

CLAIM SUMMARY / DETERMINATION

**Claim Number:** 920027-0001  
**Claimant:** Ocean Blue Environmental Services, Inc.  
**Type of Claimant:** OSRO  
**Type of Claim:** Removal Costs  
**Claim Manager:** (b) (6), (b)(b) (6), (b) (6)  
**Amount Requested:** \$27,792.08  
**Action Taken:** Offer in the amount of \$27,792.08

**EXECUTIVE SUMMARY:**

On December 20, 2019, the vessel *R GETAWAY*, caught fire, capsized and sank at the Marina De Rey Harbor in Marina Del Rey, California.<sup>1</sup> The incident resulted in the release of an unspecified amount of engine oil into the Marina Del Rey; a navigable waterway of the United States.<sup>2</sup> Coast Guard (CG) Sector Los Angeles/Long Beach (LA/LB) was dispatched to serve as Federal On Scene Coordinator (FOSC).<sup>3</sup> The Owners of *R GETAWAY*, Mr. (b) (6), (b) (6) (Mr. (b) (6), or RP), and Ms. (b) (6), (b)(b) (6), (b) (6) (Ms. (b) (6), or RP) were identified as the responsible parties (RP's), as defined by the Oil Pollution Act of 1990.<sup>4</sup>

On December 20, 2019, Ocean Blue Environmental Services, Inc. (Ocean Blue or Claimant) was directed by the Los Angeles County Department of Beaches & Harbors to recover and remove all oil from the identified spill locations.<sup>5</sup> Ocean Blue submitted all incurred expenses to the RP, Mr. (b) (6), on March 3, 2020,<sup>6</sup> and attempted to submit all incurred expenses to the joint RP, Ms. (b) (6), on July 9, 2020.<sup>7</sup> Ocean Blue has received no notification or response from the RP, Mr. (b) (6), and has received no notification or response from the joint RP, Ms. (b) (6).<sup>8,9</sup>

On June 15, 2020, Ocean Blue presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$27,792.08.<sup>10</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$27,792.08 of the requested amount is compensable and offers this amount as full and final compensation of this claim.

**I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

*Incident*

<sup>1</sup> NRC Report #1266978, dated December 20, 2019.

<sup>2</sup> Hazardous Materials Spill Report: Cal OES control #19-8154.

<sup>3</sup> CG Sector LA/LB Operational Response Summary, dated December 20, 2019.

<sup>4</sup> 33 U.S.C. § 2701(32).

<sup>5</sup> Ocean Blue claim submission, dated June 1, 2020.

<sup>6</sup> Email from Ocean Blue to Mr. (b) (6), dated March 3, 2020, and Email from Ocean Blue to Mr. (b) (6) dated March 5, 2020.

<sup>7</sup> Letter from Ocean Blue to Ms. (b) (6), dated July 9, 2020.

<sup>8</sup> Email from Ocean Blue to the NPFC, dated July 20, 2020.

<sup>9</sup> Track History of certified mail, dated July 19, 2020.

<sup>10</sup> Ocean Blue claim submission, dated June 1, 2020.

On December 20, 2019, the 32 foot vessel *R GETAWAY*, owned by Mr. (b) (6) and Ms. (b) (6), caught fire, capsized and sank at the Marina De Rey Harbor in Marina Del Rey, California. Three (3) passengers were onboard the vessel at the time of the fire,<sup>11</sup> and two (2) passengers, including the boat owner, Mr. (b) (6), were hospitalized due to sustained burns. The vessel's engine contained 200 gallons of oil, and released an unspecified amount into the Marina Del Rey, a navigable waterway of the United States.<sup>12</sup>

On December 20, 2019, the Los Angeles County Fire Department Life Guard Division contacted the National Response Center (NRC), who notified CG Sector LA/LB to serve as the FOSC for the incident. Los Angeles County Department of Beaches & Harbors dispatched Ocean Blue to respond to the oil spill on December 20, 2019.<sup>13</sup> CG Sector LA/LB monitored Ocean Blue's cleanup activity.<sup>14</sup>

### ***Responsible Party***

The FOSC identified the *R GETAWAY* as a substantial threat of a discharge of oil to navigable waters of the United States, on December 20, 2019.<sup>15</sup> Mr. (b) (6), (b) (6) and Ms. (b) (6), (b) (6), (b) (6) are identified as the Owners of the vessel.<sup>16</sup> The vessel was not in operation at the time of the fire or spill.<sup>17</sup>

The NPFC issued a Responsible Party Notification Letter to both RP's on June 19, 2020.<sup>18</sup> The NPFC has received no notification or response from either RP. 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.

### ***Recovery Operations***

On December 20, 2019, Ocean Blue was notified of the *R GETAWAY*'s oil spill release and sinkage into the Marina Del Rey, and was dispatched to assist with cleanup and removal of the spill.<sup>19</sup> Ocean Blue arrived on-site and began oil cleanup and vessel removal operations on December 20, 2019.<sup>20</sup>

Ocean Blue boomed off the immediate area surrounding the *R GETAWAY*, completed fire foam suppression, the cleanup of said fire foam, and the raising of the *R GETAWAY*. Full

---

<sup>11</sup> Hazardous Materials Spill Report: Cal OES control #19-8154.

<sup>12</sup> NRC Report #1266978, dated December 20, 2019.

<sup>13</sup> Ocean Blue claim submission, dated June 1, 2020.

<sup>14</sup> Email from Sector LA/LB to the NPFC, dated June 23, 2020.

<sup>15</sup> NRC Report #1266978, dated December 20, 2019.

<sup>16</sup> National Vessel Documentation Center (NVDC) Certificate of Documentation (COD), dated October 18, 2019.

<sup>17</sup> Photograph of R GETAWAY on fire, dated December 20, 2019.

<sup>18</sup> RP Notification Letter to Mr. (b) (6) dated June 19, 2020, and RP Notification Letter to Ms. (b) (6), dated June 19, 2020.

<sup>19</sup> Email Sector LA/LB to the NPFC, dated June 23, 2020.

<sup>20</sup> Ocean Blue claim submission, dated June 1, 2020.

cleanup of the vessel's oil spillage was completed on December 21, 2019, and transfer of product by subcontractor was completed on December 30, 2019.<sup>21</sup>

## **II. CLAIMANT AND RP:**

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>22</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>23</sup>

Ocean Blue submitted its request for compensation to Mr. (b) (6) for \$27,792.08 on March 3, 2020,<sup>24</sup> and resubmitted the request on March 5, 2020.<sup>25</sup> Ocean Blue has received no notification or response from the RP. Ocean Blue attempted to submit its request for compensation to Ms. (b) (6), the joint RP, for \$27,792.08 on July 9, 2020.<sup>26</sup> Ocean Blue has received no notification or response from the RP.<sup>27,28</sup>

## **III. CLAIMANT AND NPFC:**

When an RP denies payment on a claim, or fails to respond within the 90 day response time period, a claimant may elect to present its claim to the NPFC.<sup>29</sup> On June 15, 2020, the NPFC received a claim for \$27,792.08 from Ocean Blue, dated June 1, 2020.<sup>30</sup> The NPFC began the adjudication process of the claim submission on July 1, 2020.

## **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>31</sup> 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.<sup>32</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions,

---

<sup>21</sup> Ocean Blue Invoice #33158, dated June 1, 2020.

<sup>22</sup> 33 U.S.C. § 2701 et seq.

<sup>23</sup> 33 CFR 136.103(c)(1).

<sup>24</sup> Email from Ocean Blue to Mr. (b) (6), dated March 3, 2020.

<sup>25</sup> Email from Ocean Blue to Mr. (b) (6), dated March 5, 2020.

<sup>26</sup> Letter from Ocean Blue to Ms. (b) (6), dated July 9, 2020.

<sup>27</sup> Email from Ocean Blue to the NPFC, dated July 20, 2020.

<sup>28</sup> Track History of certified mail, dated July 19, 2020.

<sup>29</sup> 33 CFR 136.103.

<sup>30</sup> Ocean Blue claim submission, dated June 1, 2020.

<sup>31</sup> 33 CFR Part 136.

<sup>32</sup> 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)).

or conclusions reached by other entities.<sup>33</sup> 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:

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.”<sup>34</sup> 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.”<sup>35</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>36</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>37</sup> 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.<sup>38</sup>

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.<sup>3940</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>41</sup>

The NPFC analyzed each of these factors and determined that all costs incurred and submitted by Ocean Blue herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

---

<sup>33</sup> 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).

<sup>34</sup> 33 U.S.C. § 2701(31).

<sup>35</sup> 33 U.S.C. § 2701(30).

<sup>36</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>37</sup> 33 CFR Part 136.

<sup>38</sup> 33 CFR 136.105.

<sup>39</sup> Email from Sector LA/LB to the NPFC, dated June 23, 2020.

<sup>40</sup> CG Sector LA/LB Operational Response Summary, dated December 20, 2019.

<sup>41</sup> 33 CFR 136.203; 33 CFR 136.205.

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Ocean Blue's request for uncompensated removal costs is approved in the full amount of \$27,792.08.

This determination is a settlement offer,<sup>42</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>43</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>44</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

	(b) (6), (b)(b) (6), (b)(b) (6), (b) (b) (6), (b)(b) (6), (b)(b) (6), (b)
Claim Supervisor:	(b) (6), (b)
Date of Supervisor's review:	7/24/2020
Supervisor Action:	<i>Offer Approved</i>

---

<sup>42</sup> 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).

<sup>43</sup> 33 CFR § 136.115(b).

<sup>44</sup> 33 CFR § 136.115(b).