

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	915080-0004
<b>Claimant:</b>	OMI Environmental Solutions
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$64,301.63

### FACTS:

**Oil Spill Incident:** On December 12, 2014, an 8 inch oil suction line connected to the Dune Energy State Lease 214 Tank Battery 414 located in Garden Island Bay, Venice, LA, failed, discharging oil into the South Pass, a tributary to the Gulf of Mexico and a navigable waterway of the United States. Dune Energy, Inc. hired OMI Environmental Solutions (OMI) to respond and conduct pollution removal activities.<sup>1</sup> Dune Energy, Inc. also hired O'Brien's Response Management<sup>2</sup> to oversee the management of the spill response and J. Connor Consulting<sup>3</sup> to provide QI oversight. Proper notifications were made the CG National Response Center.<sup>4</sup> MST3 [REDACTED] of CG Sector New Orleans and in his capacity as the Federal On Scene coordinator's Representative (FOSCR) responded to conduct oversight of the pollution removal activities.<sup>5</sup>

**Description of Removal Activities for this Claimant:** On December 12, 2014, OMI personnel responded at the request of Dune Energy, Inc. to conduct removal activities that included the use of boats, skimmers, sorbents and wash pumps as the discharged oil was trapped around and underneath the Hyacinth and Roseau Cane. Cleanup activities extended from December 12, 2014 through February 18, 2015. A total of 30 gallons of oil and 25 cubic yards (164 bags) of oiled vegetation and sorbent waste were collected and disposed of properly at Riverbirch Landfill, Avondale, LA.<sup>6</sup>

**Responsible Party:** On March 8, 2015, Dune Energy, Inc. filed for Chapter 11 Bankruptcy.<sup>7</sup> The Claimant, OMI Environmental Solutions, failed to file their Proof of Claim before the deadline for submission of claims as established by the U.S. Bankruptcy Court for their amount claimed.<sup>8</sup>

**The Claim:** On April 22, 2016, OMI Environmental Solutions submitted a pollution removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated pollution removal costs totaling \$64,301.63<sup>9</sup>

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<sup>1</sup> See Optional OSLTF Claim Form from OMI to the NPFC dated 15 Apr 2016.

<sup>2</sup> O'Brien's Response Management submitted a claim to the NPFC for their oversight of the spill removal activities on 11 May 2015, see claim 915080-0001.

<sup>3</sup> J. Connor Consulting submitted a claim to the NPFC for their QI services on 26 Jul 2015, see claim 916080-0002.

<sup>4</sup> See NRC Report # 1103268, opened 12/12/2014.

<sup>5</sup> See USCG Sector New Orleans Case Report # 717260.

<sup>6</sup> See Optional OSLTF Claim Form from OMI to the NPFC dated 15 Apr 2016.

<sup>7</sup> See Notice of Entry of Order setting deadline for the filing of Proofs of Claim dated April 17, 2015.

<sup>8</sup> See Optional OSLTF Claim Form from OMI to the NPFC dated 15 Apr 2016.

<sup>9</sup> Id.

**APPLICABLE LAW:**

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC." [Emphasis added].

## **DETERMINATION OF LOSS:**

### ***A. Overview:***

1. MST3 [REDACTED], CG Sector New Orleans responded as the Federal On-Scene Coordinator's representative (FOSCR) for this incident but is no longer an active duty member of the Coast Guard and therefore unavailable for comment to the NPFC regarding OMI's pollution removal activities. As such, the NPFC has determined through a conversation with MSTC [REDACTED]<sup>10</sup> (MST3 [REDACTED] supervisor at the time), the Situation Reports submitted by O'Brien's Response Management<sup>11</sup> and verification that MST3 [REDACTED], CG Sector New Orleans responded to oversee the pollution removal activities that the actions undertaken by the Claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).;
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

### ***B. Analysis:***

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined to be consistent with the NCP, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule in place at the time the

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<sup>10</sup> See email documenting a conversation between MSTC [REDACTED] CG MSD Cincinnati and Mr. [REDACTED], NPFC dated 6 May 2016.

<sup>11</sup> See O'Brien's Response Management Situation Reports #1 -4.

<sup>12</sup> See USCG Sector New Orleans Case Report # 717260.

services were rendered and were determined by the NPFC to be consistent with the NCP. Costs denied by the NPFC include improper rates charged by OMI for roll tarp roll off boxes and roll off liners, the disposal of non hazardous waste billed in excess of OMI's allowable 20% markup and administrative fees for the profiling, load scheduling and manifest prep that weren't properly supported by OMI's rate schedule. In addition, OMI failed to provide an itemized lunch receipt dated December 16, 2015. As such, the NPFC allowed \$15.00 partial per diem for each person on site for that date.

The NPFC therefore determines that the OSLTF will pay \$63,372.06 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 915080-0004. 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.

**AMOUNT: \$63,372.06**

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>May 9, 2016</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor's Comments:</p>
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