

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915007-0001
Claimant	: BP Exploration & Production, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested:	\$703.66

### **FACTS:**

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

On December 20, 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, 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>

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

On December 20, 2013, 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 14.20 pounds of SRBs were recovered and properly disposed of at River Birch Landfill, Avondale, LA. During the cleanup operations, both CG and BP representatives sampled two of the SRBs from the beach located in Segment LAJF01-004-40.<sup>3</sup>

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

On September 29, 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 \$703.66 for services provided on December 20, 2013, 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 # 1069089, dated December 20, 2013.

<sup>2</sup> See email directive to BP dated December 20, 2013.

<sup>3</sup> USCG NRC Tracker Spreadsheet, submitted with the claim by the claimant on September 29, 2014.

The samples collected by CG personnel were forwarded to the Coast Guard Marine Safety Laboratory (MSL) on February 6, 2014 (MSL Case Number 14-071). In an Oil Sample Analysis Report dated February 19, 2014, the MSL determined that samples 14-071-1 and 14-071-2 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.<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 23, 2014, stating that Sample 14-071-1 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 14-071-1 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 14-071-1 and DWH oil are consistent with anticipated changes resulting from severe weathering; the PAHs and biomarkers very strongly suggested a relationship between sample 14-071-1 and Deepwater Horizon oil.<sup>6</sup> Therefore, the NPFC denied any costs claimed that were affiliated with sample 14-071-1.

The MSL memorandum also clarified that after a qualitative review of the PAHs and biomarker profiles for sample 14-071-2, there were no similarities to suggest a possible relationship between sample 14-071-2 and Deepwater Horizon oil.<sup>7</sup> The NPFC has also denied costs affiliated with sample 14-071-2 despite the fact that there were no similarities between this sample and Deepwater Horizon oil because the Claimant did not distinguish the removal costs associated with sample 14-071-1 (which are not reimbursable from the Fund) from the costs associated with sample 14-071-2 (which would be reimbursable from the Fund with proper itemization of costs and documentation).

The NPFC noted in its denial that if the Claimant sought reconsideration of this claim it should clearly identify the removal costs associated with sample 14-071-1 and with sample 14-071-2.

#### **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:

<sup>4</sup> See MSL Case # 14-071 dated February 19, 2014.

<sup>5</sup> See email from [REDACTED] NPFC, to [REDACTED] USCG MSL, dated October 7, 2014.

<sup>6</sup> See MSL Memo from [REDACTED], USCG MSL to [REDACTED], NPFC dated October 23, 2014

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

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 14-071-1 (not payable from the Fund) and which removal cost are associated sample 14-071-2 (payable from the Fund). The claims manager did determine in its de novo review of the original claim submission that samples 14-071 and 14-071-2 were mistakenly classified as 14-107-1, 14-074-1 and 14-074-2 , however, that 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 14-071-2 from the non-compensable costs in this claim associated with sample 14-071-1.

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

Claim Supervisor:

Date of Supervisor’s Review: *2/11/15*

Supervisor Action: *Denial of reconsideration approved*

Supervisor’s Comments: