

CLAIM SUMMARY / DETERMINATION

Claim Number:	921004-0001
Claimant:	Water Quality Insurance Syndicate
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$4,101.00
Action Taken:	Offer in the amount of \$3,827.75

EXECUTIVE SUMMARY:

On April 30, 2019, a rainbow colored sheen, approximately fifty feet long by forty feet wide was reported to the Massachusetts Department of Environmental Protection (“Mass DEP” or State On Scene Coordinator “SOSC”), as seen next to the Boston Harbor Cruises (BHC) owned vessel M/V CLAIRE. ¹ Mass DEP notified the Coast Guard Sector Boston Incident Management Division (IMD), who sent personnel to the scene to conduct an assessment of the oil spill incident, in its capacity as the Federal On Scene Coordinator (FOSC).² The FOSC observed an oil based substance in the inlet between Pier 4 and the Charlestown Navy Yard, and determined that the sheen discharged into the Charles River; a navigable waterway of the United States.³

The FOSC issued a Notice of Federal Interest (NOFI) to the BHC, as a potential responsible party (RP),⁴ but no clear path of discharge and no source of the discharge was identified by either the FOSC or the SOSC. The spill source remains unknown.

BHC hired Clean Harbors Environmental Services, Inc. (CHES) to perform cleanup of the spill on April 30, 2019,⁵ and Water Quality Insurance Syndicate (WQIS), in its capacity as the insurer for BHC, paid all costs as presented by CHES to BHC on May 28, 2019.⁶ On November 4, 2020, Maritime Alliance Group, Inc. (“MAGI” or “Claimant”) presented a removal costs claim on behalf of and by the direction of WQIS,⁷ to the National Pollution Funds Center (NPFC) for \$4,101.00.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$3,827.75 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

¹ Mass DEP NE-19-10034 Field Response dated April 30, 2019.

² Mass DEP NE-19-10034 Initial Call dated April 30, 2019.

³ CG MISLE Case # 1170159 dated April 30, 2019.

⁴ Notice of Federal Interest, dated April 30, 2019.

⁵ Maritime Alliance Group claim submission dated October 28, 2020.

⁶ WQIS Check#31901 dated May 28, 2019.

⁷ Email from WQIS to the NPFC dated November 4, 2020.

⁸ Maritime Alliance claim submission dated October 28, 2020.

On April 30, 2019, an anonymous caller reported a rainbow colored sheen, approximately fifty feet long by forty feet wide, beside the BHC vessel M/V CLAIRE, while it was moored at Pier 4 in Charlestown, Massachusetts.⁹ The FOSC was notified of the sheen,¹⁰ and personnel from CG Sector Boston IMD and Mass DEP performed a joint assessment of the mystery sheen substance and conducted an inspection of the M/V CLAIRE vessel.¹¹

FOSC observed the sheen was an oil based substance, and cited the sheen as lying in the inlet between Pier 4 and the Charlestown Navy Yard, at the mouth of the Charles River; a navigable waterway of the United States.¹² After thorough inspection of the M/V CLAIRE, CG Sector Boston IMD and Mass DEP declared no clear path of discharge and no source of discharge could be identified.¹³¹⁴

Responsible Party

CG Sector Boston IMD worked with Mass DEP, attempting to locate the source of the spill, and working to identify a responsible party (RP). All attempts to locate a source were unsuccessful, and a RP could not be identified.¹⁵ As such, the oil spill was determined to be a mystery sheen.

Recovery Operations

On April 30, 2019, BHC notified the Oil Spill Response Organization (OSRO), CHES, to report to the scene of the spill. CHES arrived on-site and began oil cleanup operations on April 30, 2019.¹⁶

CHES deployed boom around the vessel¹⁷ and completed cleanup of the mystery sheen substance between Pier 4 and the Charlestown Navy Yard, before leaving the spill location on April 30, 2019.¹⁸ Following their response, the OSRO issued an invoice to BHC which was then reviewed by WQIS, who determined that costs accurately reflected the actions observed during the response. Upon request of BHC, WQIS made a payment to CHES for all costs associated with the response.¹⁹

III. CLAIMANT AND NPFC:

⁹ Mass DEP NE-19-10034 Initial Call dated April 30, 2019.

¹⁰ NRC Incident Report #1244193 dated April 30, 2019.

¹¹ Mass DEP NE-19-10034 Field Response dated April 30, 2019.

¹² MISLE Case # 1170159.

¹³ Email from CG Sector Boston IMD to the NPFC dated November 19, 2020.

¹⁴ Email from Mass DEP to the NPFC dated November 9, 2020.

¹⁵ Mass DEP NE-19-10034 Field Response dated April 30, 2019.

¹⁶ CHES Invoice#1002823455 dated April 30, 2019.

¹⁷ MISLE Case # 1170159.

¹⁸ Maritime Alliance Group claim submission dated October 28, 2020.

¹⁹ WQIS Check#31901, dated May 28, 2019.

On November 4, 2020, the NPFC received a claim for \$4,101.00 from Maritime Alliance Group (MAGI), dated October 28, 2020.²⁰ Upon receipt of the claim, the NPFC requested authorization from WQIS granting approval for MAGI to submit their costs and communicate with the NPFC on behalf of WQIS.²¹ The NPFC obtained the authorization to represent from WQIS on November 4, 2020.²² The NPFC began the adjudication process of the claim submission on November 4, 2020.²³

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁴ 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.²⁵ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁶ 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.”²⁷ 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.”²⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁹ The NPFC has promulgated a comprehensive set

²⁰ Maritime Alliance Group claim submission dated October 28, 2020.

²¹ Email to Claimant from the NPFC dated November 4, 2020.

²² Email from WQIS to the NPFC dated November 4, 2020.

²³ Acknowledgement Letter dated November 4, 2020.

²⁴ 33 CFR Part 136.

²⁵ 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)).

²⁶ 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).

²⁷ 33 U.S.C. § 2701(31).

²⁸ 33 U.S.C. § 2701(30).

²⁹ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁰ 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.³¹

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.³²³³
- (d) That the removal costs were uncompensated and reasonable.³⁴

The NPFC analyzed each of these factors and determined that the majority of costs incurred and submitted by MAGI 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 the majority of costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

The amount of compensable costs is \$3,827.75, while \$273.25 is deemed non-compensable for the following reasons:

1. MAGI submitted a request for CHES personnel costs dated April 30, 2019, totaling \$3,912.00.³⁵ After reviewing the costs, the NPFC found that all hours submitted were charged at the overtime rate, but found that some of the hours invoiced on the daily timesheet did not constitute the standards for overtime pay, as specified on the rate schedule.³⁶³⁷ As such, the NPFC found that \$3,638.75 in personnel costs are approved, while \$273.25 are denied.³⁸

Overall Denied Costs: \$273.25

VI. CONCLUSION:

³⁰ 33 CFR Part 136.

³¹ 33 CFR 136.105.

³² Email from CG Sector Boston IMD to the NPFC dated November 19, 2020.

³³ MISLE Case # 1170159.

³⁴ 33 CFR 136.203; 33 CFR 136.205.

³⁵ CHES Invoice#1002823455 dated April 30, 2019.

³⁶ Boston Harbor Cruises Billing Worksheet dated April 30, 2019.

³⁷ 2019 CHES Rate Schedule.

³⁸ Summary of Costs Spreadsheet dated November 24, 2020.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Maritime Alliance's request for uncompensated removal costs is approved in the amount of \$3,827.75.

This determination is a settlement offer,³⁹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁰ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴¹ 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:	<i>12/1/2020</i>
Supervisor Action:	<i>Offer Approved</i>

³⁹ 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).

⁴⁰ 33 CFR § 136.115(b).

⁴¹ 33 CFR § 136.115(b).