

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914136-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested:	\$387.66

### **FACTS:**

#### ***A. Oil Spill Incident:***

On January 8, 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 Elmer's Island, Jefferson Parish, LA, located on the Gulf of Mexico, a navigable waterway of the United States.<sup>1</sup> The CG Gulf Coast Incident Management Team (CG GCIMT) was notified and responded to the report and found SRBs spread throughout Segments LAJF01-004-20, LAJF01-004-35, LAJF01-004-40 and LAJF01-004-60 / Zones 1, 2 and 3. As the SRBs were in a quantity that exceeded the CG's capacity to mitigate (sustained winds swept away top layers of sand revealing previously buried SRBs concentrated in old rack lines), 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.<sup>2</sup>

#### ***B. Description of removal actions performed:***

On January 8, 2014, Danos & Curole Marine Contractors (BP's OSRO), 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 through Zones 2 and 3 on the beach. Approximately 1.68 pounds of SRBs were recovered and properly disposed of at River Birch Landfill, Avondale, LA. During the cleanup operations, CG representatives sampled three of the SRBs from the beach located in Zone 2. BP personnel did not take samples.<sup>3</sup>

### **THE CLAIMANT AND THE CLAIM:**

On September 22, 2014, BP submitted a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or Fund), asserting that the oil was not Deepwater Horizon oil. Claimant sought reimbursement of its uncompensated removal costs in the amount of \$387.66 for services provided on January 8, 2014, which included personnel and vehicle use. The claimed removal costs were based on the rate schedule in place at the time services were provided.

### **INITIAL CLAIM REVIEW:**

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<sup>1</sup> See NRC Report # 1070439, dated January 8, 2014.

<sup>2</sup> See email directive to BP dated January 8, 2014.

<sup>3</sup> USCG NRC Tracker Spreadsheet, submitted with the claim by the claimant on September 22, 2014.

The samples collected by CG personnel were forwarded to the Coast Guard Marine Safety Laboratory (MSL) on February 6, 2014 (MSL Case Number 14-055). In an Oil Sample Analysis Report dated February 7, 2014, the MSL determined that sample 14-055-1, 14-055-2 and 14-055-3 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.<sup>4</sup>

Further analyses of the oil samples were performed by the MSL at the request of the NPFC.<sup>5</sup> Subsequent to the additional analyses, MSL issued a follow-up memorandum dated October 20, 2014, stating that Sample 14-055-1 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 14-055-1 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 14-055-1 and DWH oil are consistent with anticipated changes resulting from severe weathering; the PAHs and biomarkers very strongly suggested a relationship between sample 14-055-1 and Deepwater Horizon oil.<sup>6</sup> Therefore, the NPFC denied any costs claimed that were affiliated with sample 14-055-1.

The initial analysis of samples 14-055-2 and 14-055-3 reflected that the oil was not DWH oil; however, upon re-analysis of samples 14-055-2 and 14-055-3, 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.<sup>7</sup> Stated another way, the samples contained DWH oil that was comingled with other oil; therefore the biomarker profiles strongly suggested a relationship between samples 14-055-2, 14-055-3, and Deepwater Horizon (MC-252) oil.<sup>8</sup> Therefore, the NPFC denied any costs claimed that were affiliated with samples 14-055-2 and 14-055-3.

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 14-055-2 and sample 14-055-3, collected from Zone 2 on January 8, 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 MSL, the NPFC has determined that the removal actions associated with sample 14-055-2 and

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<sup>4</sup> See MSL Case # 14-055 dated February 7, 2014.

<sup>5</sup> See email from [REDACTED] NPFC, to [REDACTED], USCG MSL, dated September 24, 2014.

<sup>6</sup> See MSL Memo from [REDACTED] Juarez, USCG MSL to [REDACTED] NPFC dated October 20, 2014

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

sample 14-055-3 are associated with a mystery spill and are compensable by the Fund although the Claimant did not distinguish the removal costs associated samples 14-055-2 and 14-055-3 and as such, the NPFC denies any costs claimed that are affiliated with samples 14-055-2 and 14-055-3.

The NPFC denied this claim initially on October 23, 2014 on the grounds that the three samples (14-055-1, 14-055-2 and 14-055-3) were DWH oil that were comingled with other petroleum.

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 three 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 14-055-1 (not payable from the Fund) and which removal costs are associated samples 14-055-2 and 14-055-3 (payable from the Fund). The claims manager did determine in its de novo review of the original claim submission that the classification of sample 14-055-1 as comingled was changed to weathered

upon reanalysis. The change in classification of sample 14-055-1, however, does not change the denial of this reconsideration, as the Claimant still failed to meet its burden on reconsideration of separating out the compensable costs included in this claim for sample 14-055-2 and 14-055-3 from the non-compensable costs in this claim associated with sample 14-055-1.

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

Claim Supervisor:

Date of Supervisor's Review: *February 11, 2015*

Supervisor Action: *Denial of reconsideration approved*

Supervisor's Comments: