

CLAIM SUMMARY / DETERMINATION FORM

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| Claim Number | : 914093-0001 |
| Claimant | : BP Exploration & Production, Inc. |
| Type of Claimant | : Corporate |
| Type of Claim | : Removal Costs |
| Claim Manager | : [REDACTED] |
| Amount Requested: | \$14,243.36 |

FACTS:

A. Oil Spill Incident:

On March 18, 2014, the CG National Response Center (NRC) received notification of a large amount of surface residual tar balls (SRBs) washed up on the beach on West Ship Island, Harrison County, MS, located on the Gulf of Mexico, a navigable waterway of the United States.

¹ On March 20, 2014, the CG Gulf Coast Incident Management Team (CG GCIMT) responded to the report and found SRBs spread throughout Segments MSHR5-010, MSHR5-011 and MSHR5-012. As the SRBs were in a quantity that exceeded the CG's capacity to mitigate, an email directive was issued to BP Exploration & Production (BP) to activate an oil spill response organization (OSRO) to respond for cleanup operations on West Ship Island as directed.²

B. Description of removal actions performed:

On March 22, 2014, Danos & Curole Marine Contractors (BP's OSRO), [REDACTED], Swift Technical Services, LLC, and Shoreline Cleanup Assessment Team (SCAT) responded to the CG's directive of response and met with 2 CG active duty personnel on-scene. Cleanup of what appeared to be SRBs of MC252 origin began and extended throughout Segments MSHR5-010, MSHR5-011 and MSHR5-012 on the beach. Approximately 79.3 pounds of SRBs were recovered and properly disposed of at Magnolia Landfill, Summerdale, AL. During the cleanup operations, CG representatives sampled two of the SRBs from the beach located in segment MSHR5-011. There is evidence that BP personnel obtained SRB samples from the same Segment.³

THE CLAIMANT AND THE CLAIM:

On July 15, 2014, BP submitted a removal cost claim associated with the cleanup of SRBs to the National Pollution Funds Center (NPFC), asserting that the oil collected was not Deepwater Horizon oil. Claimant sought reimbursement of its uncompensated removal costs in the amount of \$14,243.36 for services provided from March 22, 2014, which included personnel, vehicle and vessel use. The claimed removal costs are based on the rate schedule in place at the time services were provided.

¹ See NRC Report # 1077008 dated March 18, 2014.

² See email directive to BP dated March 20, 2014.

³ See NPFC Optional OSLTF Form submitted by BP dated July 15, 2014.

INITIAL CLAIM REVIEW:

The samples collected by CG personnel were forwarded to the Coast Guard Marine Safety Laboratory (MSL) on March 31, 2014 (MSL Case Number 14-107). In an Oil Sample Analysis Report dated April 2, 2014, the MSL determined that sample 14-107-1 and 14-107-2 contained heavy petroleum oil with characteristics different from those samples of MC 252 oil. The MSL originally concluded that the samples were not derived from Deepwater Horizon oil.⁴

Further analyses of the oil samples were performed by the MSL at the request of the NPFC.⁵ Subsequent to the additional analyses, MSL issued a follow-up memorandum dated October 14, 2014, stating that Sample 14-107-1 was compared against source oil collected during the Deepwater Horizon (DWH) oil spill and response. Qualitative review of the PAHs and biomarker profiles for sample 14-107-1 indicated the biomarker profiles were the same as those for DWH oil, but the minor differences between the PAHs were not attributable to known-weathering or non-petroleum contamination. Based on the PAHs alone, the conclusion is that the sample is a non-match to MC 252 oil; however, that doesn't mean that the sample didn't originate from DWH oil as a petroleum fingerprint is altered by various weathering processes after a discharge occurs.

Thus, the differences noted between sample 14-107-1 and DWH oil are consistent with anticipated changes resulting from severe weathering; the PAHs and biomarkers very strongly suggested a relationship between sample 14-107-1 and Deepwater Horizon oil.⁶ Therefore, the NPFC denied any costs claimed that were affiliated with sample 14-107-1.

The initial analysis of sample 14-107-2 reflected that the oil was not DWH oil; however, upon re-analysis of sample 14-107-2, using chromatography and gas chromatography-mass spectrometry methods indicated that the petroleum oils in the samples resulted in new fingerprint that could not be correlated to a single source based solely on chemical analysis.⁷ Stated another way, the samples contained DWH oil that was comingled with other oil; therefore the biomarker profiles strongly suggested a relationship between sample 14-107-2, and Deepwater Horizon (MC-252) oil.⁸ Therefore, the NPFC denied any costs claimed that were affiliated with samples 14-107-2.

Subsequent to the NPFC denial of this claim, the MSL discovered that the sampling was not conducted in accordance with accepted chain of custody protocols. Collected samples were temporarily stored in a large plastic bag with other samples collected on that date. Thus, it is not known if sample 14-107-2, collected from Segment MSHR5-011 on March 22, 2014 was in fact MC252 oil, non MC 252 oil or comingled oil whereby the comingling occurred in the Gulf of Mexico or whether the comingling occurred during the collection process.

Thus, the MSL Oil Spill Report relied upon by the NPFC in its initial denial of this claim is unreliable and based on the evidence provided by BP and evidence collected by the NPFC and

⁴ See MSL Case # 14-107 dated April 2, 2014.

⁵ See email from [REDACTED] NPFC, to [REDACTED], USCG MSL, dated September 2, 2014.

⁶ See MSL Memo from [REDACTED], USCG MSL to [REDACTED], NPFC dated October 14, 2014

⁷ *Ibid.*

⁸ *Ibid.*

MSL, the NPFC has determined that the removal actions associated with sample 14-107-2 are associated with a mystery spill and are compensable by the Fund although the Claimant did not distinguish the removal costs associated sample 14-107-2 and as such, the NPFC denies any costs claimed that are affiliated with samples 14-107-2.

The NPFC denied this claim initially on October 17, 2014 on the grounds that the differences between sample 14-107-1 and Deepwater Horizon oil were entirely consistent with anticipated changes resulting from severe weathering and sample 14-107-2 and Deepwater Horizon oil suggested that the mixing of oils resulted in a fingerprint that couldn't be correlated to a single source based upon chemical analysis alone. The biomarkers profiles for both samples strongly suggested a relationship to Deepwater Horizon Oil.

The NPFC noted in its denial that if the Claimant sought reconsideration of this claim, it must provide further analysis and documentation establishing that the costs associated with these two samples were not MC 252 oil.

REQUEST FOR RECONSIDERATION:

A request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d). The claimant has the burden of providing any facts and legal arguments to support its request for reconsideration. 33 CFR 136.115(a).

In a letter dated November 6, 2014, Claimant sought reconsideration of 26 denied removal cost claims, arguing that the denial it received was arbitrary and capricious. It argued the following:

1. After initially concluding that the differences in PAHs supported a "non-match", the re-analysis seeks to adjust that conclusion, seeming to assert MSL's inability to determine whether the material was derived from DWH based upon PAH analysis;
2. Any number of weathered, light sweet Louisiana crude oils could have a similar chemical fingerprint and could "suggest a relationship" to MC-252 oil; and
3. The totality of circumstantial evidence surrounding many of the determinations, point to unavailable inconsistency that strongly suggests an error in analysis as of the 29 BP claims submitted from cleanup activity on Elmer's Island, LA, 12 of those BP claims have been paid by the NPFC while 17 of those BP claims were denied by the NPFC.


Claimant noted that its request for reconsideration will apply to all 26 denied claims and that no further information was forthcoming at the time the request was made.

RECONSIDERATION ANALYSIS:

The NPFC, in a request for reconsideration, performs a de novo review of the entire claim submission, including new information provided by the claimant in support of the request for reconsideration and any new information or facts independently discovered by the NPFC.

As noted above, the NPFC denied the claim in its entirety on the grounds that Claimant did not distinguish which removal costs are associated with sample 14-107-1 (not payable from the Fund) and which removal costs are associated sample 14-107-2 (payable from the Fund).

For these reasons, this claim is denied in its entirety upon reconsideration.

Claim Supervisor: 

Date of Supervisor's Review: *2/11/2015*

Supervisor Action: *Denial of reconsideration approved*

Supervisor's Comments: