

CLAIM SUMMARY / DETERMINATION

Claim Number:	916011-0002
Claimant:	Oil Mop, LLC
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$8,989.70

FACTS:

A. Oil Spill Incident:

On June 26, 2015, Gulf Restoration Network observed a large rainbow sheen surrounding the area of the Mesa Gulf Coast Facility, during a restoration over-flight. Gulf Restoration Network immediately reported the sheen to the facility operator, as well as the National Response Center (NRC) on June 26, 2015, at 14:38 via NRC Report # 1121074. HLP Engineering reported the sheen to the NRC at 20:11 on the same day, June 26, 2015.

The sheen was located in an area surrounding the Mesa Gulf Coast production barge facility. 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 (FOSC).

The RP hired Oil Mop, LLC (OMI) to handle cleanup and response actions for this incident,¹ and on June 26, 2015, Oil Mop, LLC (OMI) responded to the discharge. They noticed that crude oil was migrating from the marsh grass adjacent to the facility. OMI personnel believed that the oil was crude oil that had previously discharged from the facility on November 9, 2014, and had been stranded in the marsh area during a high tide.²

On June 29, 2015, United States Coast Guard (USCG) Sector New Orleans, Incident Management Division (IMD) personnel arrived on scene to investigate the discharge and monitor the removal actions. Upon the Coast Guard's arrival on-scene, they concurred that the crude oil in the marsh grass area had been stranded after a previous spill that occurred on November 9, 2014,³ involving a discharge of approximately 25 barrels of oil from a 400-barrel tank storing crude oil located on the Mesa Gulf Coast facility into Lake Hermitage, a navigable waterway of the U.S. The FOSCR, PO [REDACTED] explained that the oil discharged on November 9, 2014, remained in the marsh throughout the low tides that occurred during the 2014 winter and the oil had not reached that level of the bank until the oil in the marsh began sheening into the waterway on June 26, 2015.⁴

B. Description of the Mesa Gulf Coast Facility, Lake Hermitage Field Production Facility No. 1 per the Facility Response Plan (FRP):⁵

¹ See Email dated 12/9/15 from Sector New Orleans to the NPFC.

² OMI had responded to the November 2014 discharge and conducted removal actions for that incident. OMI submitted a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) under Claim #916013-0001.

³ See Claim # 916013-0001.

⁴ See Email dated 12/14/2015 from FOSCR to NPFC.

⁵ See, Mesa Gulf Coast Facility Response Plan, Section 1.5 p. 6, submitted with Claim #916011-0002

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 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).⁶

C. Description of Removal Actions Performed:

This incident is associated with the November 9, 2014, discharge, Claim Number 916013-0001.⁷ OMI arrived on-scene June 26, 2015, with response equipment to conduct cleanup operations. OMI brought personnel, vessel assets, absorbent pads, and 5” sorbent boom as needed to perform cleanup. OMI immediately deployed two 30’ barge boats to begin a low pressure flush in the grassy area using three 2” wash pumps and 30’ of 2” suction hose. OMI deployed approximately ten bales of 5” sorbent boom around the marsh area.

D. Presentment to the Responsible Party:

As noted above, Mesa Gulf Coast, LLC (Mesa) is identified by the FOSC as the owner/operator of the 400-barrel storage tank that discharged the oil. The Claimant, OMI, presented its invoices and documentation associated with this claim to the RP: OMI Invoice #N1510-257A, in the amount of \$8,989.70 was issued to Mesa on January 28, 2016. To date, OMI has not received payment for this invoice.

On November 20, 2015, OMI submitted a removal cost claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund), NPFC claim number 916011-0001, asserting that Mesa failed to pay them for their uncompensated removal costs totaling \$53,126.70 as described and itemized in invoice #N1510-257. By NPFC Claim Summary / Determination dated January 13, 2016, the NPFC offered \$52,867.04 as full compensation for the reimbursable removal costs incurred by the claimant. OMI accepted this offer by signed Acceptance / Release Agreement dated January 28, 2016.⁸

In the instant claim, OMI contacted the NPFC by email dated September 27, 2016, claiming an additional \$8,989.70 in removal costs associated with the first day of cleanup efforts for the June 26, 2015, Mesa oil spill. The claimant asserts that personnel and equipment costs associated

⁶ 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.

⁷ 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; claim #916010-0001, in the amount of \$70,005.32; 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.

⁸ See, NPC Acceptance / Release Agreement dated January 28, 2016.

with the claimed \$8,989.70 were not included in OMI's previous NPFC claim number 916011-0001. Regarding OMI's new claim for \$8,989.70, Mr. [REDACTED] (OMI) stated:

“Please find the attached claim for one day of a response that OMI had originally given the RP discounts in an attempt to discount a response and facilitate a payment. The RP ultimately did not pay for the response and OMI submitted a claim (with the exception of this first day, NPFC claim 916011-0001). OMI sent the RP a revised invoice N1510-257A on 1/28/16 (attached to this claim) for the revised amount without discounts as per our contracted rates. The RP has not made payment on the invoice, nor have they attempted to contact OMI regarding the invoice. “

THE CLAIMANT AND CLAIM:

On September 26, 2016, 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 their uncompensated removal costs totaling \$8,989.70 as described and itemized in invoice # N1510-257A.

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.”

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. 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. He provided a lengthy write-up regarding the incident and affirmed that he oversaw the removal actions and determined that the actions undertaken by Oil Mop, LLC were consistent with the NCP⁹. 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. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined which of the costs claimed were associated with OPA compensable

⁹ See email from MST [REDACTED], Sector New Orleans FOCSR to Mr. [REDACTED], NPFC dated December 9, 2015.



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:

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 by the FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC confirmed that the actions undertaken were reasonable and necessary and that the services were billed in accordance with the rate schedule in place at the time services were rendered. On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$8,989.70 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #916011-0002. The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident on June 26, 2015. The Claimant represents that all costs paid by the Claimant are compensable removal costs, payable by the OSLTF as presented by the Claimant.

Determined Amount: \$8,989.70


Claim Supervisor: 
Date of Supervisor's review: <i>9/29/2016</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments: