

CLAIM SUMMARY / DETERMINATION FORM

| | |
|------------------|--|
| Date | : 03/19/2010 |
| Claim Number | : N08057-017 |
| Claimant | : United States Environmental Services, L.L.C. |
| Type of Claimant | : OSRO |
| Type of Claim | : Removal Costs |
| Claim Manager | : [REDACTED] |
| Amount Requested | : \$882,305.29 |

I. Facts

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States. The No. 6 oil discharged by the tank barge DM 932, moved downstream into an area designated as Division B at mile marker 89.1 of the lower end of the Mississippi River where the oil coated and contaminated the shoreline, docks, barges and deep draft vessels, offshore of the Exxon Chalmette Refinery. On July 29, 2008, the United States Environmental Services, L.L.C. (USES) deployed personnel, materials and equipment to ExxonMobil/Chalmette Refinery in Division B, for response and clean-up of Chalmette's docks, tugs, barges, and deep draft vessels, which were contaminated with heavy, thick No. 6 oil. While this removal action had no designated Zone Manager for the Chalmette refinery area, Mr. [REDACTED], Spill Response Officer, of ExxonMobil provided oversight of the response and approved the materials/equipment and labor identified on each daily by signing the daily field log.¹ In addition, personnel from the U.S. Coast Guard worked on-scene to ensure the clean-up was properly implemented and completed. USES continued the removal action at the Chalmette Refinery through August 22, 2008.

When the removal action activities were completed at the Chalmette Refinery, the Claimant, USES submitted the invoices to ExxonMobil/Chalmette Refinery for payment. When payment was refused, the Claimant submitted the invoices for uncompensated removal costs to the NPFC.

II. Responsible Party

American Commercial Lines LLC (ACL) owned the barge at the time of the incident and is a responsible party (RP) under the Oil Pollution Act (OPA), 33 USC § 2701 *et seq.* As the owner of the barge which discharged oil to a "waters of the United States," the RP is liable for removal costs and damages, 33 USC § 2702(a). "Removal costs" referred to in 33 USC § 2702(a) are covered in subsection (b) of this section to mean, "(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan [NCP]." OPA specifies that the RP is liable for "any removal costs by any person for acts" that are "consistent with the NCP." 33 USC § 2702(b)(1)(B).

¹ Mr. [REDACTED] is certified through the National Safety Counsel and has responded to oil spills for over 30-years. He also provides training to the employees at ExxonMobil in how to respond to oil spills as well as EMT training. Mr. [REDACTED] is the Demurrage Analyst at ExxonMobil and has worked as a Dock-Man.

III. The Claimant and the Claim

As a result of the incident, USES provided oil removal services at the ExxonMobil/Chalmette Refinery in the area designated as Division B on the Mississippi River by the Incident Command. On February 2, 2009, USES submitted the removal cost claim in the amount of \$849,114.79 to the National Pollution Funds Center (NPFC) for reimbursement of its uncompensated removal costs represented by Invoice No. 080140141A for the deployment of boom, decontamination of oil contaminated vessels and docks in Division B, Mile Marker 89.1, during the time period of July 29, 2008 through August 22, 2008.² Initially, the NPFC treated this claim as a “mystery” spill claim and assigned claim number 909080-001. Yet, the clean up activities occurring in Division B, Mile Marker 89.1, was downstream from the ACL barge DM 932 oil spill incident. Accordingly, the NPFC conducted interviews with Coast Guard Personnel, reviewed the Coast Guard database associated with this incident, and obtained information from Mr. ██████████ of NOAA which the NPFC then determined this claim correlates with the DM 932 oil spill incident claims. The NPFC initially changed the claim number to N08057-007 which was altered to N08057-017. (Enclosure 1-Binder). The NPFC sent notification of the claim number changes to all involved parties via email on April 8, 2009.³

On October 5, 2009, the NPFC sent the Claimant an email alerting them to discrepancies found in their sum certain of the claim. USES agreed with the NPFC and sent an email requesting that their sum certain be amended to \$882,305.29.⁴

IV. Claim Presentment

The NPFC sent the RP notification letter to all parties responsible for the removal action at the Chalmette Refinery. On April 8, 2009, the NPFC sent the RP notification letter to Ms. ██████████ ██████████ ACL – General Counsel and Mr. ██████████ of Nicoletti, Horning, & Sweeney, ACL – External Counsel. On August 4, 2009, the NPFC sent Chalmette Refining, LLC, an RP notification letter to the attention of Mr. ██████████.

V. The Audits

At various times in the adjudication process, the NPFC made requests for the audits to Mr. ██████████ ██████████ of Maritime Alliance Group, Inc, (MAGI). Mr. ██████████ responded with requests for details of the work performed at the Chalmette Refinery and requested confirmation of the Exxon representative who had directed and supervised USES’ daily activities.⁵ To date, the NPFC has not received any audits performed by ACL or their contracted partners for costs which are subject of this claim.

VI. APPLICABLE LAW:

Title I of the Oil Pollution Act of 1990, 104 Stat 484, 33 USC §2701 *et seq.*, provides a strict liability and compensation regime for certain oil pollution. In general, “each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages...that result from such incident. OPA § 1002(a), 33 USC §2702(a).

² See, Claim Form signed by Mr. ██████████ dated January 28, 2009.

³ See, email, Ms. ██████████ dated April 8, 2009 entitled, *N08057-017*.

⁴ See, email, dated October 5, 2009 from Mr. ██████████ @usesgroup.com.

⁵ See, email, dated July 23, 2009, from Ms. ██████████ to Mr. ██████████ requesting audit reports.

Removal costs” referred to in 33 USC § 2702(a) are covered in subsection (b) of this section to mean, “(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan [NCP].” OPA specifies that the “responsible party” is liable for “any removal costs by any person” that are “consistent with the NCP.” 33 USC § 2702(b)(1)(B).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the NCP and uncompensated damages.

Under 33 CFR 136.105(b), each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR Part 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (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 determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205, “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

The National Contingency Plan, 40 CFR Part 300, provides the organizational structure and procedures in preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants (40 CFR § 300.1). The provisions in 40 CFR § 300.185 direct industry groups and local industries such as a terminal transferring oil in bulk with the technical and scientific capabilities to assist the on-scene coordinator during an oil spill incident.

DETERMINATION OF LOSS:

A. Overview:

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the “Delegation of Authority for Determination of Consistency with the National Contingency Plan (NCP) for the Payment of Uncompensated Removal Cost Claims under Section 1012(a)(4), Oil Pollution Act of 1990,” and is consistent with the provisions of 33 U.S.C. § 2702(b)(1)(B).⁶
2. The incident involved the discharge and continuing substantial threat of discharge of “oil” as defined in OPA 90. 33 U.S.C. § 2701(23), to navigable waters.

⁶ Delegation of Authority from COMDT letter 5402 of 19 March 1992.

3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted on time.
5. Presentment of costs was made to both ExxonMobil and ACL. The NPFC also made presentment of costs to the RP however we did not receive an audit from ACL.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 with the exception of denied costs itemized in the attached Summary of Invoices spreadsheets: (See, Enclosure 2 – NPFC audit).

B. Discussion:

The NPFC reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR Part 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

USES stated that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident for the time period of July 29, 2008 through August 22, 2008. The Claimant represented that all costs paid by the Claimant were compensable removal costs payable by the OSLTF as presented by the Claimant.

The Incident Action Plans (IAPs) were helpful in corroborating actions that took place in the field at any given point in time and were utilized as part of the adjudication process, it is important to note that every action taken during the response is not fully captured in IAPs or Pollution Reports. The NPFC Claims Manager also cross referenced claim submission information to the USCG’s database of files that were associated with this oil spill incident and provided to the NPFC by USCG Sector New Orleans. The NPFC spoke with MSTCS [REDACTED], one of the USCG representatives in the field regarding activities being conducted at the Chalmette Refining facility during the response period in question and also spoke with Mr. [REDACTED] of NOAA who provided documentation of samples that were taken of the oil recovered and along the shorelines in Zone B where the Chalmette Refining facility is located, and these refrigerated samples are available at Louisiana State University for future analysis should the need arise.

During the incident, the Claimant provided response and removal resources and services in Division B at mile marker 89.1 of the lower end of the Mississippi River where the oil coated and contaminated the shoreline, docks, barges and deep draft vessels, offshore of the Exxon Chalmette Refinery. The Claimant was not under contract with ACL or ExxonMobil. However, the services provided by the Claimant were acknowledged by the FOSC Documents/Situation Unit’s Handwritten Notes of the Unified Command. The handwritten notes confirm that Mr. [REDACTED] from USES was on site at the Chalmette Refining facility during the incident and efforts were underway to keep Chalmette from shutting down.⁷

⁷ See, FOSC Documents, Situation Unit Handwritten Notes.

The NPFC Claims Manager interviewed MSTCS [REDACTED], via email on October 22, 2009. MSTCS [REDACTED] was one of the Coast Guard representatives who worked on-scene to ensure the clean-up was complete as a result of the DM 932 spill. The MSTCS' response to the NPFC stated the DM932 oil spill was a release of No. 6 oil from the barge and that the Chalmette Refinery was contaminated with the No. 6 oil. The MSTCS further stated that most of the shoreline, docks, barges and deep draft vessels that were in the area (Division B) as well as down river were also contaminated with the No. 6 oil. MSTCS [REDACTED] added that all of the facilities were impacted by the No. 6 oil.⁸ ACL did not designate a Zone Manager for the Chalmette Refinery location (Division B). Instead, the Claimant submitted their daily sheets to Mr. [REDACTED] of ExxonMobil for each day of the response for that specific area. Mr. [REDACTED] approved the materials/equipment and labor identified on each daily by signing the daily field log.

The NPFC Claims Manager also interviewed Mr. [REDACTED] who was an Emergency Operations Division Manager for USES. Mr. [REDACTED] provided a synopsis of the cleanup operations that were completed by USES at ExxonMobil's Chalmette Refining facility during the DM 932 oil spill. Mr. [REDACTED] found that when USES initially arrived at Chalmette, the DM 932 was actively spilling oil into the Mississippi River above the facility and that the spilled oil that was moving downriver with the current which oiled Chalmette's docks, barges and vessels that were both loading and unloading cargo at the Chalmette Refining facility. Additionally, Mr. [REDACTED] asserted that the oil that was not fully contained from upriver collection sites and cleaning operations associated with the DM 932 oil spill and oil continued to impact the Chalmette Refining docks and associated barges and vessels throughout the entire duration of the DM 932 response.⁹

According to Mr. [REDACTED], prior to initiating clean up efforts, USES placed diversion boom and absorbent upriver of the vessel to reduce oiling from free floating oil associated with DM-932 spill, and absorbent and placed containment boom downriver of the vessel to contain and recover the diverted oil and any oil that may re-enter due to removal operations. Yet, the current of the Mississippi River was too strong for the diversion boom and absorbent to deflect all the spilled oil from USES' operations.¹⁰

Mr. [REDACTED] claimed that barges arriving at the Chalmette Refining facility through the oil-contaminated waters of the Mississippi River were coated with oil requiring decontamination and oil removal. The barges laden with cargo, also had oil splashed on the decks and the sides of these barges from their transit. As the USCG advised, the Chalmette Refining facility was prohibited from transferring oil to or from a cargo barge with the oil on the deck because of inherent fire hazard and health and safety concerns of the transfer personnel and tankermen.¹¹ In response, Mr. [REDACTED] noted that USES proceeded with removal operations by cleaning the decks of the barges with high pressure hot water and manual scrubbing using hand applied surfactants on absorbent pads, thus, removing oil from the hulls of barges at the Chalmette Refining docks as the barges were unloaded or loaded cargo. Often times, as the freeboard of the barge increased, oil from the Mississippi River waters would adhere to the hull at river level causing vertical oiling and requiring removal. Mr. [REDACTED] claimed that its cleaning operations became an ongoing operation because of the changing draft of the barges as the barge was offloaded and then loaded with cargo.¹²

⁸ See, Email statement from MSTCS [REDACTED] dated October 22, 2009.

⁹ See, email statement from Mr. [REDACTED] dated, February 24, 2010.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Finally, Mr. █████ confirmed in his email that USES' daily field tickets which accounted for personnel, equipment, materials, and supplies that were utilized for the DM 932 cleanup operations at the Chalmette Refining facility were directly supervised and witnessed by an ExxonMobil employee and the daily field tickets were signed by that employee. Also, all of USES's operations were fully supervised by the USCG Unified Command. USCG personnel made unscheduled daily site visits and inspected all of the vessels and barges prior to departure from the ExxonMobil Facility.¹³ Mr. █████ stated that the cleanup operations at the Chalmette Refining facility were consistent with Phase III operations of the National Contingency Plan (NCP) – 40 CFR 300.310.¹⁴

USES arrived on site on July 29, 2008; Mr. █████ of USES was the Supervisor for the clean-up activities that took place at the Chalmette Refining facility. The following is a timeline of summarized daily response actions performed by the Claimant while situated on the Lower Mississippi River at the Chalmette/Exxon Refinery. The summaries are based on the dailies as well as the Operations Summary Spreadsheet provided by the Claimant and Chalmette/Exxon and the interview accounts conducted by the NPFC Claims Manager. The NPFC has confirmed that these vessels were decontaminated of oil and cleared by using the Coast Guard Data-Base Spreadsheet.^{15 16}

- On July 29, 2008, USES arrived on site with five employees and utilized two trucks, one steam cleaner, 200-foot containment boom, one generator 4 KW, one submersible pump, to 1-inch and 2-21-foot 150-300 hp motor boats to decontaminate the barges and other vessels at the Chalmette/Exxon Refinery. (See USES daily dated 7/29/08, signed by █████, Exxon). The USES crew cleaned and decontaminated the following vessels of oil on this day: the FMT 3190/3192 barges, the barge Kirby 31800, the Kirby 29034 & 27015 barges, the Kirby 28036 & 28019 barges, and the Kirby 20707 & 23701 barges, Jill P Harvey tug with the FMT 3112, 3023, 3038 barges, and the Miss Marcy Parker tug with the Kirby 31800 barge, and the John P Pasentine tug with the FMT 3190, 3192 barges.
- On July 30, 2008, USES arrived on site with five employees and utilized 2 trucks, 1 steam cleaner 200-feet of containment boom, 1 generator to 4KW, 1 submersible pump, 1", 2 21' boats with 150-300 hp motor, 1-6mil Poly bags 20 bags of sorbent boom, 300 feet of rope. (See USES daily dated 7/30/08, signed by █████, Exxon). The Kirby 20707/23701 barges and the WEB 244 and 253 were added for decontamination.
- On July 31, 2008, USES arrived on site with 16 employees and utilized; 4 trucks, 4 steam cleaners, 200' of containment boom, a 4KW Generator, 4 submersible pumps 5 21' 150-300 hp motor boat, 20 bags of sorbent boom, and 300' of rope. (See USES daily dated 7/31/08, signed by █████, Exxon). The "City of Port Allen" tug was decontaminated by the Claimant.
- On August 1, 2008, USES was on site with 16 employees and utilized; 4 trucks, 4 steam cleaners, 200' of containment boom, 4 generators, 4 submersible pumps, 5 21' boats, 20 bales of sorbent boom and 300' of rope. (See USES daily dated 8/1/08, signed by █████, Exxon). The Claimant decontaminated the following

¹³ *Id.*

¹⁴ 40 CFR § 300.310(a)(b)(c).

¹⁵ *See*, Operations Summary Spreadsheet.

¹⁶ *See*, Coast Guard Data Base Spreadsheet.

vessels of oil: the Kirby 20707, Kirby 23701, Kirby 27015 and Kirby 29034, Smitty 17, Kirby 27722, Kirby 30719, WEB 210 and WEB 218, M402, M406, M409, and the "Eagle Carina."

- On August 2, 2008, USES was on site with 18 employees and utilized; 4 trucks, 4 steam cleaners, 300' of containment boom, 4 generators, 4 submersible pumps, 5 21' boats-150-300 hp motor, 300' rope, and 2 bales of sorbent pads. (See USES daily dated 8/2/08, signed by [REDACTED], Exxon). The Claimant decontaminated the following vessels of oil: FMT 3110, FMT 3212, Kirby 28036 and Kirby 28019.
- On August 3, 2008, USES was on site with 10 employees and utilized; 4 trucks, 2 steam cleaners, 300' of containment boom, 2 generators, 2 submersible pump, 3 21' boat-150-300 hp motor, 6 mil poly bags, 300' of rope, and 2 bales of sorbent pads. (See USES daily dated 8/3/08, signed by [REDACTED], Exxon). The Claimant decontaminated the following vessels of oil: M401, M403, Kirby 20707, Kirby 23701, K27751, and Kirby 2775.
- On August 4, 2008, USES was on site with 19 employees and utilized; 4 trucks, 4 steam cleaners, 300' of containment boom, 4 generators, 4 submersible pumps, 5 21' boats-150-300 hp motor, 300' rope, and 2 bales of sorbent pads (See USES daily dated 8/4/08, signed by [REDACTED], Exxon). The Claimant decontaminated the following vessels of oil: WEB 217, WEB 248, FMT 304, FMT 3168 M 401, M 403, M406, and the M409 to August 5th.
- On August 5, 2008, USES was on site with 45 employees and utilized; 5 trucks, 14 steam cleaners, 11 trash pumps, 40' of petroleum hoses (1"), 100' of petroleum hoses (2"), 300' of containment boom, 4 generators, 4 submersible pumps, 2 24-26' vessels, 4 20-23' vessels, 12 16-20' vessels, 1 600' spool of rope, 300' spool of rope, 1 bale of sorbent pads and 1 40lb boom anchor. (See USES daily dated 8/5/08, signed by [REDACTED], Exxon). The Claimant decontaminated following vessels of oil: the Kirby 28001, Smitty 18 Chem 299, FMT 3190/3192, WEB 210, WEB 218, and NM 1024.
- On August 6, 2008, USES was on site with 45 employees and utilized; 5 trucks, 14 steam cleaners, 10 trash pumps--2" gas, 40' petroleum hose--1", 100' petroleum hose--2", 300' containment boom, 4 generators, 4 submersible pumps--1", 2 24-26' vessels w/150-300 hp motor, 4 20-23' vessels w/150-300 hp motor, 12 16-20' vessel w/<50 hp motor, 7 bags of sorbent boom, 1 rope, 1/4", (600' spool), 300' rope, 3/8", (<1/2 spool), 1 bale sorbent pads, and 15 gallons of degreaser, VC Cleaner. (See USES daily dated 8/6/08, signed by [REDACTED], Exxon). The Claimant cleaned oil from the decks of Barges 20707, 23701, from the sides of Barges 406, 409, and from the side of the Tug Agamemnon. (See USES tailgate safety meeting sheet).
- On August 7, 2008, USES was on site with 40 employees and utilized, 5 trucks, 14 steam cleaners, 10 trash pumps--2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 300' containment boom, 4 generators to 4 KW, 4 submersible pumps to 1", 2 24-26" vessels w/150-300 hp motor, 4 20-23' vessel w/150-300 hp motor, 10 16-20' vessels w/ <50 hp motor, 7 bags of sorbent boom, 1 rope, 1/4" (600' spool), 300' rope, 3/8", (<1/2 spool), 1 bale of sorbent pads, and 5 gallons of degreaser, VC Cleaner. (See USES daily dated, 8/7/09, signed by [REDACTED], Exxon). The Claimant cleaned

and decontaminated the following of oil: the sides of the barges M402, M406, M409, and the side of the Tug Agamemnon. The Claimant began to clean the docks.

- On August 8, 2008, USES was on site with 42 employees and utilized; 5 trucks, 12 steam cleaners, 10 trash pumps--2" gas, 40' of petroleum hose 1", 100' of petroleum hose--2", 300' containment boom, 4 generators to 4KW, 4 submersible pumps to 1", 2 24-26' vessel w/150-300 hp motor, 4 20-23' vessels w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 7 bags of sorbent boom 1 rope, 1/4" (600' spool), 300' rope 3/8" (<1/2 spool), 1 bale of sorbent pads, 5 gallons of degreaser, VC Cleaner, 1 digital camera, and 1 roll of duct tape. (See USES daily dated, 8/8/08, signed by [REDACTED], Exxon). The Claimant cleaned and decontaminated the following of oil: barges M406, M409, 20715T, 29039T, Dock 5, Dock 6, and Chalmette's Crude Dock. (See USES tailgate safety meeting sheet.)
- On August 9, 2008, USES was on site with 43 employees and utilized; 10 trucks, 13 steam cleaners, 8 trash pumps, 2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 300' containment boom, 5 Generators to 4KW, 5 submersible pumps, to 1", 2 24-26' vessels w/150-300 hp motor, 4 20-23' vessels w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 5 bags of sorbent boom, 1 rope, 1/4" (600' spool), 300' rope, 3/8", (<1/2 spool), 1 bale of sorbent pads, 5 gallons of Degreaser, VC Cleaner, 1 digital camera, and 1 roll of duct tape. (See USES daily dated, 8/9/09, signed by [REDACTED], Exxon). The Claimant cleaned and decontaminated the following of oil: barge decks of 28036, 27015, and 29034, as well as the Exxon Dock (Crude dock).
- On August 10, 2008, USES was on site with 46 employees and utilized; 10 trucks, 12 steam cleaners, 8 trash pumps--2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 300' containment boom, 4 generator to 4KW, 4 submersible pump, to 1", 4 24-26" vessels w/150-300 hp motor, 3 20-23' vessels w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 6mil poly bags, 1 rope, 1/4", (600' spool), 300' rope, 3/8", (<1/2 spool), 1 digital camera, and 1 roll of duct tape. (See USES daily dated, 8/10/08, signed by [REDACTED], Exxon). The Claimant cleaned and decontaminated the following of oil: the sides of barges 28036, 27015, and 29034. (See USES tailgate safety meeting sheet).
- On August 11, 2008, USES was on site with 47 employees and utilized; 10 trucks, 13 steam cleaners, 8 trash pumps, 2" gas, 40' petroleum hoses, 1", 100' petroleum hose, 2", 300' containment boom, 5 generators to 4KW, 5 submersible pumps to 1", 5 24-26' vessels w/150-300 hp motor, 1 20-23' vessel w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 5 bags of sorbent boom, 300' rope, 3/8" (<1/2 spool), 1 bale of sorbent pads, and 1 digital camera. (See USES daily dated, 8/11/08, signed by [REDACTED], Exxon). The Claimant washed the deck of Barge 27015, Dock 2, and Dock 4. (See USES tailgate safety meeting sheet).
- On August 12, 2008, USES was on site with 45 employees and utilized; 9 trucks, 13 steam cleaners, 8 trash pumps, 2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 300' containment boom, 4 generators 4KW, 5 submersible pumps, to 1", 5 24-26' vessel w/150-300 hp motor, 2 20-23' vessels w/150-300 hp motor, 10 16-20' vessel, w/<50 hp motor, 5 bags of sorbent boom, 300' rope, 3/8", (<1/2 spool), and 1 digital camera. (See USES daily dated, 8/12/08, signed by [REDACTED], Exxon). The Claimant cleaned and decontaminated the following of oil: vessels; K29007, CBC

7019, and CBC 70. The oil contained and recovered from the clean up was prepared for disposal. (See USES tailgate safety meeting sheet).

- On August 13, 2008, USES was on site with 47 employees and utilized; 9 trucks, 13 steam cleaners, 8 trash pumps, 2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 300' containment boom, 5 generators to 4KW, 5 submersible pumps, to 1", 5 24-26' vessel w/150-300 hp motor, 2 20-23' vessels w/150-300 hp motor, 10 16-20' vessel w/<50 hp motor, 5 bags of sorbent boom, 300' of rope, 3/8", (<1/2 spool), 1 digital camera, and 1 roll of duct tape. (See USES signed daily dated, 8/13/08, signed by [REDACTED], Exxon). The Claimant cleaned and decontaminated the following of oil: barges; FMT 3112, FMT3038, FMT3023. The oil contained and recovered from the clean up was prepared for disposal. (See USES tailgate safety meeting sheet).
- On August 14, 2008, USES was on site with 46 employees and utilized; 9 trucks, 5 24-26' vessels w/150-300 hp motor, 2 20-23' vessels w/150-300 hp motor, 10 16-20' vessel w/ <50 hp motor, 8 trash pumps, 2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 300' containment boom, 1 digital camera, 5 generators to 5KW, 13 steam cleaners, 5 submersible pumps, to 1", and 5 bags of sorbent boom. (See USES daily dated, 8/14/08, signed by [REDACTED], Exxon). The Claimant continued to clean the Exxon Docks as well as to contain and recover oil and prepare it for disposal. (Reference, USES: Tailgate Safety).
- On August 15, 2008, USES was on site with 47 employees and utilized; 9 trucks, 5 24'-26' vessels w/150-300 hp motor, 2 20'-23' vessels w/150-300 hp motor, 10 16'-20' vessels w/<50 hp motor, 8 trash pumps, 2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 1 digital camera, 5 generators to 4KW, 13 steam cleaners, 5 submersible pumps, to 1", 3 bags of sorbent boom, 1' rope, 3/8", (600' spool), 1 bale of sorbent pads, and extensions cords. (See USES daily dated 8/15/08, signed by [REDACTED], Exxon). USES cleaned and decontaminated the following of oil: barges FMT 3112, FMT 3038, and FMT 3023, as well as, the Smitty 18.
- On August 16, 2008, USES was on site with 46 employees and utilized; 9 trucks, 5 24'-26' vessels w/150-300 hp motor, 2 20'-23' vessels w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 8 trash pumps, 2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 1 digital camera, 5 generators to 4KW, 13 steam cleaners, 5 submersible pumps, to 1", and 3 bags of sorbent boom. (See USES daily dated, 8/16/08, signed by [REDACTED], Exxon). USES cleaned and decontaminated the following of oil: barges K27015 and K 29035. The Claimant continued to clean the Exxon Docks as well as to contain and recover oil and prepare it for disposal. [Same question as SCE3] (Reference, USES: Tailgate Safety).
- On August 17, 2008, USES was on site with 47 employees and utilized; 9 trucks, 7 24-26' vessels w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 8 trash pumps, 2" gas, 40' petroleum hose, 1", 100' petroleum hose, 2", 1 digital camera, 5 generators to 4KW, 13 steam cleaners, 5 submersible pumps, to 1", and 8 bags of snare. (See USES daily dated, 8/17/08, signed by [REDACTED], Exxon). The Claimant cleaned and decontaminated the following of oil: Vessels K27015 and K29035. The Claimant continued to clean the Exxon Docks as well as to contain and recover oil and prepare it for disposal. (Reference, USES: Tailgate Safety).

- On August 18, 2008, USES was on site with 45 employees and utilized; 9 trucks, 7 24-26' vessels w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 8 trash pumps, 2" gas, 5 generators, to 4KW, 13 steam cleaners, and 5 submersible pumps to 1". (See USES daily dated, 8/18/08, signed by [REDACTED], Exxon). The Claimant began to decontaminate USES Boats, and send 1000' of contaminated boom to be decontaminated. (Reference, USES: Tailgate Safety)
- On August 19, 2008, USES was on site with 36 employees and utilized; 9 trucks, 7 24-26' vessels w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 8 trash pumps, 2" gas, 5 generators to 4KW, 13 steam cleaners, 5 submersible pumps, to 1", and 3 rolls of poly sheeting. (See USES daily dated, 8/19/08, signed by [REDACTED], Exxon). The Claimant continued to decontaminate its boats & equipment. (Reference, USES: Tailgate Safety Meeting).
- On August 20, 2008, USES was on site with 27 employees and utilized; 8 trucks, 7 24-26' vessels w/150-300 hp motor, 10 16-20' vessels w/<50 hp motor, 8 trash pumps, 2" gas, 4 rolls of duct tape, 5 generators to 4KW, 13 steam cleaners, 5 submersible pumps, to 1" and 2 rolls of poly sheeting. (See USES daily dated 8/20/08, signed by [REDACTED], Exxon). The claimant continued to decontaminate its boats to be demobilized from the response area. (Reference, USES: Tailgate Safety Meeting).
- On August 21, 2008, USES was on site with 17 employees and utilized; 7 trucks, 7 20-23' vessels w/150-300 hp motor, 12 16-20' vessels w/<50 hp motor, 8 trash pumps, 2" gas, 2 rolls of duct tape, 5 generators to 4KW, 13 steam cleaners, 5 submersible pumps, to 1", and 2 rolls of poly sheeting. (See USES daily dated, 8/21/08, signed by [REDACTED], Exxon). The claimant continued to decontaminate its boats to be demobilized from the response area. (Reference, USES: Tailgate Safety Meeting).
- On August 22, 2008, USES was on site with 13 employees and utilized; 8 trucks, 7 20-23' vessels w/150-300 hp motor, 12 16-20' vessels w/<50 hp motor, 8 trash pumps, 2" gas, 5 generators to 4KW, 13 steam cleaners, 5 submersible pump, to 1", and 1 roll of poly sheeting. (See USES daily dated, 8/22/08, signed by [REDACTED], Exxon). The claimant continued to decontaminate its boats to be demobilized from the response area (Reference, USES: Tailgate Safety).

The NPFC finds that the efforts undertaken by the Claimant meet the definition of "removal" as defined in 33 U.S.C. § 2701(30) which states that "'remove' or 'removal' means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the health or welfare, including but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches." The NPFC has determined that all removal costs presented including but not limited to cleanup, decontaminating vessels, docks, and shorelines were actions consistent with and in accordance with the NCP and the costs for these actions reasonable, necessary, and allowable under OPA and 33 CFR § 136.205.

During the adjudication, the NPFC collected additional documentation in support of response activities being performed in (Division B) ExxonMobil/Chalmette Refinery Area which was contaminated and required cleanup. The NPFC contacted NOAA and requested any documentation that they may have with regards to shoreline assessment and sample analysis

that took place in particular at the ExxonMobil/Chalmette Refinery location. NOAA provided the NPFC with a document entitled “Sampling of Stranded Oil in Mississippi River Corridor – Barge DM932 Incident” dated 6 August 2008. Additionally, was information specific to twenty three (23) samples that had been taken, along with maps, chain of custody documents, a copy of NOAA’s preliminary plan for the sampling of stranded oil in the Mississippi River dated 27 July 2008, NOAA’s “Sampling of Water Column during Barge DM932 Incident” dated 25 August 2008, a draft of the final “Water Column Sampling Field Action Plan” dated 27 July 2008, and Shoreline Assessment Forms. (See Enclosure 1, Binder).

Some of the details specific to the additional documentation from NOAA are as follows; stranded oil samples were obtained from shorelines and batture areas in the Mississippi River corridor for polycyclic aromatic hydrocarbon (PAH) characterization and fingerprinting to source oil during 7/29/08 through 8/4/08. The stranded oil samples were archived but may be analyzed in the future should the oil source which has been identified as American Commercial Lines Inc. Barge DM 932, ever be in question. A total of 23 stranded oil samples were collected by the Trustees (represented by NOAA and Louisiana Department of Environmental Quality (LDEQ)), and the RP, represented by Entrix. All stranded oil samples were split with the RP representative. Samples were taken to the incident command post by the NOAA Regional Resource Coordinator or designated Trustee representative and transferred to LSU Response & Chemical Assessment Team (Enclosure 1).¹⁷

Also, the evidence shows that before the DM 932 was salvaged from the Mississippi River, the three fuel tanks were lightered and source samples were collected from each of the fuel tanks by the U.S. Coast Guard. The Coast Guard collected multiple split samples of source oil from each tank by the request of NOAA and various agencies. On August 5, 2008, a NOAA contractor transported two source oil samples from the command post to the LSU Response and Chemical Assessment Team for analysis and chemical characterization. The NOAA Scientific Support Coordinator used the chemical results from the source oil samples and other environmental samples to inform clean-up decisions associated with this incident. The State of Louisiana obtained samples from all three of DM 932 tanks and those samples are archived at LSU. (Enclosure 1)¹⁸

The scientific support for oil sampling in Division B is also evidenced in Enclosure 1 by the use of several charts that show oil degree, location, the length, width, distribution, thickness, and character of the oil taken from the Division B where Chalmette Refinery is located. The charts show which platform the oil sample was taken from as well as the associated shoreline. (Enclosure 1)¹⁹

During the adjudication, the NPFC also received information from Sector New Orleans containing information specific to Division B where the Chalmette Refinery was located. In the FOSC Documents file entitled “Miscellaneous”, there is a document called “Areas of Special Concern – 2008/08/07 which specifically names Chalmette Battlefield as an area of focus.

In the FOSC Documents file entitled “SCAT Sensitive Areas”, there is a table specific to Division B which includes the location of Chalmette Refinery, and lastly, in the FOSC

¹⁷ See, Sampling of stranded oil in Mississippi River Corridor, and Table 1, List of 23 stranded oil samples.

¹⁸ See, Sampling of source oil during Barge DM 932 Incident and U.S. Coast Guard Sector New Orleans Oil Sample Chain of Custody Record.

¹⁹ See, Tab 3 in Enclosure 1.

Documents file entitled “Demurrage Facilities”, it specifies the Chalmette Refinery location as an affected location during the incident. The culmination of all of this information clearly establishes the Chalmette facility was impacted from the oil spilled by the DM 932 barge into the Mississippi River, upstream of mile marker mile marker 89.1 of the lower end of the Mississippi River, as a highly affected location by the DM 932 oil spill incident and that spill response was performed at this location as a direct result of the DM 932 oil spill incident.

Finally, ██████████ of the NPFC, sent an email dated February 25, 2010 to Damage Control man Chief (DCC) ██████████, a member of the U.S. Coast Guard Gulf Strike Team, who was present during response operations. On March 1, 2010, DC ██████████ stated that he saw USES working within Division B, and that Coast Guard personnel were aware of USES performing response actions in Division B.²⁰

To date, the NPFC has not received an official audit for this claim from ACL for USES invoice number 080140141A. The NPFC has adjudicated the claim based on the evidence that was submitted by Coast Guard and NOAA, the signed dailies and the claimant’s published rate schedule.

The NPFC has approved costs that were invoiced and supported by daily sheets which also had signature(s) by an ExxonMobil/Chalmette Refinery representative in the absence of a designated Zone Manager which confirmed that the personnel, materials, equipment, and work had been performed. During the adjudication process, the NPFC obtained a statement from the FOOSC, CAPT ██████████ which clarified that the restricted hours were “suggested” for the purpose of heat stress and safety concerns, but the monitoring and determination of actual work hours resided with the Zone Managers.²¹ In the case of hours worked at the Chalmette facility, hours were signed off by an Exxon representative in place of a DM932 assigned Zone Manager.

In its review of Enclosure (2), the NPFC tabulated and approved the costs claimed as uncompensated removal costs for each day beginning on July 29, 2008 through August 22, 2008 and constitutes uncompensated removal costs for a total of \$882,305.29.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay **\$882,305.29** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim# N08057-017. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Claim Supervisor: ██████████

Date of Supervisor’s review: *3/22/10*

Supervisor Action: *Approved*

Supervisor’s Comments:

²⁰ See, Email dated March 1, 2010 from DC ██████████, Gulf Strike Team to ██████████, NPFC.

²¹ See, FOOSC statement provided to the NPFC regarding restricted hours.