

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPN18026-URC002
Claimant:	State of Louisiana
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$9,045.04
Action Taken:	Offer in the amount of \$8,966.47

EXECUTIVE SUMMARY:

On January 25, 2018 at 0800 local time, Red Rock Energy reported a discharge of approximately 5,000 gallons of crude oil from a recirculating pump into a secondary containment in the Bully Camp Oil Field Marshlands (Bully Camp) of Lafourche County, Louisiana.² On January 24, 2018, The State of Louisiana (“LA State” or “Claimant”) was notified by a witness that is reported to be unaffiliated with the Red Rock Energy facility.³ The reporting party claimed seeing a thin strip of oil traveling through the marshlands and into a nearby waterway.⁴

On January 25, 2018, the National Response Center (NRC) notified Coast Guard Marine Safety Unit (MSU) Houma of the spill incident.⁵ MSU Houma, in its as the Federal On Scene Coordinator (FOSC), sent investigators to Bully Camp and discovered the source of the spill to be a burst pipe.⁶ The discharge created a sheen within the marshlands, a tributary to Bayou Lafourche, a navigable waterway of the United States.⁷ The FOSC opened a Federal Project Number (FPN) N18026.⁸ The FPN was opened for the sole purpose of utilizing a USCG contractor for initial transportation and pollution assessment.⁹ The owner of the tank battery is Redrock Energy Group (“Redrock” or “RP”), was identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.¹⁰

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 MISLE Case Id: 1114400 Narrative Summary dated January 23, 2018 and National Response Center (NRC) report # 1202800 dated January 25, 2018.

³ See State of Louisiana OSLTF Claim Form, question 2 under brief description of incident on page 1 of 2 dated February 22, 2023.

⁴ The State of Louisiana claim submission received on February 23, 2023, page 10 of 51: LSP report #18-00453.

⁵ National Response Center (NRC) report # 1202800 dated January 25, 2018.

⁶ MISLE Case Timeline, page 1 of 2.

⁷ MISLE Case Id: 1114400 opened on January 30, 2018.

⁸ USCG FPN Notification message dated January 25, 2018.

⁹ SITREP-POL Three and Final dated July 13, 2018. See section (A) entitled OVERVIEW.

¹⁰ 33 U.S.C. § 2701(32) and USCG MISLE Case # 1114400.

On June 25, 2018, MSU Houma received notification from the RP that all recoverable oil had been removed from their tank battery and secondary containment. The incident cleanup ended on July 12, 2018, and the FOSC determined an environmental threat was no longer a concern.¹¹ The Louisiana State Oil Spill Coordinator's Office (LOSCO) submitted all incident costs on behalf of LA State to Red Rock on January 18, 2019.¹²

On February 22, 2023, LOSCO presented all incident costs on behalf of LA State to the National Pollution Funds Center (NPFC) in the amount of \$9,045.04.¹³ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$8,966.47 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 January 23, 2018, at approximately 1030 hours CST, a witness affiliated with Coastal Environments, Inc. (CEI) spotted a discharge of an unknown amount of crude oil in the Bully Camp Oil Field Marshlands of Lafourche County, Louisiana.¹⁴ On January 24, 2018, LA State was notified by the witness who claimed seeing a person doing "something" to address the issue via pads and boom. The witness also spotted a thin strip of oil traveling through the marshlands and into a nearby waterway.¹⁵ The witness gave their opinion that the occurrence resulted from a tank battery, which they believed had either overflowed from containment or had breached in the berm. The CEI employee/witness was unaffiliated with the incident and could not provide the identity of the facility's owner/operator.

On January 25, 2018, at approximately 0800 hours, the NRC received notification of the incident from the facility owner/operator, Red Rock Energy Group, Inc., who claimed a tank battery equipment failure caused 5 barrels of crude oil to release from a recirculating pump.¹⁶ On January 25, 2018, the NRC notified MSU Houma of the spill incident who then sent investigators to Bully Camp, who determined the discharge occurred due to a burst pipe.¹⁷ An employee of Red Rock who was on scene while MSU Houma performed their initial investigation identified the 5 barrels that had previously discharged. The discharge created a sheen within the marshlands, a tributary to Bayou Lafourche, a navigable waterway of the United States.¹⁸

On January 25, 2018, MSU Houma opened FPN N18026 to utilize a USCG contracted response company for initial transportation and pollution assessment.¹⁹

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.²⁰ Red Rock Energy Group, Inc. is the confirmed

¹¹ SITREP-POL 3 and Final, dated July 13, 2018.

¹² The State of Louisiana claim submission received on February 23, 2023, page 16 of 51: LOSCO Letter to Red Rock Energy Group, Inc., dated January 18, 2019.

¹³ The State of Louisiana claim submission received February 23, 2023.

¹⁴ MISLE Case Id: 1114400.

¹⁵ The State of Louisiana claim submission received on February 23, 2023, page 10 of 51: LSP report #18-00453.

¹⁶ National Response Center Report #1202800 dated January 25, 2018.

¹⁷ MISLE Case Timeline, page 1 of 2.

¹⁸ MISLE Case Id: 1114400 opened on January 30, 2018.

¹⁹ FPN N18026 Official Notification dated January 25, 2018.

²⁰ 33 U.S.C. § 2701(32).

owner/operator of the Bully Camp Oil Field facility at the time of the incident²¹ As such, Red Rock is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.²²

Recovery Operations

Between January 25 through January 30, 2018, the Louisiana Department of Environmental Quality (LA DEQ) sent an Environmental Scientist on scene to coordinate with the spill response, and on June 7, 2018, LA DEQ sent a second Environmental Scientist to perform a final inspection/site visit.²³ The Louisiana Department of Wildlife & Fisheries (LA DWF) reviewed response information and coordinated with others on site regarding the spill response, and on January 30, 2018, the LA DWF sent a Biologist Supervisor on scene to participate in the Unified Command with the FOSC, LOSCO and the LA DEQ.²⁴ Throughout cleanup operations, the FOSC and LOSCO were on scene as part of the Unified Command to oversee the cleanup process.²⁵

On June 25, 2018, the FOSC received notification from the RP that all recoverable oil had been removed from their tank battery and secondary containment.²⁶ The incident cleanup ended on July 12, 2018, and the FOSC determined the environmental threat was no longer a concern.²⁷

II. NPFC AND RP:

The NPFC issued a RP Notification letter to Red Rock dated February 24, 2023.²⁸ The NPFC has thus far received no response in reply to the RP Notification letter.

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 a result of the incident in which the recipient is the identified or suspected RP.²⁹

III. CLAIMANT AND NPFC:

On February 23, 2023, the NPFC received a claim for \$9,045.04 from f the State of Louisiana.³⁰ LA State provided the NPFC with NRC Report #1202746, NRC Report# 1202800, LSP Report #18-00453, LSP Report #18-00484, LA State's request for payment mailed to Red Rock Energy Group, Inc. on January 18, 2019, work reports specific to LA State on behalf of, the Louisiana Oil Spill Coordinator's Office (LOSICO), the State of Louisiana Department of Environmental Quality (LA DEQ) and the State of Louisiana Department of Wildlife & Fisheries (LA DWF), labor and equipment records associated with all costs claimed and the invoice/requests for reimbursement associated with the costs claimed.³¹

On June 25, 2018, following the RP's notification that all recoverable oil had been removed from their tank battery and secondary containment, Red Rock notified the FOSC that their Produced Water

²¹ SITREP-POL 1 dated February 24, 2023.

²² 33 U.S.C. § 2701(32).

²³ The State of Louisiana claim submission received on February 23, 2023, page 24 of 51: LA DEQ's Daily Work Detail Report.

²⁴ The State of Louisiana claim submission received on February 23, 2023, page 31 of 51: LA DWF's Daily Work Detail Report.

²⁵ The State of Louisiana claim submission recieved February 23, 2023, page 2 of 51.

²⁶ SITREP-POL 3 and Final dated July 13, 2018.

²⁷ *Id.*

²⁸ NPFC letter to Red Rock Energy Group, Inc. dated February 24, 2023.

²⁹ *See*, RP Notification Letter dated February 24, 2023.

³⁰ The State of Louisiana claim submission dated February 22, 2023.

³¹ The State of Louisiana claim submission received February 23, 2023.

tanks were being replaced and on July 12, 2018, the RP notified the FOSC that the new produced water tanks were in place and in service.³² On March 9, 2023, the NPFC requested additional information from LA State, including a request for sampling data.³³ On March 22, 2023, Claimant submitted an email with a chart explaining the 2018 Indirect Rates included in their claim³⁴, and the Claimant submitted sampling data confirming the spill product was crude oil, and not a produced water, or mixed substance spill.³⁵

The NPFC contacted the FOSC who was on-site during the incident cleanup operations and has confirmed LA State personnel were present on the dates claimed and confirmed LA State personnel actions were performed in accordance with the National Contingency Plan (NCP).³⁶

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁷ 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.³⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁹ 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.⁴⁰ An RP's liability is strict, joint, and several.⁴¹ 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."⁴² 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

³² SITREP-POL 3 and Final, dated July 13, 2018.

³³ NPFC email to LOSCO dated March 9, 2023.

³⁴ LA State email to NPFC dated March 22, 2023.

³⁵ LA State Chain of Custody Sampling Documentation Form.

³⁶ FOSC email to NPFC dated February 27, 2023.

³⁷ 33 CFR Part 136.

³⁸ 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)).

³⁹ 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).

⁴⁰ 33 U.S.C. § 2702(a).

⁴¹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴² *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).

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.”⁴³ 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.”⁴⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁶ 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.⁴⁷

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.⁴⁸
- (d) That the removal costs were uncompensated and reasonable.⁴⁹

The NPFC analyzed each of these factors and determined that the majority of costs incurred and submitted by LOSCO 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 Sector New Orleans (Sector New Orleans).⁵⁰ All approved costs are supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁵¹

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$8,966.47 while \$282.38 is deemed non-compensable for the following reasons:⁵²

1. Invoice LA2018_0124_1508_1 consisted of equipment costs specific to a Chevy Silverado automobile used by LA DWF personnel on January 30, 2018.⁵³ The transportation vehicle claimed 228 miles of use at a rate of \$0.58 per mile; totaling \$132.24. The 2017-2018 equipment rates established by FEMA support an automobile for transport up to \$0.54 per mile.⁵⁴ As such,

⁴³ 33 U.S.C. § 2701(31).

⁴⁴ 33 U.S.C. § 2701(30).

⁴⁵ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁶ 33 CFR Part 136.

⁴⁷ 33 CFR 136.105.

⁴⁸ FOSC email to NPFC dated February 27, 2023.

⁴⁹ 33 CFR 136.203; 33 CFR 136.205.

⁵⁰ 40 CFR 300.120(a)(2).

⁵¹ FOSCR email to NPFC dated February 27, 2023.

⁵² Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

⁵³ The State of Louisiana claim submission received on February 23, 2023, page 31 of 51: LA DWF Daily Work Detail Report.

⁵⁴ FEMA Schedule of Equipment Rates 2017 excel spreadsheet, line 809/item 8800.

costs are approved for 228 miles of use at a rate of \$0.54 per mile; totaling \$123.12. The additional costs, equaling \$9.12 are denied.

2. Invoice LA2018_0124_1508_1 consisted of equipment costs specific to a Field Back Pack used by LA DWF personnel on January 30, 2018.⁵⁵ The item could not be found on the list of equipment usage rates established by DPS⁵⁶, or on the 2017-2018 equipment rates established by FEMA.⁵⁷ As rates cannot be substantiated, the costs totaling \$50.00 are denied.
3. Invoice LA2018_0124_1508_1 consisted of equipment costs specific to a 2018 Dodge Ram 1500 used by LOSCO personnel on January 25, 2018.⁵⁸ The transportation vehicle claimed 330 miles of use at a rate of \$0.56 per mile; totaling \$184.80. The 2017-2018 equipment rates established by FEMA support an automobile for transport up to \$0.54 per mile.⁵⁹ As such, costs are approved for 330 miles of use at a rate of \$0.54 per mile; totaling \$178.20. The additional costs, equaling \$6.60 are denied.
4. Invoice LA2018_0124_1508_1 consisted of equipment costs specific to a 2012 Jeep Liberty used by LOSCO personnel on January 26, 2018.⁶⁰ The transportation vehicle was claimed for 261 miles of use at a rate of \$0.56 per mile; totaling \$146.16. The 2017-2018 equipment rates established by FEMA support an automobile for transport up to \$0.54 per mile.⁶¹ As such, costs were approved for 261 miles of use at a rate of \$0.54 per mile; totaling \$140.94. The additional costs, equaling \$5.22 are denied.
5. Invoice LA2018_0124_1508_1 consisted of equipment costs specific to a 2018 Dodge Ram 1500 used by LOSCO personnel on January 31, 2018.⁶² The transportation vehicle claimed 380 miles of use at a rate of \$0.56 per mile; totaling \$212.80. The 2017-2018 equipment rates established by FEMA support an automobile for transport up to \$0.54 per mile.⁶³ As such, costs are approved for 380 miles of use at a rate of \$0.54 per mile; totaling \$205.20. The additional costs, equaling \$7.60 are denied; and
6. An unidentified amount of \$.03 is denied as unsupported by the record.⁶⁴

Overall Denied Costs: \$78.57

VI. CONCLUSION:

⁵⁵ The State of Louisiana claim submission received on February 23, 2023, page 31 of 51: LA DWF Daily Work Detail Report.

⁵⁶ DPS Equipment List.

⁵⁷ FEMA Schedule of Equipment Rates 2017 excel spreadsheet.

⁵⁸ The State of Louisiana claim submission received on February 23, 2023, page 42 of 51: LOSCO Daily Work Detail Report.

⁵⁹ FEMA Schedule of Equipment Rates 2017 excel spreadsheet, line 809/item 8800.

⁶⁰ The State of Louisiana claim submission received on February 23, 2023, page 42 of 51: LOSCO Daily Work Detail Report.

⁶¹ FEMA Schedule of Equipment Rates 2017 excel spreadsheet, line 809/item 8800.

⁶² The State of Louisiana claim submission received on February 23, 2023, page 42 of 51: LOSCO Daily Work Detail Report.

⁶³ FEMA Schedule of Equipment Rates 2017 excel spreadsheet, line 809/item 8800.

⁶⁴ NPFC's Summary of Costs Spreadsheet, Enclosure 3.

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 \$8,966.47

This determination is a settlement offer,⁶⁵ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁶⁶ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶⁷ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6) (b) (6)
Date of Supervisor's review: 3/28/23
Supervisor Action: <i>Approved</i>

⁶⁵ 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).

⁶⁶ 33 CFR § 136.115(b).

⁶⁷ 33 CFR § 136.115(b).