

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914102-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested:	\$1,211.45

FACTS:

On December 4, 2013, the CG National Response Center (NRC) received notification of a large amount of surface residual tar balls (SRBs) washed up on the beach on Elmer's Island, Grand Isle, Jefferson Parish, LA, located on the Gulf of Mexico, a navigable waterway of the United States.¹ The CG Gulf Coast Incident Management Team (CG GCIMT) was notified and an email directive was issued to BP Exploration & Production (BP) to activate an oil spill response organization (OSRO) to respond for cleanup operations on Elmer's Island as directed.²

On December 4, 2013, Danos & Curole Marine Contractors, BP's oil spill removal organization (OSRO), [REDACTED] NextSource, Inc, and Shoreline Cleanup Assessment Team (SCAT) operations liaison responded to the CG's directive of response and met with 2 CG active duty personnel on-scene. Removal actions were initiated and extended throughout Segments LAJF01-004-20 and LAJF01-004-60 on the beach. Approximately 29 pounds of SRBs were recovered and properly disposed of at River Birch Landfill, Avondale, LA.³ During the removal operations, CG representatives sampled an SRB from the beach located in Segment LAJF01-004-20 and on December 23, 2013 submitted it to the CG Marine Safety Lab (CG MSL) for analysis.⁴ BP personnel split the sample taken by CG personnel from Segment LAJF01-004-20.⁵

Upon receipt the MSL assigned Case Number 14-033-2 to the sample. In an Oil Sample Analysis Report dated January 2, 2014, the MSL determined that sample 14-033-2 contained heavy petroleum oil with characteristics different from those samples of MC 252 oil. The MSL concluded that the sample was not derived from Deepwater Horizon oil.⁶ However, upon re-analysis of the sample, using as chromatography and gas chromatography-mass spectrometry methods, the MSL clarified that the qualitative review of the PAHs and biomarker profiles indicated that the petroleum oils in the sample resulted in a new fingerprint that could not be correlated to a single source based solely on chemical analysis.⁷ The biomarker profiles strongly suggested a relationship between the sample and Deepwater Horizon (MC-252) oil.⁸

HISTORY OF THE CLAIM:

¹ See NRC Report # 1067532 dated December 4, 2013.

² See email directive to BP dated December 4, 2013.

³ See NPFC Optional OSLTF Form submitted by BP dated August 12, 2014.

⁴ See MSL Case # 14-033 dated January 2, 2014.

⁵ See NPFC Optional OSLTF Form submitted by BP dated August 12, 2014. It is not known if BP analyzed the split sample but BP did not provide an analysis, if conducted, to the NPFC.

⁶ See MSL Case # 14-033 dated January 2, 2014.

⁷ See MSL memorandum dated October 10, 2014.

⁸ See MSL Memo from [REDACTED] USCG MSL to [REDACTED], NPFC dated October 10, 2014.

On August 12, 2014, BP submitted a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) asserting that the oil cleaned up by BP's OSRO on December 4, 2013 was non-MC 252 oil. Claimant sought reimbursement of its uncompensated removal costs in the amount of \$1,211.45 for services provided from December 4 – December 5, 2014, which included personnel and vehicle use. The claimed removal costs are based on the rate schedule in place at the time services were provided.

Based on the subsequent analysis of sample number 14-033-2, the NPFC denied the claim on October 15, 2014.

BP timely sought reconsideration of the claim on November 6, 2014, arguing that the denial was arbitrary and capricious.⁹ It argued the following:

1. After initially concluding that the differences in PAH's 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.¹⁰
2. Any number of weathered, light sweet Louisiana crude oils could have a similar chemical fingerprint and could "suggest a relationship" to MC-252.¹¹
3. The totality of circumstantial evidence surrounding many of the determinations points to unavoidable 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.¹²

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.

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.

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 all other samples collected on that date. Thus, it is not known if Sample Number 14-033-2, collected from Segment LAJF01-004-20 on December

⁹ In an e-mail dated November 6, 2014, BP notified the NPFC that the request for reconsideration was applicable to all 26 of its denied claims, which totaled 26.

¹⁰ Id.

¹¹ Id.

¹² Id.

5, 2013, was in fact MC 252 oil, non MC 252 oil or a co-mingled oil where commingling occurred in the Gulf of Mexico or during collection actions.

Thus, the MSL Oil Spill Report relied upon by the NPFC in its initial denial of this claim is unreliable. The administrative record for this claim does however evidence that a BP OSRO conducted removal actions on December 4-5, 2013 for claim number 914102-0001. There is evidence in the record that the tar balls collected by BP were oil as defined by OPA. Further, BP provided the OSRO rate sheet in place at the time of the removal actions and the claimed costs were based on that rate schedule. BP provided evidence that it paid the removal costs.

Based on the evidence provided by BP and evidence collected by the NPFC and the MSL, the NPFC determines that the removal actions in this claim were associated with a mystery spill and BP is entitled to removal costs in the amount of \$1211.45.

DETERMINED AMOUNT:

The NPFC will offer **\$1,211.45** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 914102-0001. 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: *1/22/15*

Supervisor Action: *Reconsideration Offer Approved*

Supervisor's Comments: