

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 916055-0001
Claimant	: OMI Environmental Solutions
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$45,995.05

**FACTS:**

- 1. Oil Spill Incident:*** The USCG Sector New Orleans confirmed via email to the National Pollution Funds Center (NPFC) that an on-going response to the West Battery Pit of the Garden Island Bay oil field owned by Dune Energy has been going on for many years.<sup>1</sup> Oil Mop Environmental Solutions (OMIES) has maintained the pit for many years as it has been leaking oil and is a constant threat for discharge. This pit is located in 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.<sup>2</sup>

In 2009, the USCG Sector New Orleans Incident Management Division (IMD), under the direction of the Federal On-Scene Coordinator (FOSC) issued Admin Order 001-09 to Dune Operating Company (Dune), and since then to 2015, the IMD has had multiple Unified Command (UC) meetings with Dune regarding its response efforts. The UC, comprised of Federal and State agencies, has maintained that this area continues to a substantial threat. Ultimately, Dune stopped paying for OMIES' maintenance of the pit area in September of 2014, after filing for bankruptcy in March 2015. Whitney Oil and Gas (Whitney) bought the rights to the land and assumed responsibility for maintaining the area. The IMD is currently conducting UC meetings with Whitney to remove contaminated soils from the area and fix the pit area.<sup>3</sup>

This incident was reported to the National Response Center (NRC) via Reports # 777822 and # 777850 (both of which were merged into the original NRC Report # 777914).<sup>4</sup>

***Description of removal actions performed:*** OMIES was contracted by Dune to maintain and clean this area since 2009 (the uncompensated portion of this work began in September 2014). OMIES placed containment boom and sorbents around the affected area, changing them out and disposing of them as needed/required by the FOSC/UC.<sup>5</sup>

Dune Operating, Inc. (Dune) was identified as the Responsible Party (RP). On March 8, 2015, Dune filed for Chapter 11 Bankruptcy which was ultimately converted to a Chapter 7. 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 that are subject of this claim. The Claimant presented its costs to Dune via the following

<sup>1</sup> See, Email from LTJG [REDACTED], USCG, to Mr. [REDACTED], NPFC, dated 5/25/2016.

<sup>2</sup> See, NPFC OSLTF Claim Form by Oil Mop, LLC, dated May 31, 2016.

<sup>3</sup> See, Email from LTJG [REDACTED], USCG, to Mr. [REDACTED], NPFC, dated 5/25/2016

<sup>4</sup> See, NRC Report # 777914, opened 10/03/2005.

<sup>5</sup> See, Invoice Dailies for this incident, included with the claim by the Claimant on 6/01/2016.

invoices: N1409-261 (\$13,386.15, dated 9/26/2014); N1411-024 (\$2,450.00, dated 11/11/2014); N1501-133 (\$4,404.80, dated 1/22/2015); N1501-227 (\$2,100.00, dated 1/27/2015); N1410-273 (\$6,015.61, dated 10/31/2014); N1411-229 (\$5,097.00, dated 11/25/2014); N1501-032 (\$2,748.00, dated 1/09/2015); N1503-009 (\$1,798.78, dated 3/05/2015); N1502-014 (\$6,894.71, dated 2/06/2015); N1502-190 (\$1,100.00, dated 2/27/2015).

- 3. *The Claim:*** On June 1, 2016, OMIES presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$45,995.05 for the services provided from August 21, 2014 through February 4, 2015. 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."

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. FOSC Coordination has been established via USCG Sector New Orleans.<sup>6</sup> 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has not been identified. 33 U.S.C. § 2701(32).
5. The claimant presented the claimed removal costs to the RP on September 30, 2014, prior to submitting the claim to NPFC.
6. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and additional documentation provided by USCG Sector New Orleans IMD, and has determined which of the removal costs presented were incurred for removal actions performed by the Claimant that were in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

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<sup>6</sup> See Email from LTJG [REDACTED], USCG, to Mr. [REDACTED], NPFC, dated 5/25/2016.

**B. 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.

Upon adjudication of the claim, the Claims Manager validated the costs incurred and determined which of the costs were reasonable, necessary and performed in accordance with the National Contingency Plan (NCP).

OMIES provided well-documented dailies that showed the actions it performed and that the work performed mitigated the effects of the oil that was released into the pit. Additionally, the USCG Sector New Orleans confirmed that the actions performed for this incident were reasonable, necessary and consistent with the NCP. Based upon the evidence in this claim submission for the actions undertaken by OMIES, the Claims Manager hereby determines that the Claimant incurred \$44,953.81 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 #916055-0001. \$1,041.24 in costs are denied due to rate schedule discrepancies and math errors in Claimant invoicing. Please see the attached Summary of Costs spreadsheet for a detailed breakdown of denied costs.

The Claimant states that the costs claimed are for removal costs incurred by the Claimant for this incident from August 21, 2014 through February 4, 2015.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$44,953.81 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 916055-0001. \$1041.24 in claimed costs are denied.

**AMOUNT: \$44,953.81**

Claim Supervisor: [REDACTED]
Date of Supervisor’s review: <i>7/14/16</i>
Supervisor Action: <i>Approved</i>
Supervisor’s Comments: