

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924044-URC001
Claimant:	E3 OMI, LLC
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$120,000.73
Action Taken:	Offer in the amount of \$73,141.32

EXECUTIVE SUMMARY:

On November 17, 2023, Robertson Energy's Black Bayou facility discharged approximately four barrels of crude oil into a tributary to Black Bayou, a navigable waterway of the United States.² The discharge came from Black Bayou Facility's flare stack, in Cameron Parish, Louisiana, due to a pressure valve failure.³ Robertson Energy, is the owner and operator of the Black Bayou facility⁴ and the Responsible Party (RP)⁵ as defined by the Oil Pollution Act of 1990 ("OPA").⁶

Robertson Energy had a Master Service Agreement in place with its oil spill cleanup contractor, E3 OMI ("Claimant" or "E3 OMI"), prior to the incident.⁷ Robertson Energy notified E3 OMI to respond and perform response actions.⁸ Throughout the response, E3 OMI used a combination of hard boom, absorbent materials, skimmers and a vacuum truck, to clean up the waterway.⁹

The Federal On Scene Coordinator (FOSC) for the incident was the United States Coast Guard, Marine Safety Unit (MSU) Port Arthur.¹⁰ The FOSC responded to the incident jointly with Louisiana Department of Environmental Quality (LA DEQ or SOS) as the State On Scene

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 See, United States Coast Guard (USCG) Investigator Statement dated January 9, 2024. See also, USCG Notice of Federal Interest issued to Robertson Energy dated November 17, 2023.

³ Louisiana Department of Environmental Quality (LA DEQ) Incident Report dated February 20, 2024. The report included an email from Robertson Energy to LA DEQ indicating the cause of the discharge.

⁴ USCG Notice of Federal Interest issued to Robertson Energy dated November 17, 2023.

⁵ See, USCG Notice of Federal Interest issued to Robertson Energy dated November 17, 2023. See also, USCG Investigator Statement dated January 9, 2024. See also, Louisiana Department of Environmental Quality (LA DEQ) Incident Report dated February 20, 2024.

⁶ 33 U.S.C. § 2701 (32).

⁷ Robertson Energy form MSA v3.12.2021 9.6.21.

⁸ Spill Notification Robertson Energy dated November 17, 2023.

⁹ Louisiana Department of Environmental Quality (LA DEQ) Incident Report dated February 20, 2024.

¹⁰ USCG Notice of Federal Interest issued to Robertson Energy dated November 17, 2023.

Coordinator (SOSC) based on the location of the incident.¹¹ On November 20, 2023, the Coast Guard Federal On Scene Coordinator's Representative (FOSCR) determined the response complete and acknowledged his coordination of the cleanup and removal actions performed by E3 OMI.¹² E3 OMI continued with cleanup efforts, site maintenance, and disposal through January 31, 2024, without the knowledge and coordination by the FOSCR.¹³

On August 15, 2024, E3 OMI presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$121,860.¹⁴ The NPFC thoroughly reviewed all documentation submitted with the claim, and determined that \$73,141.32 of the claimed costs were compensable and offered this amount as compensation of the claim.¹⁵ E3 OMI timely sought reconsideration for the \$46,859.41 of denied costs.¹⁶ The NPFC has thoroughly reviewed the original claim, the request for reconsideration, and the applicable law and regulations. Upon reconsideration, the NPFC finds the original offer of \$73,141.32 is still compensable and offers this amount as full and final compensation of this claim. The costs that were denied in the original determination remain denied upon reconsideration.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁷ 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.¹⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁹ 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.

¹¹ See, USCG Investigator Statement dated January 9, 2024. See also, Louisiana Department of Environmental Quality (LA DEQ) Incident Report dated February 20, 2024.

¹² See, email from the NPFC to the FOSCR dated November 20, 2024, summarizing the phone call and requesting FOOSC coordination. See also, email from the FOSCR to the NPFC dated December 2, 2024, providing partial coordination. See also, email from the FOSCR to the NPFC dated December 2, 2024, not providing after-the-fact coordination for the dates beyond November 20, 2023.

¹³ See, email from the NPFC to the FOSCR dated November 20, 2024, summarizing the phone call and requesting FOOSC coordination. See also, email from the FOSCR to the NPFC dated December 2, 2024, providing partial coordination. See also, email from the FOSCR to the NPFC dated December 2, 2024, not providing after-the-fact coordination for the dates beyond November 20, 2023.

¹⁴ E3 OMI Original claim submission received August 15, 2024.

¹⁵ Determination Letter sent by NPFC to E3 OMI on December 26, 2024.

¹⁶ Request for reconsideration letter with attachments received January 29, 2025.

¹⁷ 33 CFR Part 136.

¹⁸ 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)).

¹⁹ 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).

II. CLAIM HISTORY:

On August 15, 2024, E3 OMI presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$121,860.16.²⁰ The NPFC thoroughly reviewed the original claim, all information provided by E3 OMI and obtained independently, the relevant statutes and regulations, and ultimately paid \$73,141.32 and denied \$48,718.84 of the claimed costs.²¹ The NPFC's initial determination is hereby incorporated by reference.

III. REQUEST FOR RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim.²² The claimant has the burden of providing all evidence, information, and documentation deemed necessary by NPFC's Director to support the claim.²³ When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by the Claimant in support of its request for reconsideration. The written decision by the NPFC is final.²⁴

On January 29, 2025, the NPFC received E3 OMI's timely request for reconsideration in the amount of \$46,859.41. Their request encompasses all the costs the NPFC denied because they were not coordinated with the FOSCR, and had occurred after November 20, 2023, which is the date the FOSCR determined the response to be concluded.²⁵

To support their request, E3 OMI submitted an email from the FOSCR indicating why the Coast Guard departed the scene. Their email stated "[t]he reason the Coast Guard departed the scene on November 20th was because the source of the discharge had been secured. Additionally, Robertson Energy had engaged their Marine Transfer Facility's pre-designated Oil Spill Response Organization (OSRO) to conduct oil recovery and clean-up operations."²⁶

Upon review of the email submitted, the NPFC determined that it does not address the reason those costs were denied. The costs were denied because the cleanup and removal actions taken were not coordinated with the FOSCR, and they occurred after November 20, 2023, which is the date the FOSCR determined the response to be concluded.²⁷ E3 OMI's email did not address the infirmities the NPFC identified in the original determination; it merely stated the reason the Coast Guard departed the scene on November 20th.

On February 12, 2025, the NPFC requested additional information from the claimant to obtain a better understanding of the email the claimant provided in support of their request. The

²⁰ E3 OMI Original claim submission received August 15, 2024.

²¹ Determination Letter sent by NPFC to E3 OMI on December 26, 2024.

²² 33 CFR 136.115(d).

²³ 33 CFR 136.105(a).

²⁴ 33 CFR 136.105(a).

²⁵ Request for reconsideration letter with attachments received January 29, 2025.

²⁶ *Id.*

²⁷ *See*, Determination Letter sent by NPFC to E3 OMI on December 26, 2024. The determination states the costs being denied encompass days that were not coordinated with the FOSCR, and occurred after November 20, 2023, which is the date the FOSCR determined the response to be concluded.

additional information request asked the claimant to provide any communications they had with the FOSCR preceding the email they sent to the NPFC in support of their request for reconsideration.²⁸

Later that day, E3 OMI provided the NPFC with a call summary of the communication they had with the FOSCR leading up to the email. The summary states “I called [FOSCR] to obtain this certification that was requested by [NPFC]. This is when I was informed by [FOSCR] the reason the Coast Guard departed the scene on November 20th was because the source of the discharge had been secured. Additionally, Robertson Energy had engaged their Marine Transfer Facility's predesignated Oil Spill Response Organization (OSRO) to conduct oil recovery and clean-up operations. This is when I asked him if he could please send me, it in an email. [FOSCR] told me he would and that he would call [NPFC] and provide him everything he was requesting.”²⁹

After reviewing the additional information provided, the NPFC determined there was no new evidence that indicated the FOSCR provided [or was willing to provide] after-the-fact coordination for any actions that occurred beyond the response end date. However, to be certain, the NPFC contacted the FOSCR on the phone to determine if his position had changed. The call was summarized in an email as follows:

“I appreciate you taking my call today to discuss the reconsideration request that we received from E3 OMI regarding the cleanup and removal actions they took after November 20, 2023, that were not coordinated by the FOSCR.

Based on our conversation you stated to me that your position has not changed, and you are not able to provide after-the-fact coordination for any actions taken beyond November 20, 2023.

When you have a chance could you please acknowledge receipt of this summary and confirm the overall accuracy of it? I appreciate your help with this process.”³⁰

The FOSCR responded to the email summary as follows: “Thank you for the summary and for taking the time to follow up on our conversation. I can confirm that my position has not changed, and I am not able to provide after-the-fact coordination for any actions taken beyond November 20, 2023.”³¹

After gathering all the material provided by E3 OMI and given the FOSCR had not changed his position regarding the after-the-fact coordination, the NPFC was able to use this information to put together an analysis for their request.

IV. ANALYSIS ON RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested,

²⁸ See, email from NPFC to E3 OMI dated February 12, 2025, requesting additional information.

²⁹ See, email from E3 OMI to NPFC dated February 12, 2025, providing the additional information.

³⁰ See, email from NPFC to FOSCR dated February 27, 2025, summarizing the phone call.

³¹ See, email from FOSCR to NPFC dated February 28, 2025, confirming he is not providing coordination.

along with any additional support for the claim in accordance with our governing claims regulations at 33 CFR 136.115(d).

The NPFC has thoroughly reviewed and considered the Claimants' request for reconsideration. Upon reconsideration of the costs, the NPFC has determined that the \$46,859.41 denied in the NPFC's initial determination and requested on reconsideration are denied for the following reason:

1. These costs encompass the days that were not coordinated with the FOSCR, and occurred after November 20, 2023, which is the date the FOSCR determined the response to be concluded. On February 27, 2025, the NPFC reached out to the FOSCR after receiving the reconsideration request,³² and the FOSCR once again stated he would not provide coordination for those days.³³ Therefore, the NPFC again denies the \$46,859.41 originally denied and requested by the claimant on reconsideration.

Overall Denied Costs = \$46,859.41

V. CONCLUSION:

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC determines and finds as a matter of fact that there was a discharge of approximately four barrels of crude oil, which is an OPA oil, into a tributary of Black Bayou, a navigable waterway of the United States.³⁴ The discharge came from Robertson Energy Black Bayou Facility's flare stack, due to a pressure valve failure,³⁵ and the Responsible Party, hired E3 OMI, to contain and clean up the spill.³⁶ All removal costs approved for payment to the claimant were determined to be reasonable and uncompensated and were determined by the FOSC to be consistent with the NCP.

After careful analysis of all the supporting documentation provided by the claimant on reconsideration, and the entire administrative record, the NPFC determines that the \$46,859.41 that was denied in the NPFC's initial determination and requested on reconsideration, remains denied on the basis that the costs claimed encompass days that were not coordinated with the FOSCR, and occurred after November 20, 2023, which is the date the FOSCR determined the response to be concluded.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, E3 OMI, LLC's request for uncompensated removal costs is approved in the amount of **\$73,141.32**.

³² See, email from NPFC to FOSCR dated February 27, 2025, summarizing the phone call.

³³ See, email from FOSCR to NPFC dated February 28, 2025, confirming he is not providing coordination.

³⁴ See, USCG Investigator Statement dated January 9, 2024. See also, USCG Notice of Federal Interest issued to Robertson Energy dated November 17, 2023.

³⁵ See, USCG Investigator Statement dated January 9, 2024. See also, USCG Notice of Federal Interest issued to Robertson Energy dated November 17, 2023. See also, Louisiana Department of Environmental Quality (LA DEQ) Incident Report dated February 20, 2024. The report included an email from Robertson Energy to LA DEQ indicating the cause of the discharge.

³⁶ See, Spill Notification Robertson Energy dated November 17, 2023. See also, Robertson Energy form MSA v3.12.2021 9.6.21.

This determination on reconsideration is a settlement offer,³⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁹ 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: 03/11/2025
Supervisor Action: <i>Offer Approved.</i>

³⁷ 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).

³⁸ 33 CFR 136.115(b).

³⁹ *Id.*