

CLAIM SUMMARY / DETERMINATION

Claim Number:	916007-0001
Claimant:	Oil Mop, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$651,676.26 ¹

FACTS:

A. Oil Spill Incident:

On May 13, 2015, Sector New Orleans Incident Management Division (IMD) received a report of an unknown sheen and heavy fuel oil odor coming from Chevron Oronite at Mile Marker 72 on the Lower Mississippi River (LMR). The incident was reported to the National Response Center (NRC) via report # 1116353, which indicated that the spill was reported by an employee at Port Ship Services located at 999 Hwy 23 in Belle Chasse, LA 70037.² The Claimant, Oil Mop, LLC was hired to handle response by the Responsible Party (RP), Evergreen Resource Recovery, LLC.

B. Coast Guard Investigation facts:

(Coast Guard Unit/Case Activity 5125229): IMO personnel conducted a shoreline assessment from the Chevron Dock up river to Port Ship Services. A Coast Guard aerial survey observed a heavy oil-sheen on the shoreline from the Evergreen Resource Recovery facility (Evergreen) just north of Port Ship Services.³ IMD personnel estimated approximately nine barrels of waste oil discharged into the Lower Mississippi River contaminating approximately one (1) mile of shoreline.

Coast Guard personnel questioned the owners of Evergreen and its Person-In-Charge (PIC) of the facility and learned that on May 12, 2015, the night before the incident, the Evergreen facility was off-loading oily water from the barge DBL 118 (owned by Envision Marine Services). CG witness statements from the PIC and the Captain of the Tugboat OMAHA (assisting the barge) observed an oily sheen at approximately 2345. Statements from the PIC stated that all transfer lines and connections were checked for integrity and possible leaks with no abnormalities reported. The sheen was not reported to the NRC by PIC at Evergreen nor was the oil-sheen reported by the tugboat Captain.

The Coast Guard Incident Management Division ruled out the tug OMAHA as a possible source because that vessel would not be carrying the type of oil that was discharged into the waterway. Envision Resources reported to the FOSC that its third party samples taken from the Evergreen storage tank for comparison with the oil onboard the DBL 118 resulted in a "substantial difference."⁴

Oil Samples: IMD personnel took samples of the oil impacting the waterway and adjoining shoreline, the 3" transfer hose, and the facility storage tank. Due to late notification to the CG, the IMD was unable to take samples from the tank onboard the DBL 118. On July 17, 2015, the

¹ See, Email from [REDACTED] dated January 27, 2016 amending sum certain to \$631,228.74.

² See, NRC Report # 1116353.

³ The Evergreen Resource Recovery facility is located at Mile Marker 74 on the Lower Mississippi River.

⁴ See, Email from FOSCR [REDACTED] to NPFC dated December 10, 2015.

IMD received a "MATCH" from the oil in the waterway and the oil located in the facility's storage tank which has been identified in Coast Guard Sample Analysis Report # 15-222.⁵

C. Presentment to the Responsible Party:

As noted above, Evergreen Resource Recovery, LLC has been identified by the FOSC as the owner/operator of the transfer tank that discharged the oil. The Claimant, OMI, presented one invoice, #N1507-172 in the amount of \$793,228.74, and documentation to the RP on July 22, 2015. The Claimant notified the NPFC via email⁶ that they did not pay the storage rental fees; therefore, they reduced the sum certain to \$651,676.26. The Claimant again reduced the sum certain to \$631,228.74.⁷ To date, payment has not been made on invoice # N1507-172 for the services rendered by OMI to conduct cleanup.

Upon receipt of this claim submission, the NPFC sent an RP Notification Letter to the RP dated November 25, 2015.⁸

THE CLAIMANT AND THE CLAIM:

On November 16, 2015, Oil Mop, LLC (OMI) submitted a removal cost claim associated with the cleanup of the Evergreen Resource Recovery, LLC oil spill to the Oil Spill Liability Trust Fund (OSLTF or the Fund), asserting that Evergreen failed to pay them for its uncompensated removal costs.

Specifically, Oil Mop, LLC. billed Evergreen Resource Recovery, LLC for all of the costs associated with its removal actions, totaling \$793,228.74 for one (1) invoice. To date, Evergreen has not paid the costs associated with this invoice. As noted above the uncompensated claimed amount in this claim is \$631,228.74.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident.

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". 33 USC 2701(31) A responsible party's liability includes "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).

A responsible party is the person owning or operating the facility. 33 U.S.C. 2701(32)(B).

A facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. 33 USC 2701(9).

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".

⁵ See, Coast Guard Oil Sample Analysis Report, MSL Case # 15-222.

⁶ See, November 16, 2015 email from [REDACTED], OMI, to [REDACTED], NPFC.

⁷ See, January 27, 2016 email from OMI to NPFC amending sum certain.

⁸ See, NPFC RP Notification Letter dated November 25, 2015.

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.

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. 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. Findings of Fact:

1. MST [REDACTED] of Sector New Orleans provided coordination for this claim in his capacity as the Federal On-Scene Coordinator's Representative (FOSCR) for this incident.⁹
2. The incident involved the discharge of "oil" to "navigable waters."
3. The claim was submitted to the Fund within the six year period of limitations for removal costs claims. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has been determined. 33 U.S.C. § 2701(32)(B).
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined that the costs claimed were associated with OPA compensable removal actions in accordance with the NCP and that the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205.

B. NPFC Analysis:

The NPFC CA Division reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136.203 (1) the actions taken were 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 by the FOSC, to be consistent with the National Contingency Plan or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC reviewed the Oil Mop rate schedule that was in place at the time the services were provided; the NPFC based its adjudication of these costs on the rate schedule, the OMI invoice, the daily support logs, disposal manifests, and third party invoicing along with proof of payment for the actions performed.

⁹ See email from MST [REDACTED] USCG, to [REDACTED] NPFC dated December 10, 2015.

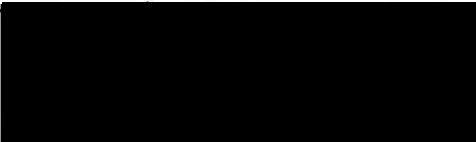
The Claimant performed cleanup utilizing personnel, boat assets, boom and pads as needed to remove the oil associated with this incident and ensured disposal was properly performed and documented. Based on its review, the NPFC has determined that the claimed costs are reimbursable from the Fund, that those were actions taken to minimize and mitigate the effects of the incident, and were reasonable and necessary and were coordinated by the FOSC.

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 and/or contractual agreements in place at the time the services were rendered, unless otherwise indicated below, and were determined to be consistent with the National Contingency Plan (NCP). The FOSCR provided a statement via email on December 10, 2015 that indicates the spill location was not determined clean until the Coast Guard made a recent site visit in December 2015.

The NPFC did not compensate the Claimant for any storage rental fees charged for OMI Invoice # N1507-172. The Claimant has yet to pay those costs and has reserved its right to present a supplemental claim in the future for those costs once they have been paid and are considered uncompensated removal costs.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer \$631,228.74 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # 916007-0001. All reimbursable costs are for charges paid 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.

C. Determined Amount: \$ 631,228.74

Claim Supervisor:	
Date of Supervisor's review:	2/18/16
Supervisor Action:	<i>Approved</i>
Supervisor's Comments:	