., that stated Summit Oil & Gas, LLC. wells in Bay Jaque were included in the Louisiana Department of Natural Resources, Office of Conservation's Orphan Well Program.²⁸ The letter also advised the State that Summit Oil & Gas, LLC is completely insolvent and has sought measures to file for bankruptcy.

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.²⁹ On April 28, 2023, the NPFC received State of Louisiana's claim submission for \$23,537.83 in uncompensated removal and natural resource damages.³⁰ On May 4, 2023, the State withdrew the NRD portion of its claim, leaving only the uncompensated removal costs portion of the claim in the amount of \$12,807.20.³¹

On May 10, 2023, the State resubmitted their claim package consisting of their uncompensated removal costs in the amount of \$12,807.20. The claim included an OSLTF Claim Form, NRC Incident Report # 1208362, LSP Hazardous Material Incident Report # 18-01565, U.S. Coast Guard 8th District Heartland News Release, State of Louisiana Letter to Summit Oil and Gas, LLC, State Invoice # LA2018_0403_1105_1 for \$12,807.20, LDEQ Request for Reimbursement # JAQE-001, State Labor and Equipment Records, Response Work Descriptions, LDEQ Incident ID: # 183946, LDEQ Photographs of the oil incident, LDW&F/Office of Wildlife Request for Reimbursement # 18-01565, State Labor and Equipment

²⁵ 33 U.S.C. § 2701 *et seq.*

²⁶ 33 CFR 136.103.

²⁷ *See*, State Letter to Summit Oil and Gas, LLC., dated April 16, 2019. P 11/55 of claim submission to the NPFC. *Also see*, Department of Public Safety LOSCO Invoice # LA2018_0403_1105_1, dated March 1, 2019. P. 12/55 of claim submission.

²⁸ *See*, Gieger, Laborde & Laperouse, L.L.C. letter to Louisiana Oil Spill coordinator, Mr. (b) (6) dated November 19, 2023. Pgs. 78 and 79/79 of claim submission to the NPFC.

²⁹ 33 CFR 136.103.

³⁰ State of Louisiana's Optional OSLTF Claim Form received April 28, 2023. P. 1-2/79 of the original claim submission.

³¹ *See*, Email between Mr. (b) (6) and NPFC dated May 4, 2023, removing the NRD portion of its claim.

Records, Response Work Descriptions, LA DNR – Office Coast Management Request for Reimbursement # 001, Labor and Equipment records, Response Work Description, DPS/LOSCO Oil Spill Expense Report #18-01565, Operating Costs Summary Record, Equipment Record, DPS/LOSCO Vehicle Usage for Bay Jaque Incident, Labor Record, Response Work Descriptions, State’s Indirect Rate, and the Denial Letter from Gieger, Laborde & Laperouse, L.L.C. to the State.³²

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³³ 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.³⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁵ 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.³⁶ An RP’s liability is strict, joint, and several.³⁷ 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.”³⁸ 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

³² See, State of Louisiana (LDEQ, LDWF, LDNR, CPRA, LOSCO) claim submission – Response Only received on May 10, 2023.

³³ 33 CFR Part 136.

³⁴ 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)).

³⁵ 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).

³⁶ 33 U.S.C. § 2702(a).

³⁷ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁸ *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).

threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident.”³⁹ 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.”⁴⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴² 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.⁴³

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (a) The actions taken were necessary to prevent, minimize, or mitigate the effects of the incidents;
- (b) The removal costs were uncured as a result of these actions;
- (c) The actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan; and
- (d) The removal costs were uncompensated and reasonable.⁴⁴

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

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$12,715.44 while \$91.76 is deemed non-compensable for the following reasons:⁴⁵

1. LA Department of Environmental Quality (LA DEQ) requested mileage for (b) (6) on 4/4/2018 in the amount of \$10.00. This line item is denied because according to the Response Work Description stated on page 20/55 of the claim submission, this person only “prepared” for the site visit to take place the next day. The record does not provide evidence of this person driving to the site this day. Therefore, this line item is denied⁴⁶ The NPFC also denied \$0.02 as an unsubstantiated cost.⁴⁷

³⁹ 33 U.S.C. § 2701(31).

⁴⁰ 33 U.S.C. § 2701(30).

⁴¹ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴² 33 CFR Part 136.

⁴³ 33 CFR 136.105.

⁴⁴ 33 CFR 136.203; 33 CFR 136.205.

⁴⁵ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

⁴⁶ *Id.*

⁴⁷ *Id.*

2. LA Department of Wildlife and Fisheries (LA DWF) requested \$1,630.72 for equipment and Labor. The NPFC denied \$1.15 due to unsubstantiated costs and a miscalculation between the straight time rates and hours.⁴⁸
3. LA Department of Public Safety (LOSCO) requested \$6,222.21 for operating costs, equipment, labor, and indirect rate. The NPFC denied \$80.53 for AT&T Teleconferencing because there is no evidence in the record substantiating that a teleconference occurred.⁴⁹ The NPFC also denied \$0.06 as an unidentified difference.⁵⁰

Overall Denied Costs: **\$91.76**

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, LA State's request for uncompensated removal costs is approved in the amount of **\$12,715.44**.

This determination is a settlement offer,⁵¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵³ 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: *9/12/23*

Supervisor Action: *Offer Approved*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ 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).

⁵² 33 CFR § 136.115(b).

⁵³ 33 CFR § 136.115(b).