

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924018-URC001
Claimant:	Environmental Safety & Health Consulting Services, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$146,033.66 ²
Action Taken:	Offer in the amount of \$114,107.02

EXECUTIVE SUMMARY:

On October 11, 2023, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of an unknown amount of crude oil releasing into the Gulf of Mexico from a pipeline connecting Whitney Oil & Gas, LLC’s (“Whitney” or “RP”) East Bay Facility production platform to Whitney’s central facility.³ The incident was reported to be a crude oil discharge into the Gulf of Mexico; a navigable waterway of the United States.⁴ Whitney Oil & Gas, LLC, is the owner and operator of the pipeline and is the responsible party (RP),⁵ as defined by the Oil Pollution Act of 1990.⁶

On October 11, 2023, Whitney hired Environmental Safety & Health Consulting Services, Inc. (“ES&H” or “Claimant”) to perform response actions.⁷ Coast Guard Sector New Orleans was the Federal On-Scene Coordinator (“FOSC”). The FOSC oversaw the response actions of ES&H.⁸

Following source containment, ES&H continued to flush the source area, deployed sorbents, and performed skimming operations.⁹ All equipment, debris and waste material were fully removed from the scene by December 13, 2023, at which time, cleanup operations ended.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 This amount was later reduced by claimant to \$119,957.02 as a result of a partial payment by the RP.

³ National Response Center Report #1381453 dated October 11, 2023.

⁴ *Id.*

⁵ Email from FOSCR to the NPFC dated March 11, 2024.

⁶ 33 U.S.C. § 2701 (32).

⁷ ES&H Original Claim Submission received December 19, 2023.

⁸ Email from FOSCR to the NPFC dated March 11, 2024.

⁹ ES&H Original Claim Submission received December 19, 2023. *See*, Supervisor Logs pages 1-6 of 6.

¹⁰ *See*, Bill of Lading Short Form Ticket with Revised ES&H Invoice 1-67323 received January 29, 2024, pages 7-8 of 11.

On December 19, 2023, ES&H presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$146,033.66.¹¹ On March 14, 2024, ES&H provided the copy of a check from the RP paying for ES&H invoices 1-67191 and 1-67323 in the total amount of \$32,399.14 and revised its sum certain to \$119,957.02.¹²

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that most of the costs requested in the total amount of \$114,107.02 are compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On October 11, 2023, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification of an unknown amount of crude oil from a pipeline connecting Whitney Oil & Gas, LLC’s (“Whitney” or “RP”) East Bay Facility production platform to Whitney’s central facility into the Gulf of Mexico; a navigable waterway of the United States.¹³

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.¹⁴ Whitney Oil & Gas, LLC is the owner and operator of the pipeline and facility at the time when the spill incident occurred.¹⁵ As such, Whitney is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.¹⁶

ES&H presented three invoices to Whitney Oil & Gas, RP, that are subject of this claim and identified as invoice # 1-66952 dated October 25, 2023, invoice # 1-67191 dated November 27, 2023, and invoice # 1-67323 dated December 14, 2023.¹⁷

Recovery Operations

On October 11, 2023, Whitney hired the Oil Spill Response Organization (“OSRO”) ES&H to clean up and remove all crude oil.¹⁸ ES&H began active recovery operations by placing containment boom around the contaminated area.¹⁹ The FOSC oversaw the actions of ES&H who were under direction of the RP, Whitney during the October 11, 2023, cleanup operation.²⁰

¹¹ ES&H Original Claim Submission received December 19, 2023.

¹² Email from Claimant to the NPFC dated March 14, 2024.

¹³ National Response Center Report #1381453 dated October 11, 2023.

¹⁴ 33 U.S.C. §2701(32).

¹⁵ Email from FOSCR to the NPFC dated March 11, 2024.

¹⁶ 33 U.S.C. §2701(32).

¹⁷ See, ES&H Original Claim Submission received December 19, 2023. See also, ES&H Invoice 1-66952, ES&H Invoice 1-67191 and ES&H Invoice 1-67323.

¹⁸ ES&H Original Claim Submission received December 19, 2023.

¹⁹ ES&H Original Claim Submission received December 19, 2023. See, Supervisor Logs page 1 of 6.

²⁰ Email from FOSCR to the NPFC dated March 11, 2024.

Following source containment, ES&H continued to flush the source area, deployed sorbents and performed skimming operations.²¹ Between October 11, 2023, and October 17, 2023, ES&H personnel visited the scene regularly, to remove any remaining oil.²² Between December 12, 2023, and December 13, 2023, personnel returned on scene to retrieve all equipment, and to remove any remaining debris and waste material.²³

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁴ require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.²⁵

On October 25, 2023, November 27, 2023 and December 14, 2023, ES&H presented its invoices to the RP via three invoices that are subject to this claim.²⁶ The invoices were inclusive of labor, equipment and vehicles, materials and supplies, subcontractors, markup, and fixed priced items totaling \$146,033.66.²⁷ On March 14, 2024, ES&H provided the copy of a check from the RP paying for ES&H invoices 1-67191 and 1-67323 in the total amount of \$32,399.14.²⁸ The same day, the claimant revised its sum certain to \$119,957.02.²⁹ The remaining invoiced costs have not been settled.³⁰

III. CLAIMANT AND NPFC:

On December 19, 2023, ES&H presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$146,033.66.³¹ On March 14, 2024, ES&H provided the copy of a check from the RP paying for ES&H invoices 1-67191 and 1-67323 in the total amount of \$32,399.14 and revised its sum certain to \$119,957.02.³²

The claim included witness contact information, photos of incident clean-up, ES&H invoices, ES&H rate sheet, ES&H daily supervisor logs, and Whitney Oil & Gas, LLC bankruptcy documentation. On February 7, 2024, the NPFC requested additional information from ES&H.³³ On February 16, 2024, and February 19, 2024, ES&H replied to the NPFC's request for additional information and provided confirmation of employee names, revised invoices, employee timecards, proofs of payment, and oil samples.³⁴

²¹ ES&H Original Claim Submission received December 19, 2023. *See*, Supervisor Logs pages 1-6 of 6.

²² *Id.*

²³ *See*, Bill of Lading Short Form Ticket with Revised Invoice 1-67323 received January 29, 2024, pages 7-8 of 11.

²⁴ 33 U.S.C. § 2701 *et seq.*

²⁵ 33 CFR 136.103.

²⁶ *See*, ES&H Invoices #1-66952 dated October 25, 2023, 1-67191 dated November 27, 2023, and 1-67323 dated December 14, 2023.

²⁷ ES&H claim submission received December 19, 2023, with Attachments.

²⁸ Email from Claimant to the NPFC dated March 14, 2024.

²⁹ *Id.*

³⁰ *See*, Whitney Oil & Gas, LLC Chapter 11 bankruptcy, Case # 23-11873 dated October 26, 2023.

³¹ ES&H claim submission received December 19, 2023.

³² Email from Claimant to the NPFC dated March 14, 2024.

³³ Email to Claimant dated February 7, 2024.

³⁴ Emails from Claimant dated February 16, 2024, and February 19, 2024.

Ultimately, the RP did not settle the claim within 90 days from presentment.³⁵ 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).³⁶ 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.³⁷ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁸ 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.³⁹ An RP's liability is strict, joint, and several.⁴⁰ 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."⁴¹ 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."⁴² 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

³⁵ 33 CFR 136.103(c).

³⁶ 33 CFR Part 136.

³⁷ 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)).

³⁸ 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).

³⁹ 33 U.S.C. § 2702(a).

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

⁴¹ *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).

⁴² 33 U.S.C. § 2701(31).

damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”⁴³

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

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.⁴⁷
- (d) That the removal costs were uncompensated and reasonable.⁴⁸

The NPFC analyzed each of these factors and determined that most of the 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.

All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁴⁹

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$114,107.02 while \$5,850.00 is denied for the following reasons:⁵⁰

1. ES&H is seeking a total of \$1,000.00 for costs associated with the use of 10-inch Containment Boom from October 14 through October 17, 2023.⁵¹ ES&H’s Daily Services Tickets do not list the use of 10-inch Containment Boom on October 14, October 16 or October 17, 2023.⁵² ES&H did not provide a daily service ticket for

⁴³ 33 U.S.C. § 2701(30).

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

⁴⁵ 33 CFR Part 136.

⁴⁶ 33 CFR 136.105.

⁴⁷ Email from FOSCR to the NPFC dated March 11, 2024.

⁴⁸ 33 CFR 136.203; 33 CFR 136.205.

⁴⁹ Email from FOSCR to the NPFC dated March 11, 2024.

⁵⁰ Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

⁵¹ *See*, ES&H Original Claim Submission received December 19, 2023. *See also*, revised ES&H Invoice 1-66952 received January 29, 2024, pages 7 and 9 of 29. *See also*, ES&H Invoice 1-67191 page 2 of 19.

⁵² Revised ES&H Invoice 1-66952 received January 29, 2024, pages 21-22, 24-25 of 29. *See also*, Daily Services Ticket with ES&H Invoice 1-67191 pages 17-18 of 19.

October 15, 2023. Therefore, the NPFC denies \$1,000.00 for containment boom expenses invoiced from October 14 through October 17, 2023.⁵³

2. ES&H is seeking a total of \$900.00 for per diem expenses associated with personnel (b) (6) on October 16, 2023.⁵⁴ ES&H's Daily Services Ticket does not list per diem for any personnel on October 16, 2023.⁵⁵ Therefore, the NPFC denies \$900.00 for per diem costs invoiced on October 16, 2023.⁵⁶
3. ES&H is seeking a total of \$350.00 for expenses associated with the use of a 23-to-30-foot response trailer on October 16, 2023.⁵⁷ ES&H's Daily Services Ticket does not list the use of a 23-to-30-foot response trailer on October 16, 2023.⁵⁸ Therefore, the NPFC denies \$350.00 for response trailer costs invoiced on October 16, 2023.⁵⁹
4. ES&H is seeking a total of \$1,200.00 for expenses associated with the use of four ½ & ¾-ton pickup trucks on October 16, 2023.⁶⁰ ES&H's Daily Services Ticket only lists the use of two ½ & ¾-ton pickup trucks on October 16, 2023.⁶¹ Therefore, the NPFC denies \$600.00 for ½ & ¾-ton pickup truck costs invoiced on October 16, 2023.⁶²
5. ES&H is seeking a total of \$3,000.00 for costs associated with the use of two response vessels (airboat single engine) on October 16, 2023.⁶³ ES&H's Daily Services Ticket does not list the use of two response vessels (airboat single engine) on October 16, 2023.⁶⁴ Therefore, the NPFC denies \$3,000.00 for Response Vessel costs invoiced on October 16, 2023.⁶⁵

Overall Denied Costs: \$5,850.60⁶⁶

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Environmental Safety & Health Consulting Services, Inc. request for uncompensated removal costs is approved in the amount of **\$114,107.02**.

⁵³ See, Enclosure 3, Sheet 2, Lines 111 149 and 179.

⁵⁴ Revised ES&H Invoice 1-66952 received January 29, 2024, page 9 of 29.

⁵⁵ Revised ES&H Invoice 1-66952 received January 29, 2024, pages 24-25 of 29.

⁵⁶ See, Enclosure 3, Sheet 2, Lines 140, 141, 144, and 146.

⁵⁷ Revised ES&H Invoice 1-66952 received January 29, 2024, page 9 of 29.

⁵⁸ Revised ES&H Invoice 1-66952 received January 29, 2024, pages 24-25 of 29.

⁵⁹ See, Enclosure 3, Sheet 2, Line 150.

⁶⁰ Revised ES&H Invoice 1-66952 received January 29, 2024, page 9 of 29.

⁶¹ Revised ES&H Invoice 1-66952 received January 29, 2024, pages 24-25 of 29.

⁶² See, Enclosure 3, Sheet 2, Lines 159 and 160.

⁶³ Revised ES&H Invoice 1-66952 received January 29, 2024, page 10 of 29.

⁶⁴ Revised ES&H Invoice 1-66952 received January 29, 2024, pages 24-25 of 29.

⁶⁵ See, Enclosure 3, Sheet 2, Lines 165 and 166.

⁶⁶ *Id.* Sheet 1, Line 4.

This determination is a settlement offer,⁶⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁶⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶⁹ 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: *5/8/24*

Supervisor Action: *Offer Approved*

⁶⁷ 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).

⁶⁸ 33 CFR 136.115(b).

⁶⁹ *Id.*