

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: E15437-0001
Claimant	: United States Environmental Services, LLC
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$121,824.18

FACTS:

A. Oil Spill Incident: The US Environmental Protection Agency (USEPA) Region VI reports¹ that on June 4, 2015, an anonymous report to the National Response Center (NRC) indicated approximately 20 barrels of crude oil had entered into Tar Creek from a production well facility. There is an intermittent creek that is immediately adjacent to the production well facility that flows into Tar Creek, then into Foster Creek, then to the Homochitto River, and ultimately into the Mississippi River, a navigable waterway of the US. The distance to the Mississippi River is approximately 50 miles.² This incident was reported to the NRC via Report # 1118635.³

The United States Environmental Protection Agency (USEPA) Federal On Scene Coordinator (FOSC) reported that early and yet to be substantiated information received on-site indicate that the spill occurred in mid May 2015 and may have been as large as 200 barrels of crude oil lost from the facility and about 100 barrels of crude oil lost to waters of the US.⁴ The USEPA FOSC issued a joint Notice of Federal Interest in an Oil Pollution Discharge to Mr. [REDACTED] of Array Corporation and to Mr. [REDACTED] on behalf of Pipeline Oil and Gas Company as the Responsible Parties (RPs). The State agency, Mississippi Department of Environmental Quality (MDEQ), worked jointly with the EPA FOSC and provided oversight of the daily cleanup activities.⁶⁷

B. Description of removal actions performed: The Claimant, USES, arrived on-scene and, over the course of the cleanup, deployed hard and soft boom, absorbent snare and absorbent material to reduce oil from spreading outside the impacted location. USES personnel also cleared the impacted soil and vegetation from the spill site, and disposed of the oily waste and soil. Other work performed includes staffing and equipping clean-up operations, as well as managing the operations and maintenance phase. The FOSC

¹ See POLREPS 1-2 for this incident, dated 6/4/2015 and 6/7/2015, respectively.

² See POLREP 1, dated 6/4/2015, Section 1.1.3.

³ See NRC Report # 1118635, opened 6/04/2015.

⁴ See POLREP 1, dated 6/4/2015, Section 1.1.3.

⁵ See USEPA Region 4 Notice of Federal Interest in an Oil Pollution Discharge dated June 6, 2015.

⁶ See POLREPS 1-2 for this incident, dated 6/4/2015 and 6/7/2015, respectively.

⁷ See Operations & Maintenance Plan for Tar Creek Oil Spill dated 6/8/2015.

POLREP 1 & 2 specifically state that the hand recovery methods are to be used for booming, herding, and debris removal of recoverable oil as well as accessible downstream containment.

C. Presentment to the Responsible Party: Pipeline Oil and Gas Company has been identified as a Responsible Party (RP) under OPA, as has Array Operations in its capacity as the operator of the site.⁸ USES made presentment of the costs associated with this claim directly to Pipeline Oil & Gas Company on June 30, 2015 by way of USES Invoice # 176078 in the amount of \$86,250.35, July 31, 2015 by way of USES Invoice # 179000 in the amount of \$28,998.80, and November 30, 2015 by way of USES Invoice # 188643 in the amount of \$6,574.93.⁹ On August 3 and 25, 2016, Pipeline Oil & Gas Company was issued an RP notification letter by the NPFC notifying them of the pending claim from USES in the total requested amount of \$121,824.18.¹⁰

The first RP Notification letter was sent to Pipeline Oil & Gas c/o Mr. [REDACTED] and upon receipt of the mail, Pipeline Oil & Gas forwarded the mail directly to Mr. [REDACTED]. On or about August 25, 2016, Ms. [REDACTED] spoke with Mr. [REDACTED] who informed her that the mail was forwarded to him and he wanted to let the NPFC know that he is no longer affiliated with Pipeline Oil & Gas. In the same telephone conversation, Mr. [REDACTED] advised the NPFC that the new point of contact for Pipeline Oil & Gas is Mr. [REDACTED], CEO. Based on the new information, the NPFC re-issued the RP Notification letter on August 25, 2016 addressing the notification to Pipeline Oil & Gas c/o Mr. [REDACTED]. The NPFC received a certified mail card showing Ms. [REDACTED] signed for the RP Notification letter to Mr. [REDACTED] on or about September 7, 2016. To date, no response has been received by the NPFC regarding the notification made.

On Friday, December 2, 2016, the NPFC called Pipeline Oil & Gas at 602-620-8272 and left a message for Mr. [REDACTED] to return the call regarding ownership and liability associated with the oil spill at the McCurley well site near Crosby, MS. The NPFC left both a cell number and a work number and to date, no response has been received. In summary, the NPFC has relied upon certain evidence in determining and confirming proper presentment of this claim to the OPA Responsible Party (RP). The NPFC has considered the following documentation as it pertains to RP identification:

1. Notice of Federal Interest (NOFI) issued by the USEPA Federal On Scene Coordinator (FOSC) identifying Pipeline Oil & Gas as the owner of the facility and Array Operations as the Operator of the facility;
2. Incident Action Plans (IAPs) generated in the Unified Command during the response that are signed by a representative of each entity acknowledging their involvement during the spill response, which was being managed by the USEPA FOSC, Mr. [REDACTED];

⁸ See EPA POLREP 2 dated 6/7/2015 under Section 2.1.2.

⁹ See USES invoices submitted in this claim package.

¹⁰ See RP Notifications letters by NPFC dated 8/3/16 and 8/25/16, respectively.

3. Notice of Violation (NOV) issued by Mississippi Department of Environmental Quality (MDEQ) on August 21, 2015 identifying both Pipeline Oil & gas as the owner and Array Operations as the Operator of the facility; and
4. Letter from Pipeline Oil & Gas, LLC dated October 1, 2015 in response to Mississippi DEQ's Notice of Violation letter dated August 21, 2015 whereby Pipeline Oil & Gas, LLC confirms it is the owner of the facility with 100% working interest upon receipt of an Assignment from Array Operations giving up its ownership interest in the property.

Based on the foregoing, the NPFC has determined that the preponderance of the evidence demonstrates that proper presentment has been made by the Claimant to Pipeline Oil & Gas, LLC, in accordance with 33 CFR §136.103(c)(2).

D. The Claim: On August 2, 2016, USES presented a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the total amount of \$121,824.18 for the services provided from June 5 through August 31, 2015. As evidence for its claim, USES submitted the three invoices referenced above, an OSLTF claim form, USEPA Notice of Federal Interest issued to both potential Responsible Parties (RPs), NRC Report # 1118635, Mississippi Oil and Gas Board Report dated June 7, 2015 and an Incident Action Plan (IAP) dated June 6, 2015. Subsequent to reviewing these documents, the NPFC submitted several requests for additional information, requesting documentation that demonstrates proof of payment by USES to all subcontractors, evidence of coordination of actions undertaken by USES and its subcontractors during the Operation & Maintenance Phase of this incident, subcontractor rate schedules, dailies and invoices that made up a portion of the costs invoiced by USES in its three invoices and explanations for clarification on duties performed.¹¹

Mr. [REDACTED] subsequently responded to each and every request for additional information providing all of the requested information incrementally.

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (OPA 90), at 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or that poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for removal costs and damages resulting from the incident, 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 that 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

¹¹ See NPFC official requests for additional information dated 8/3/16, 8/11/16, 8/26/16, 9/15/16, 10/18/16, 10/26/16, and 11/4/16, respectively.

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 at 33 USC § 2701(31) 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”.

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).

Removal costs include any removal costs incurred by any person for acts taken by the person that are consistent with the National Contingency Plan. 33 USC § 2702(b)(1)(B).

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].

Under 33 USC §2713(a), all claims for removal costs or damages must (with certain exceptions not applicable here) be presented first to the responsible party or guarantor of the designated source of the incident. Then 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 FOOSC to be consistent with the National Contingency Plan or were directed by the FOOSC.”

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 FOOSC 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. Mr. [REDACTED], as the USEPA Region IV Federal On-Scene Coordinator (FOSC) for this incident, determined that the actions undertaken by USES and its subcontractors were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).¹²¹³
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 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 has determined what, of the removal costs presented, were incurred for removal actions taken by the Claimant 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.

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

The NPFC has determined that the majority of the costs incurred by the Claimant in this claim submission were reasonable and necessary to mitigate the effects of the incident. 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 in place at the time services were rendered and were determined by the EPA FOSC to be consistent with the National Contingency Plan (NCP). All actions undertaken were overseen by either the State On Scene Coordinator, Mississippi Department of Environmental Quality (MSDEQ) or the Coast

¹² See USEPA Polreps 1 & 2.

¹³ See Operations & Maintenance Plan dated 6/8/15 signed by FOSC, SOSOC, and RP Rep.

Guard's Gulf Strike Team (GST). All incident action plans and Operation & Maintenance Plans were signed by the EPA FOOSC, the SOOSC, and an RP representative.¹⁴¹⁵

Costs denied by the NPFC include: \$1,150.00 in charges for stress relief as identified in the USES rate schedule under USES invoice # 176078. The amounts charged per day per man are not in accordance with the provisions of the USES rate schedule terms and conditions and as such, all amounts not in accordance are denied. See the NPFC Summary of Costs spreadsheet for an itemization of the costs denied. The NPFC also denied \$1,153.27 in third party charges by USES subcontractor Code 3 on June 9, 2015. The amounts denied are not supported by third party receipts and there is no justification provided on the replacement of 125 feet of boom.¹⁶ Should the Claimant decide to request reconsideration of any denied costs, all justifications, explanations and documentary evidence must be provided.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$119,520.92 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim E15437-0001; \$2,303.27 in claimed costs are denied.

AMOUNT: \$119,520.92

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 12/15/2016

Supervisor Action: *Approved*

Supervisor's Comments:

¹⁴ See USEPA Polreps 1 & 2.

¹⁵ See Operations & Maintenance Plan dated 6/8/15 signed by FOOSC, SOOSC, and RP Rep.

¹⁶ See NPFC Summary of Costs spreadsheet.