

CLAIM SUMMARY / DETERMINATION

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|--------------------------|---------------|
| Claim Number: | 916013-0001 |
| Claimant: | Oil Mop, LLC |
| Type of Claimant: | CLAIMANT TYPE |
| Type of Claim: | Removal Costs |
| Claim Manager: | [REDACTED] |
| Amount Requested: | \$328,551.59 |

FACTS:

A. Oil Spill Incident:

On 9 November 2014, U.S. Coast Guard, Sector New Orleans Incident Management Division (IMD), responded to the discharge of approximately 25 barrels of oil from a 400-barrel tank storing crude oil located on a fixed production barge into Lake Hermitage, a navigable waterway of the U.S. IMD was notified via NRC report #1100561. 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 OMI Environmental Solutions, Inc. (OMI) to handle cleanup and response actions for this incident.¹

B. Description of the Mesa Gulf Coast facility, Lake Hermitage Field Production Facility No. 1 per the Facility Response Plan (FRP):²

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).³ The oil is transferred directly from the storage barge through the barge mounted manifold.

The produced water is stored in two 400-barrel storage tanks and is disposed of by injection downhole or transferred to a marine vessel. Waste oil is collected and stored in three 400-barrel tanks. As a preventive measure, all 400-barrel tanks are fitted with equalizer lines to prevent overfilling.

The discharge associated with the instant claim, Claim No. 916013-0001, was from a crude oil 400- barrel tank on November 9, 2014.^{4 5} Discharge occurred when the high pressure shutdown

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

² See, Mesa Gulf Coast Facility Response Plan, Section 1.5, page 6.

³ 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.

⁴ 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

valve failed, allowing crude oil to overfill the tank. During the removal actions the estimate of the discharged oil was increased to approximately 50 barrels of oil. As more fully described below, removal actions included assessment of 1,800 feet of oiled shoreline, deployment of boom, deployment of personnel and equipment to the site and the removal of discharged oil. Removal actions were completed on December 5, 2014. MST [REDACTED] monitored the removal actions conducted by OMI and determined that they were consistent with the National Contingency Plan (NCP).

C. Description of actions performed as reported by the FOSC representative:⁶

Following is a description of overall removal actions performed for and during the incident as recounted by the Federal On Scene Coordinator's rep (FOSCR), MST [REDACTED] to the NPFC.⁷

Discharge occurred on 09NOV14 at 0230 and was due to the high pressure shutdown failing and allowing crude oil to overfill the 400-bbl tank. The tank was seen discharging and pressure was quickly shutdown. Boom available on scene was quickly deployed around the source and managed to contain all but a few quarts of crude oil.

OMI was on-scene with response equipment to conduct clean up operations on 09NOV14. OMI brought personnel, vessel assets, a drum skimmer, pads and boom as needed to perform cleanup.

On 10NOV14 IMD personnel conducted shoreline assessment observing 1800 feet of shoreline impacted within the canal where the facility is located. OMI personnel deployed approximately 500 feet of hard boom around the fixed production and storage barges, keeping most of the product contained. One 400-foot section of hard boom was placed across the canal with an additional set of hard boom to arrive this afternoon. OMI personnel were utilizing a drum skimmer and had recovered approximately 15 Barrels of oil from around the fixed barge, with an estimated 10 bbls still within containment.

13NOV14: SECNOLA Incident Management Division (IMD) personnel arrived on-scene to assess impacted area and ensure proper cleanup. The estimated amount discharged was updated from the initial 25 bbl estimate to an estimated 50 bbl. Approximately 10 barrels of crude remain within boomed containment and an estimated 2-3 barrels impacting 1800 feet of shoreline. OMI personnel were utilizing one drum skimmer (due to low tide the other skimmer was not able to be used) and have recovered approximately 39 barrels of oil from within containment around the barge.

18NOV14: For information reasons in understanding the cause of the incident, it was determined by 3rd party engineers that the cause of the discharge was due to the faulty construction of the produced water tank operating and safety devices. The measuring and limit switches were not

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 the instant claim # 916013-0001 in the amount of 4328,551.59. the NPFC is reviewing and adjudicating each claim separately.

⁵ See, Enclosure (2) Mesa Site Diagram.

⁶ Id.

⁷ See, Email dated 12/21/15 from FOSCR to the NPFC.

designed to indicate accurate fluid levels from outside the tank when the tank was "overran" with oil.

01DEC14: Final response work was concluded by OMI on 12/5/14 under the oversight of the FOSCR.

D. Presentment to the Responsible Party:

As noted above Mesa Gulf Coast, LLC is identified by the FOSC as the owner/operator of the 400-barrel storage tank that discharged the oil. The Claimant, OMI, presented all invoices and documentation associated with this claim to the RP: OMI Invoice # N1503-173 in the amount of \$64,471.38 issued to Mesa on March 18, 2015, OMI Invoice # N1501-056 in the amount of \$254,508.17 issued to Mesa on January 12, 2015; OMI Invoice # N1501-257 in the amount of \$1,100.00 issued to Mesa on January 29, 2015; OMI Invoice # N1509-001 in the amount of \$4,345.20 issued to Mesa on September 2, 2015 and finally OMI Invoice # N1503-304 in the amount of \$4,126.84 issued to Mesa on March 26, 2015. To date, OMI has not received payment for any of these invoices.

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 wished the NPFC consider.⁸ 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 e-mail 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.⁹

On January 19, 2016, the NPFC received a request for reconsideration via email from the Claimant whereby the Claimant has revised its sum certain to \$323,324.75 as it is withdrawing OMI Invoice # N1501-257 in the amount of \$1,100.00 and OMI Invoice # N1503-304 in the amount of \$4,126.84 as those invoices were paid by the RP.¹⁰

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 their uncompensated removal costs totaling \$328,551.59 as described and itemized in five (5) invoices.

REQUEST FOR RECONSIDERATION:

On January 19, 2016, the Claimant sent an email to the NPFC officially requesting reconsideration of its claim whereby the Claimant withdraws two invoices that were originally presented to the NPFC as unpaid by the RP. The RP sent payment to the Claimant for OMI

⁸ See, November 30, 2015 email from NPFC to Mesa granting 30 day ext. to settle with Claimant.

⁹ See, December 30, 2015 email from NPFC to Mesa rejecting extension of time to settle.

¹⁰ See, January 19, 2016 email from Claimant to NPFC.

Invoice # N1503-304 in the amount of \$4,126.84 and the RP also paid OMI Invoice # N1501-257 in the amount of \$1,100.00 and as such, the Claimant revised its sum certain downward to \$323,324.75.

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 or the substantial threat of a discharge of oil to navigable waters and adjoining shorelines of the United States.

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).

In the case of a facility, the 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 [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 writeup 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 NCP¹¹. 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 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 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 136.203 (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 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 OMI 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 actions performed. The Claimant performed cleanup utilizing personnel, boat assets, drum skimmer, containment 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 determined that most of the claimed costs are reimbursable from the Fund, were actions taken to minimize and mitigate the effects of the incident, and were reasonable and necessary and were at the direction of 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 \$1,221.03 in requested costs. A description of the denied costs are as follows:

¹¹ See email from MST [REDACTED] Sector New Orleans FOSCR to M [REDACTED] NPFC dated December 9, 2015.

1. OMI Invoice # N1503-173 – Total denied \$321.00.

The Claimant presented meal costs in the amount of \$340.00 plus a 20% markup for a total of \$408.00 pursuant to the terms and conditions of their rate schedule. The Claimant did not however 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 per man, per meal and not to exceed the total meal reimbursement request on a given day. As such, the NPFC allowed \$126.00;

The Claimant presented roll off box rental for box # 39011 from 11/6/14 to 1/23/15. The NPFC has denied the rental charge for 11/6/14 through 11/8/14 as those dates preceed the date of this incident resulting in a total amount denied of \$75.00.

2. OMI Invoice # N1501-056 – Total denied \$900.03.

The denied costs are associated with unsupported meal receipts therefore the NPFC reimbursed the Claimant based on the process described above.

3. OMI Invoice # N1503-304 – Claimant withdrew this invoice on reconsideration since it was paid by the RP.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer \$322,103.72 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916013-0001. 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.

AMOUNT: \$322,103.72

Claim Supervisor:

Date of Supervisor's review: *1/20/16*

Supervisor Action: *Recon Approved*

Supervisor's Comments: