

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924022-URC001
Claimant:	American Pollution Control Corporation
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$388,944.28
Action Taken:	Offer in the amount of \$384,767.12

EXECUTIVE SUMMARY:

On October 21, 2023, at 11:00 a.m., local time, a platform owned and operated by Extex Operating Company (“Extex” or “RP”), discharged approximately 15 barrels² of crude oil and gas mixture into Little Lake, a tributary of the Gulf of Mexico, a navigable waterway of the United States, causing a visible sheen on the surface of the water. Contemporaneous reports were made to the United States Coast Guard (“USCG”) National Response Center (“NRC”) describing a plume in the adjacent Turtle Bay area.³

Extex is the confirmed lessee of the Extex Little Lake platform and facility at the time when the spill incident occurred.⁴ As such, Extex is identified as the responsible party (RP) as defined by the Oil Pollution Act of 1990.⁵ Extex contacted Forefront Emergency Management, the facility’s Qualified Individual (“Forefront” or “QI”) confirming a well blowout at the West Little Lake Compressor Station that released an estimated 10-15 barrels of crude oil and natural gas.⁶ American Pollution Control Corporation (“AMPOL” or “Claimant”) was activated by Extex personnel on Saturday, October 21, 2023, to respond to the spill.⁷

USCG Sector New Orleans (SEC NOLA) was the Federal On-Scene Coordinator (“FOSC”) for the incident. The FOSC determined there was a discharge of oil into a navigable waterway of the United States, and determined all actions undertaken by the AMPOL were consistent with the

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 One barrel of oil equals 42 gallons.

³ See, USCG Investigator Statement dated October 23, 2023. See also, correlating NRC Report Numbers 1382332, 1382337, 1382350, and 1382372 dated October 21, 2023, respectively.

⁴ See, USCG Investigator Statement dated October 23, 2023.

⁵ 33 U.S.C. § 2701(32)(c).

⁶ See, AMPOL Original Claim Submission received January 23, 2024, page 7 of 8, Forefront Spill Response Notification Form P. 1 of 2, under Incident Description.

⁷ See, AMPOL Original Claim Submission received January 23, 2024, page 7 of 8, Forefront Spill Response Notification Form P. 1 of 2, under Remedial Action section.

National Contingency Plan (“NCP”).⁸ Louisiana Oil Spill Coordinator’s Office (“LOSCO”), Louisiana Department of Environmental Quality (“LA DEQ”), and Louisiana Department of Wildlife and Fisheries (“LA DWF”) provided direct oversight of the cleanup.⁹

On January 23, 2024, AMPOL presented its removal costs submission to the National Pollution Funds Center (“NPFC”) for \$388,944.28.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$384,767.12 of the claimed costs are compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On October 21, 2023, at 11:00 a.m., local time, a platform belonging to Extex discharged approximately 10 – 15 barrels of crude oil and natural gas mixture into Little Lake, a tributary of the Gulf of Mexico, a navigable waterway of the United States, causing a visible sheen on the surface of the water. Contemporaneous reports were made to the NRC that were described as a large white to rust colored plume at the nearby adjacent Turtle Bay area.¹¹

The incident was caused by platform equipment failure. A line corroded in the well compressor station causing a discharge of crude oil and gas mixture into Little Lake, a tributary to the Gulf of Mexico; a navigable waterway of the United States.¹² Extex contacted Forefront the facility’s QI confirming that the release was caused by a well head leak between the casing valve and gas lift line at the Little Lake field near the North Half tank battery SL 2453 # 21.¹³ The FOSC was notified of the spill incident and confirmed the cause and estimated volume of the discharge.¹⁴

Responsible Party

The spill in this case occurred at an offshore facility as defined by the Oil Pollution Act of 1990 (OPA).¹⁵ Extex Operating Company (“Extex” or “RP”), is the confirmed lessee of the Extex Little Lake platform and facility at the time when the incident occurred.¹⁶ As such, Extex is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.¹⁷

⁸ Email from FOSC to NPFC dated January 31, 2024.

⁹ *Id.*

¹⁰ AMPOL Original Claim Submission received January 23, 2024.

¹¹ *See*, USCG Investigator Statement dated October 23, 2023. *See also*, correlating NRC Report Numbers 1382332, 1382337, 1382350, and 1382372 dated October 21, 2023, respectively.

¹² *See*, USCG Investigator Statement dated October 23, 2023.

¹³ Extex Operating Company Incident Briefing ICS 201 – 2A, Saturday, October 21, 2023. P. 4/14.

¹⁴ *See*, USCG Investigator Statement dated October 23, 2023, and *See also*, email from FOSC to NPFC dated January 31, 2024.

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 *See*, USCG Investigator Statement dated October 23, 2023.

¹⁷ 33 U.S.C. § 2701(32)(c).

On January 25, 2024, the NPFC issued an RP Notification Letter to Extex Operating Company via email.¹⁸

Recovery Operations

Extex personnel activated AMPOL to respond to the spill.¹⁹ AMPOL performed response actions from October 21, 2023, through November 21, 2023.²⁰ AMPOL daily activities were at the direction and oversight of the FOSC and state authorities.²¹

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²² require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.²³

AMPOL presented all costs subject of this claim to Extex, identified as invoice # 0015376-IN dated November 1, 2023,²⁴ invoice # 0015534-IN dated November 28, 2023,²⁵ invoice # 0015535-IN dated November 28, 2023,²⁶ and invoice 0015632-IN dated December 8, 2023.²⁷ The NPFC issued a RP Notification letter to Extex dated January 25, 2024.

On February 6, 2024, the RP confirmed receipt of all AMPOL's invoices.²⁸ The RP did not settle the claim within 90 days from presentment.

III. CLAIMANT AND NPFC:

On January 23, 2024, AMPOL presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$384,767.12.²⁹ The claim included AMPOL's signed OSLTF form, a separate email containing the separate invoices, some support documentation and analytical reports, NRC Incident Report # 1382350, Forefront Emergency Management Spill Response Notification Form.³⁰

The NPFC received AMPOL's claim within the ninety day "presentment period" as outlined at 33 CFR 136.103.³¹ If a RP denies all liability for a claim or does not settle the claim within 90

¹⁸ NPFC RP Notification Letter dated January 25, 2024. An RP Notification letter notifies the owner/operator that a claim was presented to the NPFC seeking reimbursement of uncompensated removal costs incurred as a result of a discharge of oil to navigable waters of the United States.

¹⁹ Extex Operating Company Incident Briefing ICS 201 – 2A, Saturday, October 21, 2023. P. 4/14.

²⁰ See, Email from FOSC to NPFC dated January 31, 2024.

²¹ *Id.*

²² 33 U.S.C. § 2701 *et seq.*

²³ 33 CFR 136.103.

²⁴ AMPOL invoice # 0015376-IN dated November 1, 2023.

²⁵ AMPOL invoice # 0015534-IN dated November 11, 2023.

²⁶ AMPOL invoice # 0015535-IN dated November 28, 2023.

²⁷ AMPOL invoice # 0015632-IN dated December 8, 2023.

²⁸ Email from (b) (6) to NPFC dated February 6, 2024.

²⁹ Original Claim Submission received January 23, 2024.

³⁰ *Id.*

³¹ If a RP does not deny liability for the costs presented or settle the claim within 90 days, the claim is ripe for adjudication. *See*, 33 CFR 136.103.

days, the claim can be presented to the Fund.³² In this case, the RP did not deny all liability or settle the claim. After the 90-day period had expired, 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).³³ 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.³⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁵ 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.³⁶ An RP's liability is strict, joint, and several.³⁷ 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."³⁸ 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."³⁹ 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

³² 33 CFR 136.103.

³³ 33 CFR Part 136.

³⁴ 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)).

³⁵ 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).

³⁶ 33 U.S.C. § 2702(a).

³⁷ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁸ *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).

³⁹ 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.”⁴⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴² 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.⁴³

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.⁴⁴
- (d) That the removal costs were uncompensated and reasonable.⁴⁵

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by AMPOL 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).⁴⁶

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$384,767.12, while \$4,177.16 is denied for the following reasons:⁴⁷

AMPOL Invoice 0015376-IN

AMPOL is seeking \$157.95 for a Fuel Service Charge (FSC) on trucks totaling \$1,215.00. On April 5, 2024, the NPFC requested amplifying information regarding this line item. AMPOL explained that the FSC charge of \$157.95 was based on trucks charged at \$1,215.00. AMPOL further explained that they erroneously applied a 13% FSC charge when they should have

⁴⁰ 33 U.S.C. § 2701(30).

⁴¹ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴² 33 CFR Part 136.

⁴³ 33 CFR 136.105.

⁴⁴ See, Email from FOSC to NPFC dated January 31, 2024. See also, USCG Investigator Statement Form dated October 23, 2023.

⁴⁵ 33 CFR 136.203; 33 CFR 136.205.

⁴⁶ See, Email from FOSC to NPFC dated January 31, 2024.

⁴⁷ Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

applied 12%.⁴⁸ Based on AMPOL's explanation of this line item, the NPFC applied 12% to the FSC calculation which resulted in a total cost of \$145.80 that the NPFC approved. NPFC denies the remaining amount of \$12.15.

AMPOL Invoice 0015376-IN, 0015534-IN, and 0015535-IN

On three separate invoices, AMPOL charged a combined total of \$4,165.00 for Level D Personal Protection Equipment (PPE).⁴⁹ Level D PPE is not found in AMPOL's 2023 Emergency Response Rate Schedule.⁵⁰ The NPFC denied \$4,165.00 for Level D PPE on all three subject invoices.

Unidentified Difference

The NPFC denies a \$.01 unidentified rounding difference.⁵¹

Overall Denied Costs: \$4,177.16⁵²

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, AMPOL's request for uncompensated removal costs is approved in the amount of \$384,767.12.

This determination is a settlement offer,⁵³ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁴ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵⁵ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

⁴⁸ See, AMPOL email to NPFC regarding fuel service charges dated April 5, 2024. See also, Enclosure 3, Tab 0015376IN, line 68.

⁴⁹ See, Enclosure 3, Tab 0015376IN – lines 54, 118, 170, 221, 260, and 288; Tab 0015534IN – lines 26 & 73; Tab 0015535IN – Lines 23 & 43.

⁵⁰ See, AMPOL 2023 Emergency Response Rate Schedule, Revision 3. P. 5/6.

⁵¹ See, Enclosure 3, Invoice Summary Tab, line 7.

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

⁵³ 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).

⁵⁴ 33 CFR 136.115(b).

⁵⁵ *Id.*

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: 6/26/2024

Supervisor Action: *Offer Approved*