

CLAIM SUMMARY / DETERMINATION¹

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| Claim Number: | UCGP922018-URC002 |
| Claimant: | State of Louisiana |
| Type of Claimant: | State |
| Type of Claim: | Removal Costs |
| Claim Manager: | (b) (6) |
| Amount Requested: | \$6,542.96 |
| Action Taken: | Offer in the amount of \$6,424.76 |

EXECUTIVE SUMMARY:

On July 1, 2021, Red Rock Energy Group (“Red Rock” or “RP”) discharged approximately 5 barrels of crude oil into a marsh area at their Bully Camp Field facility in Lafourche Parish, Louisiana. The incident occurred after a 2-inch flow line ruptured on the DSCI #146 well and discharged the oil into Lake Bully Camp, a tributary to Bayou Blue, a navigable waterway of the United States.²

Based on the location of this incident, the Federal On Scene Coordinator Representative (FOSCR) was the United States Coast Guard (USCG) Marine Safety Unit (MSU) Houma, Louisiana and they responded and directed the response efforts with support from the State of Louisiana (“Claimant”).³ After shutting in the well, the responsible party (RP), Red Rock Energy Group, hired the contractor Oil Mop to contain and clean up the oil.⁴

The State of Louisiana, who is requesting compensation for their expenses incurred during the response and cleanup efforts, presented their claim for uncompensated removal costs totaling \$6,542.96 to the National Pollution Funds Center (NPFC) on August 24, 2023.⁵ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$6,424.76 of the requested \$6,542.96 is compensable and offers this amount as full and final compensation of this claim.

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 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 USCG Pollution Responder Statement dated November 22, 2021.

³ Email from FOSCR dated October 30, 2023.

⁴ USCG Pollution Responder Statement dated November 22, 2021.

⁵ Original Claim Submission dated August 24, 2023. The claim included the Optional OSLTF claim form, NRC Incident Report, LSP Hazardous Material Incident Report, Photographs of the incident, State of LA claim for removal costs to the RP, Invoice containing LA State Agency Response Expenditures, Indirect Rate Methodology, LA DEQ Incident Report, Oil Spill Expense Reports, Statement from (b) (6) (LA DW&F), LA DNR Lesase Facility Inspection Report, Certified Mail Slip addressed to the RP.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On July 1, 2021, Red Rock Energy Group (Red Rock or RP) discharged approximately 5 barrels of crude oil into a marsh area at their Bully Camp Field facility in Lafourche Parish, Louisiana. The incident occurred after a 2-inch flow line ruptured on the DSCI #146 well and discharged oil into Lake Bully Camp, a tributary to Bayou Blue, a navigable waterway of the United States. The oil created a thick rainbow and black sheen on the water's surface and infiltrated the surrounding marsh area. The facility operator immediately shut in the well and began using wheel wash from a crew boat to attempt to physically herd the oil into a natural collection point until Oil Mop arrived on scene to deploy containment boom and clean up the oil.⁶

Responsible Party

Red Rock Energy Group, Inc. is the lessee who operates the Bully Camp Field production facility that discharged the oil⁷ and, thus, the RP under Oil Pollution Act (OPA).⁸

Recovery Operations

During the initial response and follow-up visits, the State participated within the Unified Command and provided personnel, equipment, and resources for monitoring and supporting the recovery operations. Oil Mop was hired to respond to the discharge and they cleaned up the oil in accordance with the National Contingency Plan, as verified by the Coast Guard FOSCR.⁹ The contractor's cleanup was completed on July 9, 2021, however, continued follow-ups by the Coast Guard and the State were required for multiple weeks. Red Rock Energy Group, Inc. was responsible for the disposal of the collected oil and sorbents.

II. NPFC AND RP:

The NPFC issued a RP Notification letter dated August 29, 2023 to Red Rock Energy Group, Inc. 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.¹⁰

III. CLAIMANT AND NPFC:

⁶ USCG Pollution Responder Statement dated November 22, 2021.

⁷ Original Claim Submission dated August 24, 2023 page 54 of 78 (Lease Facility Inspection Report indicating Red Rock Energy Group Inc as the Operator of Bully Camp Field.)

⁸ See, 33 U.S.C. § 2701(32).

⁹ Email from FOSCR to NPFC dated September 12, 2022.

¹⁰ RP Notification Letter dated August 29, 2023.

On August 24, 2023, the claimant submitted its claim to the NPFC for \$6,542.96.¹¹ Their claim was for the costs they incurred while working with the Coast Guard in the Unified Command and for providing personnel, equipment, and resources that supported the response efforts and their additional follow-up site visits.¹²

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹³ 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.¹⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁵ 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.¹⁶ An RP's liability is strict, joint, and several.¹⁷ 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."¹⁸ OPA was intended to cure these deficiencies in the law.

¹¹ Original Claim Submission dated August 24, 2023, the claim included the Optional OSLTF claim form, NRC Incident Report, LSP Hazardous Material Incident Report, Photographs of the incident, State of LA claim for removal costs to the RP, Invoice containing LA State Agency Response Expenditures, Indirect Rate Methodology, LA DEQ Incident Report, Oil Spill Expense Reports, Statement from (b) (6) (LA DW&F), LA DNR Lesase Facility Inspection Report, Certified Mail Slip addressed to the RP.

¹² Original Claim Submission dated August 24, 2023.

¹³ 33 CFR Part 136.

¹⁴ 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)).

¹⁵ 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).

¹⁶ 33 U.S.C. § 2702(a).

¹⁷ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

¹⁸ *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).

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.”¹⁹ 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.”²⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²² 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.²³

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.²⁴
- (d) That the removal costs were uncompensated and reasonable.²⁵

The NPFC analyzed each of these factors and determined that the costs incurred and submitted by the State of Louisiana are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rates for personnel, equipment, and indirect costs.

Based on the location of this incident, the Federal On Scene Coordinator Representative (FOSCR) was the U.S. Coast Guard (USCG) Marine Safety Unit (MSU) Houma, Louisiana.²⁶ All approved costs were supported by adequate documentation and were determined by the FOSCR to be consistent with the National Contingency Plan (NCP).²⁷

¹⁹ 33 U.S.C. § 2701(31).

²⁰ 33 U.S.C. § 2701(30).

²¹ *See generally*, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²² 33 CFR Part 136.

²³ 33 CFR 136.105.

²⁴ Email from FOSCR to NPFC dated September 12, 2022; Email from FOSCR dated October 30, 2023 providing coordination and indicating that actions taken were consistent with the NCP.

²⁵ 33 CFR 136.203; 33 CFR 136.205.

²⁶ 40 CFR 300.120(a)(2).

²⁷ *See*, Original Claim Submission dated August 24, 2023, the claim included the Optional OSLTF claim form, NRC Incident Report, LSP Hazardous Material Incident Report, Photographs of the incident, State of LA claim for removal costs to the RP, Invoice containing LA State Agency Response Expenditures, Indirect Rate Methodology, LA DEQ Incident Report, Oil Spill Expense Reports, Statement from (b) (6) t (LA DW&F), LA DNR Lesase Facility Inspection Report, Certified Mail Slip addressed to the RP; *See also*, email from FOSCR to NPFC dated

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$6,424.76 while \$118.20 are deemed non-compensable for the following reasons:²⁸

1. The NPFC denies the \$71.10 requested for the two hours of labor provided by (b) (6) to complete the Red Rock Bully Camp Incident Report on 12/15/2021. The FOSCR's response to this incident was completed in 7/29/2021. No compensation is awarded for costs incurred beyond the response completion date.
2. The NPFC denies \$47.02 of the \$346.75 requested for the Louisiana Department of Environmental Quality (LA DEQ) Indirect Rate charges. That rate was 66.13% of the invoiced LA DEQ labor charge of \$524.35. However, after denying the two hours of labor above for (b) (6), the adjusted LA DEQ labor charge should be \$453.25. When applying the adjusted labor charge to the 66.13% Indirect rate, the amount should be \$299.73.
3. The NPFC denies \$0.08 of the \$2,731.32 claimed for the Indirect Rate charged on the Louisiana Oil Spill Coordinator's Office (LOSCO) invoice. This charge was based on 154.18% of LOSCO's labor rate of \$1,771.46. LOSCO's invoice charged \$2,731.32 when they should have charged \$2,731.24. This reduction is for the amount charged above the amount that should have been charged.

Overall Denied Costs = \$118.20²⁹

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the State of Louisiana's request for uncompensated removal costs is approved in the amount of \$6,424.76.

September 12, 2022; *See also*, email from FOSCR dated October 30, 2023 providing coordination and indicating that actions taken were consistent with the NCP.

²⁸ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

²⁹ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

This determination is a settlement offer,³⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³² Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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| <div data-bbox="386 430 857 506" data-label="Text"><p>(b) (6)</p></div> <div data-bbox="180 499 695 543" data-label="Text"><p>Claim Supervisor: (b) (6)</p></div> <div data-bbox="180 571 721 613" data-label="Text"><p>Date of Supervisor's review: <i>10/31/2023</i></p></div> <div data-bbox="180 644 656 686" data-label="Text"><p>Supervisor Action: <i>Offer Approved</i></p></div> |
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³⁰ 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).

³¹ 33 CFR § 136.115(b).

³² 33 CFR § 136.115(b).