

CLAIM SUMMARY / DETERMINATION

Claim Number:	919022-0001
Claimant:	CTR Industries, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$16,913.47
Action Taken:	Offer in the amount of \$8,519.83

EXECUTIVE SUMMARY:

On March 03, 2018, Petty Officer (PO) (b) (6) of the United States Coast Guard (USCG) Sector Long Island Sound reported an oil spill incident to the National Response Center (NRC) that occurred following high winds from winter storm Riley.¹ A barge began listing following the storm and causing a crane to fall overboard and discharge approximately thirty (30) gallons of diesel into the harbor that leads to the Long Island Sound (LIS), a navigable waterway of the United States.²

In accordance with the Oil Pollution Act of 1990, Atlantic Marine Construction (Atlantic Marine) was identified as the responsible party (RP)³ for the incident that occurred at the Old Greenwich Yacht Club Harbor, in Greenwich, Connecticut.⁴ Atlantic Marine hired CTR Industries, Inc. (CTR or Claimant) to install containment and absorbent boom around the sunken crane.⁵ After performing its pollution response activities, CTR presented its invoice to Atlantic Marine on April 13, 2018.⁶

Having received a response but no payment from Atlantic Marine, CTR presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$16,913.47.⁷ The OSLTF claim form was dated January 25, 2019 but was not received by the NPFC until April 25, 2019.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$8,519.83 is compensable and offers this amount as full and final compensation of this claim.⁹

¹ National Response Center (NRC) Report # 1205813 dated March 3, 2018.

² National Response Center (NRC) Report # 1205813 dated March 3, 2018.

³ United States Coast Guard Notice of Federal Interest dated March 3, 2018.

⁴ 33 U.S.C. § 2701(32).

⁵ CTR Industries, Inc. signed Agreement for Emergency Services dated March 14, 2018.

⁶ Optional OSLTF claim form dated January 25, 2019, question #5.

⁷ 33 CFR 136.103(c).

⁸ CTR claim submission.

⁹ 33 CFR 136.115.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On March 03, 2018, a crane that was owned and operated by Atlantic Marine was staged on a work barge that was performing reconstruction of a pier at the Old Greenwich Yacht Club. Following the effects of the winter storm Riley, Atlantic Marine's crane fell off of the work barge and discharged diesel fuel into the harbor.¹⁰ The Federal On Scene Coordinator (FOSC) is United States Coast Guard Sector Long Island Sound. The FOSC issued a Notice of Federal Interest (NOFI) for an Oil Pollution Incident to the Atlantic Marine.¹¹

Responsible Party

Atlantic Marine Construction is the owner and operator of the crane that discharged oil into a navigable waterway of the United States. Atlantic Marine Construction was identified as the responsible party (RP) for the oil spill incident.¹²

On May 3, 2019, the NPFC issued a Responsible Party Notification Letter to Atlantic Marine Construction.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.

On May 6, 2019, a representative of Atlantic Marine signed the green acknowledgement of certified mail receipt of the RP Notification letter.¹⁴ Atlantic Marine Construction is liable under OPA.¹⁵ As such, it is the responsible party for the incident.¹⁶

Recovery Operations

United States Coast Guard Sector Long Island Sound was the Federal On-Scene Coordinator (FOSC) and oversaw the response and removal operations.¹⁷ CTR was hired by Atlantic Marine to install containment and absorbent boom around the crane.¹⁸ Response services were performed from March 14, 2018 through March 15, 2019.¹⁹

¹⁰ NRC Report # 1205183 dated March 3, 2018.

¹¹ Sector Long Island Sound, Notice of Federal Interest for an Oil Pollution Incident dated March 3, 2018.

¹² United States Coast Guard SITREP dated March 3, 2018.

¹³ NPFC RP Notification Letter sent to Atlantic Marine Construction via United States Postal Service Certified Mail, Tracking Number 7017 3040 0000 6783 7074, dated May 3, 2019.

¹⁴ United States Postal Service Domestic Return Receipt received by NPFC on May 15, 2019 signed by (b) (6).

¹⁵ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

¹⁶ 33 U.S.C. § 2701(32).

¹⁷ United States Coast Guard MISLE Case #1117749 and United States Coast Guard SITREP dated March 3, 2018.

¹⁸ CTR Industries, Inc. signed Agreement for Emergency Services dated March 14, 2018.

¹⁹ CTR Invoice # 131613 dated March 28, 2018.

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)²⁰ require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.²¹

The claimant presented its claim to Atlantic Marine Construction on April 13, 2018.²² The claimant also sent an email to Atlantic Marine on April 16, 2018,²³ May 8, 2018,²⁴ May 17, 2018,²⁵ and on June 4, 2018, respectively, with its invoice attached.²⁶ The RP has not made payment for the services provided.

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after ninety days of receipt, a claimant may elect to present its claim to the NPFC.²⁷ On April 25, 2019, the NPFC received a claim for uncompensated removal costs from CTR Industries Inc. The claim included CTR invoice # 131613 totaling \$16,913.47, Field Notes, an April 13, 2018 quote for Fortress FX-55 Anchor – 32 lbs., Connecticut Department of Energy and Environmental Protection Emergency Response and Spill Prevention Division Emergency Incident Report, CTR Industries, Inc., Agreement for Emergency Services, and emails between CTR Industries and Atlantic Marine Construction.²⁸

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁹ 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.³⁰ The NPFC may rely upon, is not bound by the findings of fact, opinions,

²⁰ 33 U.S.C. § 2701 *et seq.*

²¹ 33 CFR 136.103.

²² CTR Invoice # 131613 dated March 28, 2018; Optional OSLTF Claim Form, Page 1, question 5, signed by (b) (6), dated January 25, 2019.

²³ Email from CTR to Atlantic Marine Construction from CTR Industries dated April 16, 2018.

²⁴ Email from CTR to Atlantic Marine Construction from CTR Industries dated May 8, 2018.

²⁵ Email from CTR to Atlantic Marine Construction from CTR Industries dated May 17, 2018.

²⁶ Email from CTR to Atlantic Marine Construction from CTR Industries dated June 4, 2018.

²⁷ 33 CFR 136.103.

²⁸ CTR Industries, Inc., claim submission.

²⁹ 33 CFR Part 136.

³⁰ 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.³¹ 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.³² An RP's liability is strict, joint, and several.³³ 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."³⁴ OPA was intended to cure these deficiencies in the law.

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."³⁵ 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."³⁶

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁷ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁸ 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.³⁹

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;

³¹ 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).

³² 33 U.S.C. § 2702(a).

³³ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁴ *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).

³⁵ 33 U.S.C. § 2701(31).

³⁶ 33 U.S.C. § 2701(30).

³⁷ See *generally*, 33 U.S.C. § (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁸ 33 CFR Part 136.

³⁹ 33 CFR 136.105.

- (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.⁴⁰
- (d) That the removal costs were uncompensated and reasonable.⁴¹

The NPFC analyzed each of these factors and determined which of the costs incurred by CTR Industries, Inc., and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined all approved costs were invoiced at the appropriate rate sheet pricing and were billed in accordance with the rate schedule provided.⁴² All approved costs were supported by adequate documentation which included invoicing, proof of payments and/or FOSC documentation.

The amount of compensable costs is \$8,519.83 while \$8,393.65 was deemed not compensable for the following reasons:

1. The NPFC requested supporting documentation for the Fortress FX-55 Anchors however the claimant did not provide it. As such, the NPFC denies \$2,069.97;
2. Containment Boom 18” and 24” per foot, per day - The claimant is charging for twenty-three (23) days of containment boom. The record appears to have some unresolved issues as it pertains to the containment boom being removed from the water by a different contractor and taken to New Haven, Connecticut. The OSLTF is only available for reasonable uncompensated asremoval costs for the response period confirmed by the FOSC. The the oil pollution response ended on March 20, 2018 and the Coast Guard MISLE case # 1117749 was then closed. Based on the foregoing, the NPFC will only allow seven days of billing for the containment boom, beginning March 14, 2018 (mobilization) with an end date of March 21, 2018 (case closure by the FOSC). As such, the NPFC denies \$5,600;
3. 4% Insurance/Fuel Surcharge – The NPFC applied the insurance/fuel surcharge to the NPFC approved amounts only and as such, the surcharges billed on denied amounts is denied in the amount of \$306.80;
4. 6.35% Connecticut sales tax – The NPFC applied the sales tax to the NPFC approved amounts only and as such, the sales tax billed on denied amounts is denied in the amount of - \$467.48; and
5. There is an unidentified amount of \$50.60 that the NPFC denies as unsubstantiated.

Overall Denied Costs = \$8,393.65⁴³

⁴⁰ United States Coast Guard MISLE Case #1117749.

⁴¹ 33 CFR 136.203; 33 CFR 136.205.

⁴² CTR Industries, Inc. (CTR) Time and Material Rate Terms and Conditions, Effective December 1, 2015.

⁴³ Enclosure 3 NPFC Summary of Costs spreadsheet.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, CTR Industries, Inc. request for uncompensated removal costs is approved in the amount of **\$8,519.83**.

This determination is a settlement offer,⁴⁴ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁵ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁶ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6)

Date of Supervisor's review:

Supervisor Action: *Offer Approved*

⁴⁴ 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).

⁴⁵ 33 CFR § 136.115(b).

⁴⁶ 33 CFR § 136.115(b).