

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGP924015-URC001
<b>Claimant:</b>	E3 OMI, LLC
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$7,844.61
<b>Action Taken:</b>	Offer in the amount of \$7,844.61

### **EXECUTIVE SUMMARY:**

On December 3, 2022, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of a pipeline leak that discharged 3 gallons of crude oil at the Polk 43 Production Platform inside the Port Neches Field Offshore facility in Orange County, Texas.<sup>2</sup> Torrent Oil, LLC (“Torrent Oil” or “RP”), owner and operator of the pipeline responsible for the oil spill, was identified as the Responsible Party (RP),<sup>3</sup> as defined by the Oil Pollution Act of 1990.<sup>4</sup> The incident was caused when the connection on the pipeline developed a small pin hole, spraying oil directly into the Bessie Heights Marsh; a navigable waterway of the United States.<sup>5</sup>

E3 OMI, LLC (“E3 OMI” or “Claimant”) was hired by Torrent Oil on December 3, 2022, to contain and recover the spilled crude oil.<sup>6</sup> E3 OMI performed a site survey on the day of the spill and put out Torrent Oil’s boom and sorbents to mitigate the incident.<sup>7</sup> On December 4, 2022, E3 OMI changed the sorbents as needed, and placed all oiled sorbents into a waste box owned by Torrent Oil. Cleanup activity ended and E3 OMI left the scene on December 4, 2022.<sup>8</sup>

The United States Environmental Protection Agency Region 6 (“USEPA” or “FOSC”) is the 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 a navigable

---

<sup>1</sup> 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.

<sup>2</sup> National Response Center Report #1354084 dated December 3, 2022.

<sup>3</sup> See, Email from FOSSC to NPFC dated February 5, 2024.

<sup>4</sup> 33 U.S.C. § 2701 (32).

<sup>5</sup> Email from TGLO to NPFC, dated December 11, 2023. See, Texas General Land Office Spill Case Number 2022-4016, pg. 2 of 26.

<sup>6</sup> Email from E3 OMI to NPFC dated December 14, 2023. See, E3 OMI Short Form Service Contract pages 1-5 of 5.

<sup>7</sup> E3 OMI Original Claim Submission received December 6, 2023. See, E3 OMI Invoice SI-28386 pg. 3 of 11.

<sup>8</sup> *Id.* Pages 3-10 of 11.

waterway of the United States, and determined all actions taken by the E3 OMI were consistent with the National Contingency Plan (NCP).<sup>9</sup>

On December 6, 2023, E3 OMI presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$7,844.61.<sup>10</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that all costs requested for \$7,844.61 are compensable and offers this amount as full and final compensation of this claim.

## **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

### ***Incident***

On December 3, 2022, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of a pipeline leak that discharged 3 gallons of crude oil at the Polk 43 Production Platform inside the Port Neches Field Offshore facility in Orange County, Texas.<sup>11</sup>

Torrent Oil, LLC (“Torrent Oil” or “RP”), owner and operator of the pipeline responsible for the oil spill, was identified as the Responsible Party (RP),<sup>12</sup> as defined by the Oil Pollution Act of 1990.<sup>13</sup> The incident was caused when the connection on the pipeline developed a small pin hole, spraying oil directly into the Bessie Heights Marsh; a navigable waterway of the United States.<sup>14</sup>

Marine Safety Unit (MSU) Port Arthur conducted a phone investigation but discovered the discharge was isolated to the zone outside United States Coast Guard jurisdiction thus, they did not respond to the scene. The Texas General Land Office (TGLO) was also notified of the incident and arrived on scene to perform spill cleanup oversight in its capacity as the State On Scene Coordinator (SOSC).<sup>15</sup>

### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, the owner and operator of the pipeline is the Responsible Party (RP) for the incident.<sup>16</sup> Torrent Oil is the owner and operator of the

---

<sup>9</sup> Email from FOSCR to NPFC dated February 5, 2024.

<sup>10</sup> ES&H Original Claim Submission received November 7, 2023.

<sup>11</sup> National Response Center Report #1354084 dated December 3, 2022.

<sup>12</sup> See, Email from FOSC to NPFC dated February 5, 2024.

<sup>13</sup> 33 U.S.C. § 2701 (32).

<sup>14</sup> Email from TGLO to NPFC, dated December 11, 2023. See, Texas General Land Office Spill Case Number 2022-4016, pg. 2 of 26.

<sup>15</sup> Email from TGLO to NPFC, dated December 11, 2023. See, Texas General Land Office Spill Case Number 2022-4016, pages 1-7 of 26.

<sup>16</sup> 33 U.S.C. §2701(32).

pipeline and facility at the time when the spill incident occurred.<sup>17</sup> As such, Torrent Oil is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.<sup>18</sup>

E3 OMI presented its invoice to Torrent Oil, RP, this is subject of this claim and identified as invoice # SI-28386 dated December 4, 2022.<sup>19</sup> The NPFC issued a RP Notification letter to Torrent Oil, LLC dated December 7, 2023.<sup>20</sup> 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.<sup>21</sup>

### ***Recovery Operations***

E3 OMI, LLC was hired by Torrent Oil on December 3, 2022, to contain and recover the spilled crude oil.<sup>22</sup> E3 OMI performed a site survey on the day of the spill and deployed Torrent Oil's boom and sorbents to mitigate the incident.<sup>23</sup> On December 4, 2022, E3 OMI changed the sorbents as needed and placed all oiled sorbents into a waste box owned by Torrent Oil. Cleanup activity ended and E3 OMI departed the scene on December 4, 2022.<sup>24</sup>

TGLO returned to the scene on December 5, 2022, to perform a final inspection of the cleanup operation.<sup>25</sup> E3 OMI did not handle waste disposal for Torrent Oil.<sup>26</sup>

### **II. CLAIMANT AND RP:**

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>27</sup> require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.<sup>28</sup>

E3 OMI submitted all costs incurred as result of the December 3, 2022, oil spill incident to the responsible party on December 4, 2022.<sup>29</sup> Torrent Oil, LLC has not paid E3 OMI, for any costs submitted with E3 OMI's claim.<sup>30</sup>

### **III. CLAIMANT AND NPFC:**

---

<sup>17</sup> Email from FOSC to the NPFC dated February 5, 2024.

<sup>18</sup> 33 U.S.C. §2701(32).

<sup>19</sup> See, E3 OMI original claim submission received December 6, 2023. See, E3 OMI Invoice SI-28386 pg. 3 of 11.

<sup>20</sup> *Id.* Pages 3-10 of 11.

<sup>21</sup> See, NPFC letter to Torrent Oil, LLC emailed on December 7, 2023.

<sup>22</sup> See, RP Notification Letter dated December 7, 2023.

<sup>23</sup> Email from E3 OMI to NPFC dated December 14, 2023. See, E3 OMI Short Form Service Contract pages 1-5 of 5.

<sup>24</sup> E3 OMI Original Claim Submission received December 6, 2023. See, E3 OMI Invoice SI-28386 pg. 3 of 11.

<sup>25</sup> *Id.* Pages 3-10 of 11.

<sup>26</sup> Email from TGLO to NPFC dated December 11, 2023. See, Texas General Land Office Spill Case Number 2022-4016, pages 6 and 12 of 26.

<sup>27</sup> See, E3 OMI Original Claim Submission received December 6, 2023, pg. 2 of 11.

<sup>28</sup> 33 U.S.C. § 2701 *et seq.*

<sup>29</sup> 33 CFR 136.103.

<sup>30</sup> E3 OMI Original Claim Submission received December 6, 2023. See, E3 OMI Invoice SI-28386 pg. 3 of 11.

<sup>31</sup> *Id.* pages 1-2.

On December 6, 2023, E3 OMI presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$7,844.61.<sup>31</sup> The claim included E3 OMI's signed OSLTF form, a copy of Invoice #SI-28386, all supporting daily reports and field notes, aerial images of the facility and images of the location of the spill.<sup>32</sup>

On December 14, 2023, the NPFC requested additional information from E3 OMI.<sup>33</sup> On December 14, 2023, E3 OMI provided a copy of the contract agreement between E3 OMI and Torrent Oil, a copy of the E3 OMI November 2022 Rate Schedule, a copy of the claim with all daily reports and field notes, and a detailed explanation of the 8.25% tax associated with the costs claimed.<sup>34</sup>

The RP did not settle the claim within 90 days from presentment.<sup>35</sup> As such, the NPFC adjudicated the claim.

#### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>36</sup> 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.<sup>37</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>38</sup> 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.<sup>39</sup> An RP's liability is strict, joint, and several.<sup>40</sup> When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required

---

<sup>31</sup> E3 OMI claim submission received December 6, 2023.

<sup>32</sup> *Id.* with Attachments.

<sup>33</sup> Email from NPFC to E3 OMI, dated December 14, 2023.

<sup>34</sup> Email from E3 OMI to NPFC, dated December 14, 2023.

<sup>35</sup> 33 CFR 136.103(c).

<sup>36</sup> 33 CFR Part 136.

<sup>37</sup> *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)).

<sup>38</sup> *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).

<sup>39</sup> 33 U.S.C. § 2702(a).

<sup>40</sup> *See*, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

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."<sup>41</sup> 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."<sup>42</sup> 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."<sup>43</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>44</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>45</sup> 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.<sup>46</sup>

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.<sup>47</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>48</sup>

The NPFC analyzed each of these factors and determined that the costs incurred and submitted by E3 OMI 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.

---

<sup>41</sup> *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).

<sup>42</sup> 33 U.S.C. § 2701(31).

<sup>43</sup> 33 U.S.C. § 2701(30).

<sup>44</sup> See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>45</sup> 33 CFR Part 136.

<sup>46</sup> 33 CFR 136.105.

<sup>47</sup> After analyzing the incident and the actions taken by E3 OMI, LLC, the FOSC opined that the response actions undertaken by E3 OMI were consistent with the National Contingency Plan. See, Email from USEPA Region 6 to the NPFC dated February 5, 2024.

<sup>48</sup> 33 CFR 136.203; 33 CFR 136.205.

Based on the location of this incident, the FOSC is the United States Environmental Protection Agency Region 6 (“USEPA” or “FOSC”).<sup>49</sup> All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>50</sup>

Upon adjudication of the costs, the NPFC has determined that all costs submitted by E3 OMI in the amount of \$7,844.61 are compensable, and as such, all removal costs claimed are approved.

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, E3 OMI’s request for uncompensated removal costs is approved in the amount of **\$7,844.61**.

This determination is a settlement offer,<sup>51</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>52</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>53</sup> 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: *2/7/2024*

Supervisor Action: *Approved*

---

<sup>49</sup> 40 CFR 300.120(a)(2).

<sup>50</sup> Email from FOSCR to NPFC dated February 5, 2024.

<sup>51</sup> 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).

<sup>52</sup> 33 CFR 136.115(b).

<sup>53</sup> *Id.*