

CLAIM SUMMARY / DETERMINATION

Claim Number:	918028-0001
Claimant:	Rhode Island Dept of Environmental Management
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$16,868.32

FACTS:

- A. Oil Spill Incident:** On May 27, 2017, the State of Rhode Island Department of Environmental Management (DEM) was notified of an incident involving the Tiger Jo, a 49 ft. wooden fishing boat, illegally tied to the University of Rhode Island (“URI”) Marine Research dock in Allen’s Harbor, located near North Kingstown, Rhode Island. Allen’s Harbor connects directly to the Atlantic Ocean by way of the Narragansett Bay, a navigable waterway of the United States. The Tiger Jo began to take on water and sink, resulting in the release of diesel oil into Allen’s Harbor.¹

The identified responsible party (RP), owner of the fishing vessel Tiger Jo, is Mr. ██████████ as stated on the NRC Report and as described in the RI DEM’s Emergency Report. That report is dated October 22, 2017 and states that while Mr. ██████████ is the current owner of the FV Tiger Jo, Rhode Island DEM also reports that the vessel was still registered to the previous vessel owner, ██████████.²

On May 27, 2017, Rhode Island DEM responder ██████████ reported the active discharge of oil into the waterway to the USCG National Response Center (NRC).³ The FOSCR from USCG Sector Southeastern New England, MSTC ██████████, reported that Rhode Island DEM’s response to the oil spill incident was performed in accordance with the National Contingency Plan (NCP).⁴

- B. Description of removal actions performed:** Rhode Island DEM responders, ██████████ and ██████████, provided oversight for the incident and hired the oil spill removal organization Newton B. Washburn to conduct pollution removal activities including the removal of oil. From May 27, 2017, through June 13, 2017, removal activities involved placing and removing containment boom, pumping the vessel’s bilge, and the removal and disposal of all nonhazardous waste.⁵

CLAIM:

This claim for uncompensated removal costs was presented to the National Pollution Funds Center (NPFC) on April 13, 2018, by Mr. ██████████, on behalf of the State of Rhode Island DEM. The Claimant specifically seeks uncompensated removal costs in the amount \$16,868.32 for both State

¹ See, State of Rhode Island and Providence Plantations Department of Environmental Management Emergency Response Report dated October 22, 2017.

² See, Rhode Island DEM Emergency Response Report dated October 22, 2017

³ See, NRC Incident Report # 1179497 dated May 27, 2017.

⁴ See, email from MSTC ██████████ to ██████████, Rhode Island DEM, dated July 14, 2017.

⁵ See, State of Rhode Island and Providence Plantations Department of Environmental Management Emergency Response Report dated October 22, 2017.

personnel and equipment costs and the cost of removal activities associated with Newton B. Washburn's response to the oil spill incident.⁶

By email dated April 19, 2018, the NPFC informed the Claimant of deficiencies with its claim and offered it the opportunity to submit additional documentation to establish that all costs associated with its response to the oil spill incident are compensable.⁷ Subsequent to numerous requests for additional information and clarification concerning new information provided to the NPFC, by email dated May 24, 2018, the Claimant requested the NPFC's amendment of the claim to show a decrease in the amount claimed for Rhode Island DEM personnel costs.⁸ In response, the NPFC decreased the amount requested from the original \$16,868.32 to \$16,850.03.

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."

⁶ See, Rhode Island DEM letter to CG National Pollution Funds Center (Claims) dated April 3, 2018.

⁷ Subsequent to this request for additional information, the NPFC submitted several additional requests, including a request for clarification concerning the sum certain.

⁸ See, email from Ms. [REDACTED], Rhode Island DEM, to Mr. [REDACTED], NPFC, dated May 24, 2018.

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. MSTC ██████████ of Coast Guard Sector Southeastern New England provided after the fact FOSC coordination 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(23), 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 uncompensated removal costs;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);

The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed 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 FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

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 FOSCR. 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 denies a total of \$10.84 in requested costs. The denied costs include \$10.80 in personnel costs associated with Newton B. Washburn invoice number 3987⁹ and \$0.04 in undetermined personnel costs associated with Rhode Island DEM responder [REDACTED] holiday overtime rate.¹⁰

The NPFC therefore determines that the OSLTF will offer \$16,839.19 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 918028-0001. 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.

Determined Amount: 16,839.19

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>6/5/18</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor's Comments:</p>

⁹ Newton B. Washburn Invoice # 3987 lists the cost of two (2) crew mates for Emergency Response on May 27, 2017, as \$350. The Rome Point, LLC document, signed by [REDACTED] and entered on July 18, 2017, describes two (2) crew mates at a rate of \$42.40 per hour for 4 hours, which totals \$339.40. The NPFC denies the additional \$10.80.

¹⁰ Rhode Island DEM responder [REDACTED] overtime rate of \$59.71 x 2 = \$119.42. The Claimant is seeking OT Holiday rate of \$119.48. Therefore, the NPFC denies the additional \$.04.