

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	916010-0001
<b>Claimant:</b>	Oil Mop, LLC
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$68,043.17

### FACTS:

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

On 15 October 2014, a discharge of an unknown amount of crude oil was discovered in Lake Hermitage, a navigable waterway of the U.S. The National Response Center (NRC) Report # 109831 states that the caller reported he heard the product coming from top of the fixed production barge.<sup>1</sup> Mesa Gulf Coast owns the production barge, its tanks and equipment and has been identified as the responsible party (RP) by the Federal On Scene Coordinator's Representative (FOSCR). The RP hired OMI Environmental Solutions, Inc. (OMI) to handle cleanup and response actions for this incident.<sup>2</sup>

#### **B. Description of the Mesa Gulf Coast facility, Lake Hermitage Field Production Facility No. 1 per the Facility Response Plan (FRP):<sup>3</sup>**

The production barge facility in question is an oil and gas production site covering an area of approximately 0.75 acres which, according to the U.S. Coast Guard, Sector New Orleans, Incident Management Division (IMD), is unmanned and requires minimal day to day activities. The facility is located over water in Lake Hermitage and consists of one production concrete barge and one storage barge. The production barge is associated with permitted oil and gas wells. Natural gas is removed from the facility by pipeline. The crude oil and water mixture enters the first stage of separation at the bulk separator and heater treater, where the mixture is allowed to separate. Once separated, the crude oil is stored in 3,000 barrel storage barge compartments awaiting transfer to marine vessel(s).<sup>4</sup> The produced water is stored in two 400 barrel storage tanks and is disposed of by injection downhole or transfers to marine vessel. Three 400-barrel tanks exist to collect waste oil. As a preventive measure, all 400 barrel tanks are fitted with equalizer lines to prevent overfilling.

The discharge associated with the instant claim, Claim # 916010-0001, originated from a crude oil 400 barrel salt water storage tank on the "top of the facility" that holds approximately 5BBL of oil depending on the frequency the tank is skimmed.<sup>5,6</sup> It is believed that the discharge occurred when the high pressure

<sup>1</sup> See, NRC Report # 109831.

<sup>2</sup> See, Claimant's OSLTF Claim Form dated November 19, 2015.

<sup>3</sup> See, Mesa Gulf Coast Facility Response Plan, Section 1.5, page 6.

<sup>4</sup> This facility can accommodate a single marine transfer barge per loading, which is typically a 5,000-barrel barge. Pile clusters are used to moor the marine transfer vessel during transfer of the crude oil from the storage tank to the marine transfer vessel.

<sup>5</sup> The NPFC notes that between May 10, 2014 and July 22, 2015 the Mesa Gulf Coast production facility suffered five discharges from different tanks and equipment on the production barge requiring removal actions. The NPFC has received five (5) separate oil spill claims from this Claimant in response to oil spills that occurred at the Mesa Gulf Coast facility between May 10, 2014 and June 26, 2015: Claim # 916009-0001, in the amount of \$52,134.43; in the instant claim #916010-0001, in the amount of \$68,043.17; claim # 916011-0001 in the amount of \$53,126.70, claim # 916012-0001, in the amount of \$5,237.80, and claim # 916013-0001 in the amount of \$328,551.59. The NPFC is reviewing and adjudicating each claim separately.

shutdown valve failed, allowing crude oil to overflow the tank.<sup>7</sup> Removal actions included shoreline assessment and cleanup. Active response actions were completed on October 31, 2014 and final disposal was completed by November 17, 2014.<sup>8</sup> MST [REDACTED] provided after-the-fact FOSC coordination and has determined that the actions undertaken by OMI for response to this incident, are consistent with OMI's response actions undertaken at this facility during similar incidents and as such, he has determined that the actions of OMI are consistent with the National Contingency Plan (NCP)

***C. Description of actions performed as reported by the Claimant:***

Following is a description of overall actions performed for the incident subject of this claim as recounted by the Claimant:<sup>9</sup>

OMI placed hard boom and sorbent boom along the shoreline and then applied a high volume/low pressure flush to the impacted shoreline. OMI personnel placed wash pumps on airboats and the oil was washed out of the marsh grass, which then accumulated in the containment boom. This was collected by placing absorbent pads and using drum skimmers that are operated from the OMI response vessel. Oiled sorbents and debris were then transported to a roll-off box for disposal.<sup>10</sup>

***D. Presentment to the Responsible Party:***

As noted above, Mesa Gulf Coast, LLC has been identified by the FOSC as the owner/operator of the 400-barrel storage tank that discharged the oil. The Claimant, OMI, has presented all invoices and documentation to the RP. This claim consists of OMI Invoice # N1501-052 in the amount of \$68,043.17, which was issued to Mesa on January 12, 2015. The initial claim submission was for two (2) invoices, OMI Invoice # N1501-052 and N1501-197, totaling \$70,005.02; however, the Claimant notified the NPFC via email<sup>11</sup> that the RP had paid the total for invoice # N1501-197 (\$1,962.15), asking that the claim total be reduced to \$68,043.17. To date, payment has not been made on invoice # N1501-052 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 24, 2015. On November 25, 2015, the RP acknowledged receipt of the NPFC's notification and requested an extension of time to respond. The NPFC granted a thirty (30) day extension, giving Mesa until December 30, 2015 to respond with any information it wishes the NPFC to consider.<sup>12</sup> On December 29, 2015, the RP sent an email to NPFC requesting an additional thirty day extension to try to settle with the Claimant. In an email dated December 30, 2015, the NPFC denied the request for an extension and advised the RP that it is free to continue discussions/negotiations with the Claimant as it deems appropriate and should notify NPFC if settlement occurs.<sup>13</sup>

**THE CLAIMANT AND THE CLAIM:**

On November 19, 2015, Oil Mop, LLC (OMI) submitted a removal cost claim associated with the cleanup of the Mesa Gulf Coast, LLC oil spill to the Oil Spill Liability Trust Fund (OSLTF or the Fund), asserting that Mesa failed to pay them for its uncompensated removal costs.

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<sup>6</sup> See, Enclosure (2) Mesa Site Diagram.

<sup>7</sup> See, January 8, 2016 email from PO [REDACTED], USCG, to [REDACTED] NPFC.

<sup>8</sup> See, OMI invoice # N1501-052.

<sup>9</sup> See, January 7, 2016 email from [REDACTED], OMI, to [REDACTED], NPFC, which includes an attachment with the claim description.

<sup>10</sup> See, January 8, 2016 email from PO [REDACTED], USCG, to [REDACTED], NPFC.

<sup>11</sup> See, January 19, 2016 email from [REDACTED], OMI, to [REDACTED], NPFC.

<sup>12</sup> See, November 30, 2015 email from NPFC to Mesa granting 30 day ext. to settle with Claimant.

<sup>13</sup> See, December 30, 2015 email from NPFC to Mesa rejecting extension of time to settle.

Specifically, Oil Mop, LLC. billed Mesa Gulf Coast, LLC for all of the costs associated with its removal actions, totaling \$68,043.17 over one (1) invoice. To date, Mesa has not paid the costs associated with this remaining invoice.

**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.

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”.

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 ██████████ of Sector New Orleans provided coordination for this claim in his capacity as the Federal On-Scene Coordinator’s Representative (FOSCR) for this incident.

He provided a write-up regarding the incident and affirmed that the removal actions performed by the Claimant in this incident reflects similar actions performed by OMI during similar incidents at the same facility and determined that the actions undertaken by Oil Mop, LLC were consistent with the NCP.<sup>14</sup> 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 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 which of 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 invoices, the daily support logs, disposal manifests, and third party invoicing along with proof of payment for the actions performed. The Claimant performed cleanup utilizing personnel, boat assets, drum skimmer, 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 most of 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 by the FOSCR to be consistent with the National Contingency Plan (NCP).

The NPFC denied a total of \$537.06 in requested costs for OMI Invoice # N1501-052. A description of the denied costs is as follows:

The NPFC has denied a total of \$403.64 in food expenses pursuant to the terms and conditions of its rate schedule. The Claimant did not produce itemized food receipts which would demonstrate what was purchased and as such, the Claimant and NPFC have agreed that where itemized receipts were missing, the NPFC would allow \$15.00 per person, per meal, up to the total meal reimbursement request for a given day. See the NPFC Summary of Costs spreadsheet for identification of the individual food items denied;


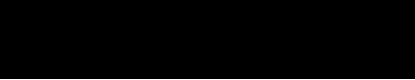

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<sup>14</sup> See email from MST [REDACTED], USCG, to [REDACTED], NPFC dated January 8, 2016.

The NPFC has denied \$13.41 in claimed cigarette costs (adjusted for markup) on the 10/17/2014 daily, and \$120.00 due to a math error on the 10/24/2014 daily. Both errors were identified by the Claimant via email dated January 8, 2016.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer \$67,506.11 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # 916010-0001. 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: \$ 67,506.11**

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