

CLAIM SUMMARY / DETERMINATION

Claim Number:	920013-0001
Claimant:	OMI Environmental Solutions
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)(b) (6)(b) (6)
Amount Requested:	\$9,462.72
Action Taken:	Offer in the amount of \$4,244.25

EXECUTIVE SUMMARY:

On February 28, 2019 at approximately 6:00 am local time, the Harbor Master of the West St. Mary's Harbor and Terminal District made notification to the National Response Center (NRC), via report # 1238846 that an unknown amount of oil was discharged into the intercostal waterway, a navigable waterway of the United States.¹

United States Coast Guard (USCG) Marine Safety Unit (MSU) Morgan City was notified by the National Response Center (NRC), responded to the scene and discovered the sunken motor vessel *DONNA KAY* discharging oil into the Port of the West of St. Mary's harbor, a navigable waterway of the United States.² (b) (6) is the owner and operator of the vessel and the responsible party (RP) as defined by the Oil Pollution Act of 1990.³

OMI Environmental Solutions ("OMI" or "claimant"), commenced on-water cleanup operations after being hired by the RP.⁴ On March 20, 2019⁵ and December 19, 2019⁶, OMI presented its uncompensated removal costs to the RP. Having not received payment from the RP after ninety days, OMI presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$9,462.72 on February 28, 2020.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,244.25 of the requested \$9,462.72 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On February 28, 2019, the vessel *DONNA KAY* sank while moored at the Port of Morgan City. The vessel sank at its mooring and discharged approximately 100 gallons of crude oil from

¹ NRC Report # 1238846 dated February 28, 2019.

² Email from (b) (6)(b) (6), FOSCR to the NPFC dated March 20, 2020, providing incident information.

³ MISLE Case 1164800 under Section VI. Involved Subjects of the Situation Report.

⁴ Phone Conversation with Responsible Party regarding M/V Donna Kay dated March 12, 2020.

⁵ NPFC OSLTF Claim Form dated February 27, 2020, OMI Invoice Number SINV1901796 dated March 20, 2019.

⁶ OMI Letter addressed to (b) (6), Boone Express, regarding Invoice Number SINV1901796 dated December 19, 2019.

⁷ NPFC OSLTF Claim Form dated February 27, 2020 and received February 28, 2020.

its engine room and fuel tanks.⁸ On February 28, 2019, MSU Morgan City reported to the scene and found the vessel had been boomed by a local company, DLS Energy, but the dewatering was not making progress.⁹ On March 1, 2019, the Federal On Scene Coordinator's Representative (FOSCR) contacted the vessel's owner, (b) (6)(b) (6), and recommended that an Oil Spill Removal Organization (OSRO) be hired due to the continuing oil discharge from the vessel. On the same day, OMI Environmental Solutions ("Claimant" or OMI) was hired by the RP's on site assistant after being given a verbal estimate of \$5,000 for OMI services¹⁰. OMI responded to the incident and began removal operations.¹¹

Responsible Party

(b) (6)(b) (6) is the owner and operator of the vessel *DONNA KAY* and was designated the responsible party (RP) for the oil spill incident.¹²

The NPFC issued two Responsible Party (RP) Notification letters dated March 10, 2020 to Mr (b) (6) at two known addresses.¹³ A Responsible Party Notification letter notifies the owners and/or operators that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

The NPFC used the last known addresses provided by the claimant and used an address obtained through open web address verification sites.¹⁴ The notification was sent through United States Postal Service (USPS) certified mail and the USPS confirmed receipt of one RP Notification Letter that was sent to a Florida address. The RP Notification letter sent to the address in Tennessee was returned to sender due to no forwarding address on file.

Recovery Operations

On February 28, 2019, the vessel *DONNA KAY* was discharging oil and a local company, DLS Energy, deployed absorbent boom around the vessel and the caretaker/RP assistant, (b) (6) (b) (6), arrived on scene with a couple of individuals and assisted in the dewatering with two water pumps but the FOSC determined they were not making sufficient progress.¹⁵

During the evening of February 28, 2019 into March 1, 2019, the FOSCR noticed the vessel's fuel tanks had been breached causing approximately 150 gallons to enter the water due to the lack of training and tools used to handle the spill.¹⁶ On March 1, 2019, the RP took action to mitigate the incident by hiring OMI Environmental Solutions after the FOSCR advised the RP

⁸ Email from the FOSCR to NPFC dated March 20, 2020 Re March 2, 2020.

⁹ Email from MSU Morgan City to NPFC dated March 20, 2020 Re March 2, 2020.

¹⁰ Phone Conversation with Responsible Party regarding M/V Donna Kay dated March 12, 2020.

¹¹ NPFC OSLTF Claim Form dated February 27, 2020, OMI Environmental Solutions Daily Supervisor Log Dated March 1, 2019.

¹² MISLE Case 1164800; under Section VI. Involved Subjects of the Situation Report.

¹³ NPFC RP Notification Letters dated March 10, 2020.

¹⁴ NPFC OSLTF Claim Form dated February 27, 2020 and received February 28, 2020.

¹⁵ Email from the FOSCR to NPFC dated March 20, 2020 Re March 2, 2020.

¹⁶ Email from the FOSCR to NPFC dated March 20, 2020 Re March 2, 2020.

that he should hire an OSRO.¹⁷ The agreement between OMI and the RP was signed by a close friend of the RP.¹⁸ The NPFC contacted the Mr. (b) (6) and verified his relationship to the authorized representative. Mr. (b) (6) acknowledged and agreed to the contract with the OSRO and his authorization of the OSRO's actions.¹⁹

On March 1, 2019, OMI began recovering saturated sorbents and replaced them with new ones to absorb diesel and hydraulic oil discharging from the vessel's engine room.²⁰ A containment boom was pulled tight around the vessel before OMI personnel departed at approximately at 5:30 pm.²¹ On March 2, 2020, OMI personnel returned to the incident and found the vessel had been righted and the leaks were plugged in the engine room that had been causing the discharge. The RP's on-site assistant informed OMI that their services were no longer required.²² The NPFC contacted the FOSC's on scene personnel to determine OMI's response actions on March 2, 2019. The FOSCR confirmed that OMI waited at the scene for USCG personnel, who arrived mid-morning, to approve the release of their services and their work.²³

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)²⁴ require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.²⁵

The claimant initially presented its claim in the form of an invoice to Boone Express in care of (b) (6)(b) (6) on March 20, 2019. The claimant contacted the RP's insurance company, Great American Insurance, and confirmed that the RP's insurance policy did not provide coverage for pollution.²⁶ Upon response, OMI invoiced the RP again on December 19, 2019.²⁷

The NPFC contacted Mr. (b) (6) to understand why multiple parties were involved in the presentment of this claim and he clarified and accepted his designation as RP of the vessel *DONNA KAY*.²⁸ Having not received payment from the RP after ninety days, OMI presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$9,462.72 on February 28, 2020.²⁹

¹⁷ NPFC OSLTF Claim Form dated February 27, 2020 and OMI Environmental Solutions General Service Agreement Number 190839.

¹⁸ Phone Conversation between NPFC and Responsible Party dated March 12, 2020.

¹⁹ Phone Conversation between NPFC and Responsible Party dated March 12, 2020.

²⁰ NPFC OSLTF Claim Form dated February 27, 2020 and OMI Environmental Solutions Daily Supervisor Log Dated March 1, 2019.

²¹ NPFC OSLTF Claim Form dated February 27, 2020 and OMI Environmental Solutions Daily Supervisor Log Dated March 1, 2019.

²² NPFC OSLTF Claim Form dated February 27, 2020, OMI Environmental Solutions Daily Supervisor Log Dated March 1, 2019.

²³ Email from the FOSCR to NPFC dated March 20, 2020 Re March 2, 2020.

²⁴ 33 U.S.C. § 2701 *et seq.*

²⁵ 33 CFR 136.103.

²⁶ Email from OMI to Great American Insurance dated December 19, 2019.

²⁷ NPFC OSLTF Claim Form dated February 27, 2020 and Invoice No. SINV1901796 to (b) (6) dated December 19, 2019.

²⁸ Phone Conversation between NPFC and Responsible Party dated March 12, 2020.

²⁹ NPFC OSLTF Claim Form dated February 27, 2020.

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.³⁰ On February 28, 2020 the NPFC received a claim for uncompensated removal costs from OMI dated February 27, 2020. The claim included the OSLTF claim form, initial invoice, contract between the RP and OMI, OMI 2018 Emergency rate schedule, daily work activity logs, a gas receipt, and daily supervisor log. Additional information provided by the claimant to the NPFC included certified mail receipts confirming presentment, second invoice to RP, and a document answering NPFC's questions.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³¹ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.³² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³³ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.³⁴ An RP's liability is strict, joint, and several.³⁵ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."³⁶ OPA was intended to cure these deficiencies in the law.

³⁰ 33 CFR 136.103.

³¹ 33 CFR Part 136.

³² See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

³³ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

³⁴ 33 U.S.C. § 2702(a).

³⁵ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁶ *Apex Oil Co., Inc. v. United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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.”³⁷ The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”³⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁰ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.⁴¹

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.⁴²
- (d) That the removal costs were uncompensated and reasonable.⁴³

Upon receipt of the claim submission, the NPFC requested additional information and clarification from the Claimant on March 3, 2020.⁴⁴

After a complete review of all documentation and after contacting the FOSCR that was on scene, the NPFC was able to corroborate the actions undertaken by the claimant and confirm that the FOSCR determined OMI’s actions to be properly coordinated with the FOSC. The NPFC has determined that the invoiced costs were billed in accordance with the contract and rate schedule in place at the time services were rendered and the NPFC has determined that the claimant demonstrated proper presentment of costs to the claimant. OMI originally filed an action in Court but was able to provide small claims court documentation indicating that the case was dismissed without prejudice, allowing the claimant to request reimbursement from the NPFC Claims Program.

³⁷ 33 U.S.C. § 2701(31).

³⁸ 33 U.S.C. § 2701(30).

³⁹ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁰ 33 CFR Part 136.

⁴¹ 33 CFR 136.105.

⁴² Email from the FOSCR to NPFC dated March 20, 2020, Re March 1, 2019, the FOSCR confirmed actions performed by OMI were consistent with the National Contingency Plan.

⁴³ 33 CFR 136.203; 33 CFR 136.205.

⁴⁴ Email from OMI to NPFC dated March 3, 2020.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$\$4,244.25 while \$5,218.47 are deemed non-compensable for the following reasons: ⁴⁵

Personnel

1. OMI's invoice number SINV1901796 charged for March 2, 2019 Spill Supervisor Overtime from 5:00 am to 12:00 pm. According to the Daily Supervisor Log, the OMI crew arrived at 7:00 am and the vessel had been righted, leaks plugged and the vessel was floating and no longer causing a discharge due to owner's actions. The FOSCR confirmed the events. Based on the evidence provided, the NPFC denies payment for this date on the basis that the response was completed by OMI on March 1, 2019;⁴⁶

2. OMI's invoice number SINV1901796 charged for March 2, 2019 Spill Boat/Truck Operator from 5:00 am to 12:00 pm. According to the Daily Supervisor Log, the OMI crew arrived at 7:00 am and the vessel had been righted, leaks plugged and the vessel was floating and no longer causing a discharge due to owner's actions. The FOSCR confirmed the events. Based on the evidence provided, the NPFC denies payment for this date on the basis that the response was completed by OMI on March 1, 2019;⁴⁷

3. OMI's invoice number SINV1901796 charged for March 2, 2019 three Spill Recovery Technicians from 5:00 am to 12:00 pm. According to the Daily Supervisor Log, the OMI crew arrived at 7:00 am and the vessel had been righted, leaks plugged and the vessel was floating and no longer causing a discharge due to owner's actions. The FOSCR confirmed the events. Based on the evidence provided, the NPFC denies payment for this date on the basis that the response was completed by OMI on March 1, 2019;⁴⁸ and

4. OMI's invoice number SINV1901796 charged for March 2, 2019 two Spill Recovery Technicians Overtime from 5:00 am to 12:30 pm. According to the Daily Supervisor Log, the OMI crew arrived at 7:00 am and the vessel had been righted, leaks plugged and the vessel was floating and no longer causing a discharge due to owner's actions. The FOSCR confirmed the events. Based on the evidence provided, the NPFC denies payment for this date on the basis that the response was completed by OMI on March 1, 2019;⁴⁹

Overall Denied Costs = \$5,218.47⁵⁰

⁴⁵ Enclosure 3 to this determination provides a detailed analysis of these costs.

⁴⁶ Email from the FOSCR to NPFC dated March 20, 2020 Re March 2, 2020.

⁴⁷ Email from the FOSCR to NPFC dated March 20, 2020 Re March 2, 2020.

⁴⁸ Email from the FOSCR to NPFC dated March 20, 2020 Re March 2, 2020.

⁴⁹ Email from the FOSCR to NPFC dated March 20, 2020 Re March 2, 2020.

⁵⁰ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, OMI Environmental Solutions request for uncompensated removal costs is approved in the amount of **\$4,244.25**.

This determination is a settlement offer,⁵¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵³ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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Claim Supervisor: (b) (6)(b) (6)(b) (6)
Date of Supervisor's review: <i>3/27/2020</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

⁵¹ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

⁵² 33 CFR § 136.115(b).

⁵³ 33 CFR § 136.115(b).