U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Toll-Free: 1-800-280-7118
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Email: ARL-PF-NPFCCLAIMSINFO@uscg.mil

5890
October 24, 2014

[redacted]

Bp Exploration & Production Inc.
ATTN: Michael Robertson
501 WestLake Park Blvd
Houston, TX 77079

RE: 914148-0001

Dear Mr. Robertson:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that it will offer $1,263.18 as full compensation for OPA claim number 914148-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.**SAM**.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

[redacted]

Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement
CG Marine Safety Lab Memo dated October 23, 2014

# ACCEPTANCE / RELEASE AGREEMENT

| Claim Number: 914148-0001 | Claimant Name: Bp Exploration & Production Inc. |
|---|---|

I, the undersigned, ACCEPT this settlement offer of $1,263.18 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action under any other law, that I may have against any party, person, firm or corporation that may be liable for the amounts for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States is fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

| | |
|---|---|
| Title of Person Signing | Date of Signature |
| Printed Name of Claimant or Authorized Representative | Signature |

| | |
|---|---|
| Title of Witness | Date of Signature |
| Printed Name of Witness | Signature |

| | |
|---|---|
| *DUNS/EIN/SSN of Payee<br>Please Circle one | Payee |
| Bank Routing Number | Bank Account Number |

CLAIM SUMMARY / DETERMINATION FORM

| | |
|---|---|
| Claim Number | : 914148-0001 |
| Claimant | : BP Exploration & Production, Inc. |
| Type of Claimant | : Corporate |
| Type of Claim | : Removal Costs |
| Claim Manager | : William Dodson |
| Amount Requested | : $1,263.18 |

***FACTS:***

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

On March 7, 2014, the CG National Response Center (NRC) received notification of surface residual tar balls (SRBs) washing up on the beach on Elmer's Island, Jefferson Parish, LA, located on the Gulf of Mexico, a navigable waterway of the United States. [1] The CG Gulf Coast Incident Management Team (CG GCIMT) was notified and responded to the report and found SRBs spread throughout Segments LAJF01-004-20, LAJF01-004-40 and LAJF01-004-60 / Zones 2 and 3. As the SRBs were in a quantity that exceeded the CG's capacity to mitigate, an email directive was issued to BP Exploration & Production (BP) to activate an oil spill response organization (OSRO) to respond for cleanup operations on Elmer's Island as directed.[2]

***B. Description of removal actions performed:***

On March 7, 2014, Danos & Curole Marine Contractors (BP's OSRO), Mr. Blake Scott, NextSource, Inc. and Shoreline Cleanup Assessment Team (SCAT) operations liaison responded to the CG's directive of response and met with 3 CG active duty personnel on-scene. Cleanup of what appeared to be SRBs of MC252 origin began and extended through Zones 2 and 3 on the beach. Approximately 8.5 pounds of SRBs were recovered and properly disposed of at River Birch Landfill, Avondale, LA. During the cleanup operations, CG personnel sampled two SRBs from the beach located in Segment LAJF01-004-40 and submitted them to the CG Marine Safety Lab (CG MSL) for analysis. There is record of BP personnel sampling from the same segment.[3]

***C. Sample Analysis:*** The samples collected by CG personnel were forwarded to the Coast Guard Marine Safety Laboratory (MSL) on April 1, 2014 (MSL Case Number 14-116). In an Oil Sample Analysis Report dated April 4, 2014, the MSL determined that sample 14-116-1 and 14-116-2 contained heavy petroleum oil with characteristics different from those samples of MC 252 oil. The MSL originally concluded that the samples were not derived from Deepwater Horizon oil.[4]

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[1] See NRC Report # 1075970 dated March 7, 2014.
[2] See email directive to BP dated March 7, 2014.
[3] See NPFC Optional OSLTF Form submitted by BP dated September 11, 2014.
[4] See MSL Case # 14-116 dated April 4, 2014.

Further analysis of the oil sample was performed by the MSL at the request of the NPFC.[5] In a follow-up memorandum dated October 23, 2014, the MSL clarified that sample 14-116-1 and 14-116-2 were analyzed using gas chromatography (ASTM Standard Test Method D 3328) and gas chromatography-mass spectrometry (ASTM Standard Practice D 5739). The analysis included a review of multiple polycyclic aromatic hydrocarbons (PAHs) and biomarker compounds that are source-specific and relatively resistant to weathering on normal environmental time scales. Further, the samples were compared against source oil collected during the Deepwater Horizon oil spill and response. Qualitative review of the PAHs and biomarker profiles for these samples indicated that there were no similarities to suggest a possible relationship between these samples and Deepwater Horizon oil.[6]

**D.** ***The Claim:*** On September 11, 2014, BP submitted a removal cost claim to the National Pollution Funds Center (NPFC), asserting that the oil was not Deepwater Horizon oil and seeks reimbursement of its uncompensated removal costs in the amount of $1,263.18 for services provided on March 7, 2014, which include personnel and vehicle use. The claimed removal costs are based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim file.

***APPLICABLE LAW***:

"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".

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 which are consistent with the National Contingency Plan. 33 USC § 2702(b)(1)(B).

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. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to

[5] See email from Mr. Bill Dodson, NPFC, to Ms. Kristy Juaire, USCG MSL, dated September 24, 2014.
[6] See CG Marine Safety Lab Memo dated October 23, 2014.

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. CG GCIMT as the Federal On-Scene Coordinator for this incident, oversaw the removal actions and determined that the actions undertaken by BP's contracted OSRO were consistent with the NCP as reported in NRC Report # 1075970; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);[7]
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. §2701 to "navigable waters;"
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed costs;
4. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager thoroughly reviewed all documentation submitted with the claim and determined the costs presented were for 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. *Analysis:***

As a result of the MSL analysis that the tar balls were not derived from MC 252 oil this is a mystery spill for which BP seeks reimbursement of its removal costs. The Claimant states that all costs claimed are for uncompensated removal costs incurred for this incident on March 7, 2014. BP represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant.

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

[7] See NRC Tracker Spreadsheet for NRC Report # 1075970.

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

Upon review of the claim submission, the NPFC has determined that the documentation presented to support the actions is reasonable, necessary and in accordance with the response objectives as determined by the CG GCIMT and that the actions were also monitored by CG personnel.

**C. *Determined Amount: $1,263.18***

The NPFC hereby determines that the OSLTF will offer to pay $1,263.18 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 914148-0001. All costs claimed are for charges paid for 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.

Claim Supervisor [redacted]

Date of Supervisor's review: ***October 24, 2014***

Supervisor Action: ***Approved***

Supervisor's Comments:

U.S. Department of Homeland Security

United States Coast Guard

Manager
United States Coast Guard
Marine Safety Laboratory

1 Chelsea Street
New London, CT 06320
Phone: (860) 271-2704
Fax: (860) 271-2641

16450
23 Oct 2014

# MEMORANDUM

From [redacted]
CG MSL

To: W. D. Dodson
CG NPFC

Subj: OIL SAMPLE ANALYSIS REPORT, MSL CASE NUMBER 14-116, ACTIVITY NUMBER 4813583

1. This correspondence is prepared in response to your inquiry dated 24 Sep 2014, which requested clarification of Marine Safety Laboratory (MSL) Case Report 14-116. Specifically, comparison of samples 14-116-1 and 2 to the Deepwater Horizon oil spill (DWH) and the resulting non-match conclusion shall be addressed.

2. MSL analyzed samples 14-116-1 and 2 using gas chromatography (ASTM Standard Test Method D 3328) and gas chromatography-mass spectrometry (ASTM Standard Practice D 5739). Data analysis included a review of multiple polycyclic aromatic hydrocarbons (PAHs) and biomarker compounds that are source-specific and relatively resistant to weathering on normal environmental time scales.

3. Samples 14-116-1 and 2 were compared against source oil collected during the Deepwater Horizon oil spill (DWH) and response. Qualitative review of the PAHs and biomarker profiles for samples 14-116-1 and 2 indicate there are no similarities to suggest a possible relationship between these samples and DWH.

4. Questions concerning this correspondence or MSL Case Report 14-116 should be directed to Kristy Juaire at 860-271-2784.

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