

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP923017-URC001
Claimant:	Environmental Safety & Health Consulting Services, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$51,264.94
Action Taken:	Offer in the amount of \$51,084.94

EXECUTIVE SUMMARY:

On September 24, 2021, Forefront Emergency Management (Forefront) reported that while moving a heater treater damaged by Hurricane Ida had released into the waters of West Little Lake, Louisiana.² The heater treater was in the process of being removed from the S2 West Little Lake Tank Battery, when the equipment rolled over, discharging its crude oil into the waterway. In response, Forefront was hired to oversee cleanup and disposal operations and to mitigate the spill.³ The United States Coast Guard Marine Safety Unit (MSU) Houma; a unit within the United States Coast Guard Sector New Orleans (Sector NOLA 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 West Little Lake, Louisiana, a navigable waterway of the United States.⁴ S2 Energy Operating, LLC (S2 or Responsible Party); owner/operator of S2 West Little Lake Tank Battery, was identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.⁵

On September 24, 2021, Forefront moved the heater treater responsible for the spill incident from the spill location and secured the equipment, preventing any further spillage.⁶ Forefront contracted Environmental Safety & Health Consulting Services, Inc. (ES&H or Claimant) to serve as the Oil Spill Recovery Organization (OSRO) for the spill incident.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 National Response Center Report #1317798 pg. 2 of 6.

³ ES&H claim submission, with Attachments: *See*, Forefront Spill Response Notification Form pg. 1 of 2.

⁴ To ensure that ES&H met its burden with respect to the cleanup activity, the NPFC coordinated with MSU Houma, a unit within the Sector NOLA as the Federal On-Scene Coordinator (FOSC) for this incident. After analyzing the incident and the actions taken by ES&H, the FOSC opined that the response actions undertaken by ES&H and its subcontractors were consistent with the National Contingency Plan. *See*, email from Sector NOLA to NPFC, dated June 7, 2023.

⁵ 33 U.S.C. § 2701(32).

⁶ ES&H claim submission, with Attachments: *See*, Forefront Spill Response Notification Form pg. 1 of 2.

⁷ ES&H claim submission, with Attachments: *See*, Forefront Spill Response Notification Form pg. 1 of 2.

On September 25, 2021, ES&H personnel boomed off the contaminated area and deployed sorbent pads to absorb all spilled oil.⁸ ES&H began to fill roll-off containment units on September 25, 2021 and continued to send personnel and equipment to the scene from September 26, 2021 through September 29, 2021. ES&H personnel returned to the scene to continue with removal and replacement of pads and boom on October 1, 2021, October 5, 2021, and October 14, 2021.⁹ ES&H personnel left 2 roll-off boxes on-scene between October 15, 2021, through October 31, 2021.¹⁰ Samples taken from the waste placed in disposal roll offs support that the spilled substance was crude oil.¹¹

On May 18, 2023, ES&H presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$51,264.94.¹² The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$51,084.94 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 September 24, 2021, at approximately 1445 hours, Mr. (b) (6) of S2 Energy Operating, LLC (S2 or Responsible Party) reported the release of 10 gallons of crude oil from a heater treater, damaged by Hurricane Ida into the waters of West Little Lake, Louisiana.¹³ The heater treater was in the process of being removed from S2's West Little Lake Tank Battery, when the equipment rolled over, releasing oil into the waterway. In response, S2 hired Forefront Emergency Management (Forefront) to oversee cleanup and disposal operations and to mitigate the spill.¹⁴

Responsible Party

The spill in this case occurred at an offshore facility as defined by the Oil Pollution Act of 1990 (OPA).¹⁵ 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.”¹⁶ S2 Energy Operating, LLC (S2 or Responsible Party); is the confirmed owner/operator of the S2 West Little Lake Tank Battery at the time when the spill incident occurred.¹⁷ As such, S2 is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.¹⁸

Recovery Operations

⁸ ES&H claim submission, with Attachments: *See*, ES&H Invoice 1-60172, pg. 2 of 17 and Email from Claimant to NPFC dated June 13, 2023: *See*, Field Supervisor Logs, pg. 1 of 7.

⁹ Email from Claimant to NPFC dated June 13, 2023: *See*, Field Supervisor Logs, pages 5-7 of 7.

¹⁰ ES&H claim submission, with Attachments: *See*, ES&H Invoice 1-60172, pg. 17 of 17.

¹¹ Email from Claimant to NPFC dated June 13, 2023: *See*, Pace Analytical test of Crude Oil Waste pages 1-18 and River Birch Incorporated Waste Profile #10533 pages 1-2.

¹² ES&H claim submission received May 18, 2023.

¹³ NRC Report #1317798, pg. 2 of 6.

¹⁴ ES&H claim submission, with Attachments: *See*, Forefront Spill Response Notification Form pg. 1 of 2.

¹⁵ 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).

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

¹⁷ ES&H claim submission dated May 17, 2023.

¹⁸ 33 U.S.C. § 2701(32).

On September 24, 2021, Forefront moved the heater treater responsible for the spill incident from the spill location and secured the equipment, preventing any further spillage.¹⁹ Forefront contracted ES&H as an Oil Spill Recovery Organization (OSRO), hired to assist with oil spill recovery and cleanup operations.²⁰

ES&H arrived on scene on September 25, 2021. Upon arrival, ES&H personnel boomed off the contaminated area and deployed multiple sorbent pads to absorb the spilled material.²¹ ES&H began to fill roll-off containment units on September 25, 2021, and continued to send personnel and equipment to the scene from September 26, 2021, through September 29, 2021. ES&H personnel continued to remove and replace pads and boom on each visit. ES&H personnel returned to the scene to continue with cleanup operations on October 1, 2021, October 5, 2021, and October 14, 2021.²² ES&H personnel left 2 roll-off boxes on scene between October 15, 2021, through October 31, 2021.²³

A total of 33 Sorbent Pads and 27 Sorbent Booms were used to mediate the spill between September 25, 2021, through October 14, 2021, with a total volume of 18 cubic yards of waste reported to be removed from the spill location.²⁴ A single roll-off box was left on-scene between November 1, 2021, through December 31, 2021, and left again between January 1, 2021, through February 9, 2022.²⁵ Samples taken from waste found in disposal units on December 9, 2021, confirmed the substance spilled was crude oil.²⁶ On February 9, 2022, ES&H personnel returned to remove the remaining roll-off box.

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁷ require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.²⁸ On November 12, 2021, ES&H submitted all costs affiliated with the S2 West Little Lake Tank Battery cleanup operation to the responsible party; S2 Energy Operating, LLC, who has since paid all costs noted on Invoice 1-61374 in the amount of \$5,266.53, but has not paid any costs affiliated with Invoice 1-60172 in the amount of \$51,264.94.²⁹ To date, no additional payments have been made.

III. CLAIMANT AND NPFC:

¹⁹ ES&H claim submission, with Attachments: *See*, Forefront Spill Response Notification Form pg. 1 of 2.

²⁰ ES&H claim submission, with Attachments: *See*, Forefront Spill Response Notification Form pg. 1 of 2.

²¹ ES&H claim submission, with Attachments: *See*, ES&H Invoice 1-60172, pg. 2 of 17 and Email from Claimant to NPFC dated June 13, 2023: *See*, Field Supervisor Logs, pg. 1 of 7.

²² Email from Claimant to NPFC dated June 13, 2023: *See*, Field Supervisor Logs, pages 5-7 of 7.

²³ ES&H claim submission, with Attachments: *See*, ES&H Invoice 1-60172, pg. 17 of 17.

²⁴ ES&H claim submission, with Attachments: *See*, Forefront Incident Action Plan, dated October 14, 2021, pg. 6 of 9.

²⁵ ES&H claim submission, with Attachments: *See*, ES&H Invoice 1-61374, pages 2-3 of 10.

²⁶ Email from ES&H to NPFC dated June 13, 2023: *See*, Pace Analytical test of Crude Oil Waste pages 1-18 and River Birch Incorporated Waste Profile #10533 pages 1-2.

²⁷ 33 U.S.C. § 2701 *et seq.*

²⁸ 33 CFR 136.103.

²⁹ Email from ES&H to NPFC dated June 23, 2023: *See*, snapshot from ES&H job number log showing the date their claimed costs were sent to S2 for payment, along with Claimant's explanation. 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 \$51,264.94, submitted in ES&H's claim.

On May 18, 2023, the NPFC received a claim for \$51,264.94 from ES&H.³⁰ When the claim was received, it included an OSLTF claim form, the Invoice 1-60172 associated with the costs claimed, the Invoice 1-61374 associated with costs paid by the RP that are not part of the costs claimed, the 2021 ES&H Rate Schedule, several photos taken from the scene of the spill incident, Forefront Incident Action Plan (IAP) reports dated September 29, 2021, October 1, 2021, October 5, 2021, and October 14, 2021, and National Response Center (NRC) Report #1317798³¹

On May 30, 2023, the NPFC requested additional information from ES&H.³² On May 31, 2023, ES&H verified the spill incident dates and cleanup operations correspondent with the costs submitted with their claim.³³ On June 13, 2023, ES&H submitted an Analytical test of Waste, a Disposal Manifest for Crude Oil Waste and a Waste Profile as proof that the substance spilled was crude oil; File number's (14) and (16) related to the Forbearance Agreement with the responsible party; and field supervisor notes and additional photo documentation as evidence supporting the daily activities of ES&H for all dates correspondent with the costs submitted in their claim.³⁴ On June 22, 2023, the NPFC requested further information from ES&H.³⁵ On June 23, 2023, ES&H verified all costs submitted in their claim are part of the total noted in their Forbearance Agreement with S2, provided a snapshot from their job number log showing the date that costs claimed were sent to S2 for payment, submitted the ES&H – S2 Aging Report, dated December 21, 2021, supporting claimed costs as part of the Forbearance Agreement, and resubmitted a copy of the Invoice 1-61374 associated with costs paid by the RP that are not part of the costs claimed; while also explaining Invoice 1-61374 displays all additional costs attributed to the S2 West Little Lake Tank Battery spill incident that took place on September 24, 2021.³⁶

On June 6, 2023, the NPFC contacted the United States Coast Guard Marine Safety Unit Houma (MSU Houma or FOOSC) to ensure the Claimant met its burden with respect to the cleanup activity.³⁷ MSU Houma is a unit within the United States Coast Guard Sector New Orleans (Sector NOLA or FOOSC) and is the pre-designated Federal On-Scene Coordinator (FOOSC) for the S2 facility spill incident. After analyzing the incident and the actions taken by ES&H, a FOOSC representative from Sector NOLA opined that the response actions undertaken by ES&H and its subcontractors were consistent with the National Contingency Plan.³⁸

The NPFC issued a RP Notification letter to S2 Energy Operating, LLC dated May 18, 2023.³⁹ 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.⁴⁰ On May 30, 2023, S2 responded to the RP Notification Letter, notifying the NPFC that S2 is in its final stages of bankruptcy.⁴¹

IV. DETERMINATION PROCESS:

³⁰ ES&H claim submission dated May 17, 2023.

³¹ ES&H claim submission, with Attachments.

³² Email from NPFC to ES&H dated May 30, 2023.

³³ Email from ES&H to NPFC, dated May 31, 2023.

³⁴ Email from ES&H to NPFC, dated June 13, 2023, with Attachments.

³⁵ Email from NPFC to ES&H dated June 22, 2023.

³⁶ Email from ES&H to NPFC, dated June 23, 2023, with Attachments.

³⁷ Email from NPFC to MSU Houma, dated June 6, 2023.

³⁸ Email from Sector NOLA to NPFC, dated June 7, 2023.

³⁹ NPFC letter to S2 Energy Operating LLC emailed on May 24, 2023.

⁴⁰ See, RP Notification Letter dated May 18, 2023.

⁴¹ Email from S2 Energy Operating LLC to NPFC dated May 30, 2023.

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁴² 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.⁴³ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁴⁴ 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.⁴⁵ An RP's liability is strict, joint, and several.⁴⁶ 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."⁴⁷ 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."⁴⁸ 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."⁴⁹

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁵⁰ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁵¹ 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.⁵²

⁴² 33 CFR Part 136.

⁴³ 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)).

⁴⁴ 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).

⁴⁵ 33 U.S.C. § 2702(a).

⁴⁶ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴⁷ *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).

⁴⁸ 33 U.S.C. § 2701(31).

⁴⁹ 33 U.S.C. § 2701(30).

⁵⁰ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁵¹ 33 CFR Part 136.

⁵² 33 CFR 136.105.

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.⁵³
- (d) That the removal costs were uncompensated and reasonable.⁵⁴

The NPFC analyzed each of these factors and determined that most 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 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 United States Coast Guard Marine Safety Unit Houma (MSU Houma or FOSC), a unit within the United States Coast Guard Sector New Orleans (Sector NOLA).⁵⁵ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁵⁶

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$51,084.94 while \$180.00 is deemed non-compensable for the following reasons:⁵⁷

1. ES&H submitted a claim for use of 6 Oil Absorbent Pads (Bale), in the amount of \$270.00 for October 5, 2021.⁵⁸ The Forefront Incident Action Plan dated October 5, 2021, supports the use of 2 Oil Absorbent Pads (Bale) on October 5, 2021.⁵⁹ As such, the 2 Oil Absorbent Pads (Bale) were approved for their standard rate of \$45.00 per bale,⁶⁰ for a total of \$90.00. The additional unsupported costs, totaling \$180.00 are denied.⁶¹

Overall Denied Costs: \$180.00

VI. CONCLUSION:

⁵³ The NPFC coordinated with MSU Houma, a unit within the Sector NOLA as the Federal On-Scene Coordinator (FOSC) for this incident. After analyzing the incident and the actions taken by ES&H, the FOSC opined that the response actions undertaken by ES&H and its subcontractors were consistent with the National Contingency Plan. *See*, email from Sector NOLA to the NPFC dated June 7, 2023.

⁵⁴ 33 CFR 136.203; 33 CFR 136.205.

⁵⁵ 40 CFR 300.120(a)(2).

⁵⁶ Email from Sector NOLA to the NPFC certifying that all actions and costs were consistent with the NCP, dated June 7, 2023.

⁵⁷ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

⁵⁸ ES&H claim submission, with Attachments: *See*, ES&H Invoice 1-60172, dated November 12, 2021, page 15 of 17.

⁵⁹ ES&H claim submission, with Attachments: *See*, Forefront Incident Action Plan, dated October 5, 2021, page 5 of 9.

⁶⁰ ES&H claim submission, with Attachments: *See*, 2021 ES&H Rate Schedule, page 17 of 22.

⁶¹ Enclosure 3 provides a detailed analysis of the amounts approved and denied by the NPFC.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, ES&H's request for uncompensated removal costs is approved in the amount of \$51,084.94.

This determination is a settlement offer,⁶² the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁶³ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶⁴ 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: *Offer approved*

⁶² 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).

⁶³ 33 CFR 136.115(b).

⁶⁴ *Id.*