

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 914142-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$533.06

**FACTS:**

On January 10, 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, LAJF01-004-40 and LAJF01-004-60 / Zones 2 and 3. 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 Elmer's Island as directed.<sup>2</sup>

On January 10, 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 16.37 pounds of SRBs were recovered and properly disposed of at River Birch Landfill, Avondale, LA. During the cleanup operations, Both CG representatives and BP personnel sampled one of the SRBs from the beach located in LAJF01-004-40, Zone 2.<sup>3</sup>

Upon receipt the MSL assigned Case Number 14-056 to the sample. In an Oil Sample Analysis Report dated February 7, 2014, the MSL determined that sample 14-056-1 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.<sup>4</sup> 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 correlated to a single source based solely on chemical analysis.<sup>5</sup> The biomarker profiles strongly suggested a relationship between the sample and Deepwater Horizon (MC-252) oil.<sup>6</sup> The MSL also determined that a second sample, 14-056-2, did not evidence any similarities that would suggest a relationship between the sample and DWH oil.

<sup>1</sup> See NRC Report # 1070663, dated January 10, 2014.

<sup>2</sup> See email directive to BP dated January 10, 2014.

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

<sup>4</sup> See MSL Case # 14-056 Oil Sample Analysis Report, dated February 7, 2014.

<sup>5</sup> See MSL Memo from Ms. [REDACTED] USCG MSL to Mr. [REDACTED] NPFC dated October 15, 2014.

<sup>6</sup> See MSL Memo from Ms. [REDACTED] USCG MSL to Mr. [REDACTED] NPFC dated October 15, 2014.

### **HISTORY OF THE CLAIM:**

On September 22, 2014, BP submitted a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF), asserting that the oil associated with the removal actions was not Deepwater Horizon oil. Claimant sought reimbursement of its uncompensated removal costs in the amount of \$533.06 for services provided on January 10, 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.

The NPFC denied the claim on the grounds that sample 14-056-01 was related to DWH oil and while sample 14-056-02 was not DWH oil, the NPFC could not determine what costs would be payable from the Fund for costs associated with the portion of the removal actions for sample 14-056-02. The NPFC noted in the denial determination that should Claimant seek reconsideration it must delineate the costs associated with sample 14-056-2. BP timely sought reconsideration of the claim on December 17, 2014, arguing that the denial was arbitrary and capricious. 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.
2. Any number of weathered, light sweet Louisiana crude oils could have a similar chemical fingerprint and could "suggest a relationship" to MC-252.
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.

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

### **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. Certain collected samples were temporarily stored in a large plastic bag with all other samples collected on that date. Thus, it is not known if the Sample 14-056-1, collected from LAJF01-004-40/Zone 2 on January 10,

2014, 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 for sample 14-056-1 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 January 10, 2014 for claim number 914142-0001. 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 associated with samples 14-056-1 and 14-056-2 in this claim were mystery spills and BP is entitled to removal costs in the amount of \$533.06.

**DETERMINED AMOUNT:**

The NPFC will offer **\$533.06** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the OSLTF under claim # 914142-0001. 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: *2/3/15*

Supervisor Action: *Reconsideration approved*

Supervisor's Comments: