

CLAIM SUMMARY / DETERMINATION FORM

Claim Number:	918041-0001
Claimant:	U-Haul
Type of Claimant:	Corporate (US)
Type of Claim:	Removal Costs
Amount Requested:	\$22,935.70
Claims Manager:	[REDACTED]

FACTS:

Oil Spill Incident:

On March 26, 2018, a 35' houseboat owned by Mr. Dennis [REDACTED] sank while moored at, All Marine Spares International, a U-Haul Marina, located in Norwalk, Connecticut. The vessel rapidly sank and was suspected to have had hull fitting failure.¹ As a result of the sinking, oil was discharged and created a sheen reported to be approximately 70' x 50' in length² on the surface of the Norwalk River, a navigable waterway of the United States.

The United States Coast Guard Sector Long Island Sound Incident Management Division, (CG Long Island Sound IMD) was notified of the spill by the National Response Center (NRC) Report # 1120443. The reporting party was the Norwalk Fire Department who had placed sausage boom around the sunken vessel.³ When CG Long Island Sound IMD arrived on-scene of the oil spill incident, they observed a sunken vessel that was in significant disrepair and was suspected to have approximately ten (10) gallons of gasoline, a propane tank, and home heating oil onboard the houseboat..⁴ The Property Manager and neighboring vessel owners stated that the vessel had been moored and inoperable at pier side for at least, ten (10) years and believed the tanks were empty with no batteries onboard.⁵ CG Long Island Sound IMD issued Mr. [REDACTED] a Notice of Federal Interest.⁶

At the time of the sinking, Mr. [REDACTED] lived full time on the vessel, which was non-operative, with no known other address.⁷ Mr. [REDACTED] was on board at the time of the vessel sinking and he entered the water with the vessel.⁸ The Norwalk Police Department was contacted and found Mr. [REDACTED] in his car, wet, and suffering from hypothermia. Mr. [REDACTED] was later hospitalized and treated for his injuries.⁹

¹ See, SITREP 281308Z MAR 18 – 032359Z APR 18.

² See, SITREP 281308Z MAR 18 – 032359Z APR 18.

³ See, SITREP 281308Z MAR 18 – 032359Z APR 18.

⁴ See, SITREP 281308Z MAR 18 – 032359Z APR 18.

⁵ See, SITREP 281308Z MAR 18 – 032359Z APR 18.

⁶ See, Claimant's Enclosure #2, Notice of Federal Interest to Mr. [REDACTED] dated, march 28, 2018.

⁷ See, Claimant's submission letter dated, September 4, 2018.

⁸ See, SITREP 281308Z MAR 18 – 032359Z APR 18.

⁹ See, Claimant's Enclosure #3, Norwalk Police Department Case/Incident Report # 18000014629.

Description of Removal Activities for this Incident:

On March 28, 2018, U-Haul's property manager hired Connecticut Tank Removal, Inc. (CTR) to respond to the oil spill. CTR mobilized to the U-Haul Marina where they deployed 300' of hard boom by Jon boat and sorbent boom around the sunken vessel and utilized a vacuum truck to collect the oil being discharged from the sunken vessel.¹⁰

On April 3, 2018, CTR continued to use the vacuum truck to vacuum out the fuel tank from the vessel and skim the oil sheen in the area within the boom. Once the vessel was towed, CTR removed and placed all boom into drums. CTR decontaminated the harbor boom and transported the drums that contained oil debris, along with the product recovered by the vacuum truck to Tradebe Treatment and Recycling of Bridgeport for disposal.^{11 12}

Claim and Claimant:

On September 7, 2018, ECM Maritime Services, LLC (hereinafter referred to as "ECM" or "Claimant") on behalf of U-Haul, submitted an uncompensated pollution removal costs claim to the USCG National Pollution Funds Center ("NPF" or "Fund") for reimbursement of its uncompensated removal costs in the amount of \$22,935.70. The claim is for response personnel, equipment, materials, and disposal costs.¹³ With its claim submission ECM submitted eight Enclosures that contained documentation that supports U-Haul's uncompensated pollution removal costs.

The claim submission consists of: CTR invoices and support that demonstrate the refund CTR gave U-Haul in the amount of \$536.42 via check # 28794¹⁴ and the deposit of \$2,658.75 to proceed with the cleanup;¹⁵ CTR's daily work sheets, CTR's published rate schedule, and two disposal manifest¹⁶.

Presentment to the Responsible Party:

Mr. [REDACTED] has been identified as the Responsible Party under the Oil Pollution Act of 1990 (OPA). ECM attempted to make presentment of all its incurred costs associated with the oil spill incident to the last two known addresses of Mr. [REDACTED] but both mailings were returned undelivered as it appears that Mr. [REDACTED] is currently homeless and lives in a homeless shelter. As such, Mr. [REDACTED] cannot be reached by certified mail.¹⁷

¹⁰ See, CTR invoice # 131724 and its daily job report, dated March 28, 2018.

¹¹ See, CTR invoice # 131724 and its daily job report, dated April 2, 2019.

¹² See, Waste Manifest Tracking Number NHWM032817 SELD and the second Waste Manifest however the Tracking Number is illegible.

¹³ See, Claim File.

¹⁴ See, Claimant's Enclosure #8 in the claim file.

¹⁵ See, Claimant's Enclosure #4 and #5 in the claim file.

¹⁶ See, Claim file.

¹⁷ See, Letter to Mr. [REDACTED] from ECM Maritime Services, dated September 11, 2018, signed by Mr. [REDACTED]. See, First Class Mail receipt dated, September 11, 2018 in the amount of \$8.25. See also, USPS Tracking Notification # 7017338000001524645. See, Letter to Mr. [REDACTED] from ECM Maritime Services, dated September 17, 2018. See, First Class Mail receipt dated, September 17, 2018, in the amount of \$8.46.

The NPFC also attempted to notify Mr. [REDACTED] of ECM's uncompensated pollution removal claim but mailings from the NPFC to Mr. [REDACTED] were also returned undelivered.¹⁸

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

¹⁸ See, RP Notification letter to Mr. [REDACTED] from the NPFC, dated September 11, 2018. See also, Certified Mail Receipt # 7017 1450 0001 9566 5760. See also, Copy of returned letter dated September 27, 2018. See also, RP Notification letter dated September 17, 2018. See also, Copy of returned letter dated September 28, 2018.

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. USCG Sector Long Island Sound personnel served as the Federal On-Scene Coordinator (FOSC) for this incident and oversaw the cleanup actions that were undertaken by CTR,¹⁹ and determined that those actions to be consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 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 costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.206.²⁰

B. NPFC Analysis

The focus of the NPFC’s review of this claim is as follows:

- (1) Whether the actions taken were compensable “removal actions” under OPA;
- (2) The actions taken were to prevent, minimize, and mitigate the effects of the incident;
- (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.

¹⁹ See, SITREP

²⁰ See, NPFC Summary of Costs Spreadsheet.

It is undisputed that the oil spill incident was cleaned utilizing CTR's personnel, equipment and materials, as needed to remove the oil associated with this incident and ensured disposal was properly performed and documented.²¹ The cleanup operations were performed beginning March 28, 2018 and ending on April 3, 2018.

Upon adjudication, the NPFC confirmed that the costs before the NPFC were charged based on CTR's published rates for its personnel, equipment, and materials. The NPFC also confirmed that CG Long Island Sound IMD was on-scene and oversaw the cleanup, as referenced in the SITREP created by CG Sector Long Island Sound and supported by IMD's Emergency Response Incident Report.

Based on the review, the NPFC has determined that the payable costs were billed in accordance with the CTR published rate schedule and or contractual agreements that were in place at the time the services were rendered and were overseen by U. S. Coast Guard.

The NPFC denied a total of \$180.00²² in requested costs.²³ The \$180 in denied costs are found to be unsupported and unsubstantiated costs.

Based on the foregoing, the NPFC hereby determines that the OSLTF will offer **\$22,755.70** as full compensation for the reimbursable removal costs incurred by U-Haul and submitted to the NPFC under claim # 918041-0001. 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 by the OSLTF as presented by the Claimant.

AMOUNT: \$22,755.70

<p>[REDACTED]</p> <p>Claim Supervisor: [REDACTED]</p> <p>Date of Supervisor's review: <i>November 7, 2018</i></p> <p>Supervisor Action: <i>Approved</i></p> <p>Supervisor's Comments (if any):</p>
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²¹ See, disposal manifests in file folder.

²² NPFC denied \$180 in unsubstantiated costs.

²³ See, NPFC Summary of Costs spreadsheet.