

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915081-0002
Claimant	: OMI Environmental Solutions
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$183,290.31

FACTS:

1. ***Oil Spill Incident:*** The United States Coast Guard (USCG) Sector New Orleans reports that on August 27, 2014, a sheen was reported emanating from a flow-line leak on a shut in well located at Garden Island Bay, near Venice, LA. Garden Island Bay drains directly into the Gulf of Mexico, both of which are navigable waterways of the US.¹

This incident was reported to the National Response Center (NRC) via Report # 1093583.²

Description of removal actions performed: Oil Mop Environmental Solutions (OMIES) was contracted by the Responsible Party (RP), Dune Energy, to perform cleanup and removal actions that included the use of boats, skimmers, sorbents and wash pumps.³

Several site visits by the USCG Incident Management Division (IMD), Louisiana Department of Environmental Quality (LA DEQ), Louisiana Department of Natural Resources (LA DNR), and the Louisiana Oil Spill Coordinator's Office (LOSCO) were conducted during this cleanup period. On September 29, 2014, the USCG IMD, LOSCO and LA DEQ all made a final site visit and agreed that the RP could remove all sorbent and hard boom on site in order to conclude cleanup efforts.⁴ All boom, pads and oily waste were removed from the site by November 12, 2014.⁵ The total amount of oil recovered was estimated to be 240 bbls. Oiled vegetation and sorbent waste were collected and disposed of properly at Riverbirch Landfill, Avondale, LA.⁶

Dune Operating, Inc. (Dune) was designated as the named Responsible Party (RP). On March 8, 2015, Dune filed for Chapter 11 Bankruptcy. The Claimant, OMI Environmental Solutions, has advised the National Pollution Funds Center (NPFC) that it has not filed a Proof of Claim with the Bankruptcy Court for the costs which are subject of this claim.⁷ The Claimant presented its costs to Dune via the following invoices: N1409-166 (\$655,923.58), dated September 23, 2014; C1411-208 (credit of \$4,251.00), dated February 23, 2015; N1411-208 (\$15,040.25), dated November 24, 2014; N1501-183 (\$53,015.57), dated January 26, 2015.

¹ See USCG Sector New Orleans Case Report # 698677, opened 8/27/2014.

² See NRC Report # 1093583, opened 8/27/2014.

³ See Invoice Dailies for this incident, included with the claim by the Claimant on 4/22/2016.

⁴ See PI Statement for this incident, written by USCG PO [REDACTED], dated 11/06/2014.

⁵ See Invoice Dailies for this incident, included with the claim by the Claimant on 4/22/2016.

⁶ See Disposal Manifests, included with the claim by the Claimant on 4/22/2016.

⁷ See, Email from [REDACTED] to [REDACTED] dated April 25, 2016.

Dune made two partial payments for Invoice N1409-166 ~ one on January 5, 2015 in the amount of \$400,000.00 and another on February 2, 2015 in the amount of \$136,438.09, thus reducing the balance owed to the claimed amount of \$183,290.31.⁸

- The Claim:*** On April 22, 2016, OMIES presented a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund); requesting reimbursement of their uncompensated removal costs in the amount of \$183,290.31 for the services provided from August 27 through November 12, 2014. A copy of the vendor rate schedule is provided in the claim submission.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"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."

⁸ See, OSLTF Claim Form dated April 15, 2106 item # 3.

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. USCG Sector New Orleans, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);⁹
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23);
3. Dune Operating Company is the designated Responsible Party (RP) but has since filed Bankruptcy for which the OMIES has not file a Proof of Claim for the costs subject of this claim;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. 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.

B. Analysis:

The National Pollution Funds Center (NPFC) Claims Manager reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed and that all costs were supported by the record, were compensable “removal actions” under the Oil

⁹ See USCG Sector New Orleans Case Report # 698677, opened 8/27/2014.

Pollution Act (OPA) and the claims regulations at 33 CFR 136, whether the costs were incurred as a result of the actions, whether the actions taken were determined by the FOOSC to be consistent with the NCP or directed by the FOOSC, and whether the costs were adequately documented and reasonable.

OMIES provided a well-documented claim to show the actions it performed were for OPA-related costs and that the work that they performed mitigated the effects of the oil that was released from the compromised well/flow-line. Additionally, the USCG Sector New Orleans confirmed what actions were performed for this incident. Based upon the evidence in this claim submission for the actions undertaken by OMIES along with the USCG's statement and MISLE Case, the Claims Manager hereby determines that the Claimant has incurred \$182,992.12 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by OMIES and submitted to the NPFC under claim #915081-0002. It is important to note that \$298.19 in claimed meal costs are denied, as the amounts claimed on certain dailies exceeded that allowed by those who were not under per diem and there were no itemization of receipts and as such, the NPFC allowed a stipend of \$15.00 per man/per day and all other amounts were denied as not supported by the record.¹⁰

The Claimant states that the costs claimed are for removal costs incurred by the Claimant for this incident from August 27 through November 12, 2014.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will offer \$182,992.12 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915081-0002. \$298.19 in claimed meal costs are denied.

AMOUNT: \$182,992.11

Claim Supervisor: 

Date of Supervisor's review: *6/23/16*

Supervisor Action: *Approved*

Supervisor's Comments:

¹⁰ See, NPFC audit/summary of costs included with this determination for further explanation