

CLAIM SUMMARY / DETERMINATION

Claim Number:	921020-0001
Claimant:	City of Whittier Harbor
Type of Claimant:	Municipality
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$1,987.50
Action Taken:	Offer in the amount of \$1,987.50

EXECUTIVE SUMMARY:

On October 3, 2020, at approximately 2111 local time, the Whittier Police Department received a call from the Anchor Inn located near the Whittier Harbor public boat launch. The caller reported that a car had driven off the pier and the car sank. Police Dispatch notified both the Harbormaster for the City of Whittier, Mr. (b) (6), and Whittier Police Chief (b) (6).¹ At approximately 2130 local time, the Harbormaster made notification to the National Response Center (NRC) via report # 1288970.² Harbormaster (b) (6) arrived on scene at 2145 and reported that the water was extremely muddy due to the weather conditions and stated that he could not see the vehicle in the water but he could smell gasoline/ oil consistent with a vehicle. Mr. (b) (6) made the decision to wait until the morning to address the incident due to the weather and the availability of resources.³

On October 4, 2020, United States Coast Guard Sector Anchorage received notification from the NRC via report # 1288970 of the vehicle incident sinking. The Harbormaster contacted the United States Coast Guard (USCG) Sector Command Center and advised that a sheen of an unknown substance of an unknown amount was observed with a size of approximately 10x10 foot sheen. The Federal On Scene Coordinator's Representatives (FOSCRs) and Pollution Responders from Sector Anchorage arrived on scene and took pictures of a sheen where the vehicle had just been removed.

(b) (6) ("RP"), is identified as the owner/operator of the vehicle involved in the incident with license plate # (b) (6) and is the responsible party (RP) as defined by the Oil Pollution Act of 1990.⁴ The Claimant, City of Whittier Harbor ("City of Whittier" or "Claimant"), presented its uncompensated removal costs to the RP.⁵ After ninety days following presentment and having not reached a settlement with the RP, the Claimant presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$1,987.50.⁶

¹ Whittier Police Report # 2001558 dated October 4, 2020.

² NRC Report # 1288970 dated October 3, 2020.

³ Harbormaster (b) (6) Incident Witness Statement dated October 6, 2020.

⁴ USCG SITREP dated April 20, 2021 and Pollution Responder Witness Statement of MST3 (b) (6) dated October 6, 2020.

⁵ The Claimant provided proof of presentment for invoices totaling \$1,987.50. See, claim submission documents and Claimant's copies of certified mail on 10/20/20 via certified mail # 70150640000453086494; 11/20/20 via certified mail #70150640000453086531; and on 1/13/21 via certified mail # 701506400004530865555. All certified mail was returned unclaimed.

⁶ City of Whittier Harbor claim submission received April 14, 2021.

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$1,987.50 of the requested amount is compensable and offers this amount as full and final compensation of the claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On October 3, 2020 at 2111 hours, the Whittier Harbor Police Department dispatch received a call from the Anchor Inn and a person on the line identified as (b) (6) (b) (6)⁷ advised that they had never been to Whittier before and were driving on the pier in what appeared to only be rain and drove off the end of the pier and the car sunk. The caller stated there were three passengers and one dog but all escaped the vehicle safely with no injuries and were now at the Anchor Inn.⁸

During the police investigation, Officer (b) (6) made contact with (b) (6), (b) (6) (b) (6) and (b) (6) at the Anchor Inn. The officer stated that it was explained to him that the vehicle occupants had never been to Whittier before and they were driving toward the area of the harbor where they thought the road continued on. They stated that it was dark and they were not sure where the road was so they tried to turn around and accidentally drove down the boat ramp and submerged the vehicle.

On October 4, 2020, the United States Coast Guard's National Response Center (NRC) received notification by phone from Harbormaster (b) (6) reporting that on October 3, 2020 a vehicle drove into the Prince William Sound, a navigable waterway of the United States.⁹ The USCG Pollution Investigators from USCG Sector Anchorage arrived on scene and took pictures of a sheen where the vehicle had just been removed. The USCG was informed that the City of Whittier had employed the services of local resources in order to retrieve the vehicle from the water. The USCG confirmed that the Claimant hired Lazy Otter to assist with the response.¹⁰

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner/operator of the vehicle involved in the incident with license plate # [REDACTED] is the Responsible Party (RP) for the incident.¹¹ It was also confirmed that Mr. (b) (6) did not have insurance for the vehicle.¹² On April 19, 2021,

⁷ Whittier Police Report indicates (b) (6) on page 1 of 3 but later identifies the name as (b) (6) on page 3 of 3 of the same report

⁸ Whittier Police Report # 2001558 dated October 4, 2020 under Dispatch Notes on page 1 of 3.

⁹ NRC Report #1288970 dated October 3, 2020.

¹⁰ Pollution Responder Witness Statement of MST3 (b) (6) dated October 6, 2020.

¹¹ USCG SITREP dated April 20, 2021 and Pollution Responder Witness Statement of MST3 (b) (6) dated October 6, 2020.

¹² Whittier Police Department Incident Report #2001558 dated October 4, 2020.

the NPFC issued a Responsible Party Notification Letter to Mr. (b) (6)¹³ On June 17, 2021, the certified letter was sent back to NPFC with a “Return to Sender” label, as well as “unclaimed” and “unable to forward” on the envelope.¹⁴ A Responsible Party Notification letter notifies the RP 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

The City of Whittier Harbor contracted with local contractors to remove the vehicle from the Prince William Sound, a navigable water of the United States. Custom Marine Services LLC provided loader operation for the removal of the vehicle from the water.¹⁵ Passage Canal Services LLC rigged the vehicle up to the loader from the water.¹⁶ Lazy Otter Charters, Inc. provided diving services for recovering the vehicle.¹⁷

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁸ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.¹⁹

Harbormaster (b) (6) sent three certified mailings to the RP. The first mailing was on October 10, 2020, and was returned on November 15, 2020. The second mailing was on November 20, 2020, and was returned on December 31, 2020. The third mailing was on January 13, 2021, and was returned on February 11, 2021.²⁰ Harbormaster (b) (6) also contacted the RP by phone seeking the removal costs. The first phone call with the RP took place on February 13, 2021 at 1:00 pm and the RP said he would call the Harbormaster back. On February 14, 2021 at 2:30 pm, the Harbormaster spoke with the RP and was told that he will make a payment of \$100.00 on Friday, February 16, 2021. The Harbormaster called the RP on February 19, 2021 at 9:30 am and again at 3:15 pm with no answer from the RP. The Harbormaster’s last call to the RP was on February 23, 2021 at 9:15 am with no answer.²¹

¹³ NPFC RP Notification Letter sent to (b) (6) via United States Postal Service Certified Mail, Tracking Number 7018 1830 0002 0523 7766 dated April 19, 2021.

¹⁴ NPFC RP Notification Letter, Tracking Number 7018 1830 0002 0523 7766 status “Return to Sender” on June 17, 2021.

¹⁵ Custom Marine Services LLC Invoice #107350 dated October 9, 2020.

¹⁶ Passage Canal Services LLC Invoice #1049 performed work on October 4, 2020.

¹⁷ Lazy Otter Charters, Inc. Invoice # 6563 dated October 4, 2020.

¹⁸ 33 U.S.C. § 2701 *et seq.*

¹⁹ 33 CFR 136.103.

²⁰ Optional OSLTF Claim Form signed by (b) (6) on April 2, 2021 and received by the NPFC on April 14, 2021.

²¹ *Id.*

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.²² On April 14, 2021, the NPFC received a claim for uncompensated removal costs from the City of Whittier Harbor. The claim included a Witness Statement by (b) (6) dated October 6, 2020; Whittier Harbor Police Incident Report #2001558 dated October 4, 2020; Ingens DMV Report regarding RP vehicle information dated October 15, 2020; City of Whittier Harbor invoices sent by certified mail to the RP dated October 14, 2020, February 28, 2021, and March 31, 2021; and a list of invoices sent by certified mail and phone calls to the RP on February 13, 2021, February 14, 2021, two calls on February 19, 2021, and a final call on February 23, 2021.²³ On May 28, 2021, NPFC received documentation from the claimant regarding invoices and payment of the contractors, as well as the City of Whittier Harbor personnel.²⁴

IV. CLAIMANT AND NPFC:

When an RP denies a claim or has not settled a claim after 90 days of receipt, a Claimant may elect to present its claim to the NPFC.²⁵ Claimant presented to the owner and the operator of the vehicle. The owner, Mr. (b) (6), failed to settle the claim within the 90 days provided under OPA. On April 14, 2021, the Claimant submitted its claim to the NPFC for \$1,987.50.

The Claimant broke down its claim via the following invoicing/costs:

1. Gilman/Custm Marine Services – inv # 107350 - \$375.00
2. Passage Canal Services LLC – inv # 1049 - \$150.00
3. Lazy Otter Charters, Inc - inv # 6563 - \$712.50
4. Public Services City of Whittier Harbor - \$750.00

Total claimed costs: \$1,987.50²⁶

V. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁷ 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

²² 33 CFR 136.103.

²³ OLTf Optional Claim Form signed by (b) (6) on April 2, 2021 and received by the NPFC on April 14, 2021.

²⁴ (b) (6) email to NPFC providing additional information regarding the claim dated May 28, 2021.

²⁵ 33 U.S.C. § 2713(a-c).

²⁶ City of Whittier Harbor claim submission received April 14, 2021.

²⁷ 33 CFR Part 136.

the facts of the claim.²⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁹ 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.

VI. 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.³⁰ An RP's liability is strict, joint, and several.³¹ 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."³² 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."³³ 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."³⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁶ 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.³⁷

²⁸ 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)).

²⁹ 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).

³⁰ 33 U.S.C. § 2702(a).

³¹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³² *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).

³³ 33 U.S.C. § 2701(31).

³⁴ 33 U.S.C. § 2701(30).

³⁵ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁶ 33 CFR Part 136.

³⁷ 33 CFR 136.105.

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.
- (d) That the removal costs were uncompensated and reasonable.³⁸

Upon review and adjudication of the claim submission, the NPFC made a request for additional information to the City of Whittier in support of its claim.³⁹ The NPFC requested the following information:

1. Please provide a copy of the City of Whittier's salary schedule demonstrating the hourly rate claimed for the Harbormaster. If there is no published salary schedule to support the rate charged, please provide actual payroll records that support the amount claimed;
2. Please provide a copy of the City of Whittie Police Department salary schedule that supports the hourly rates claimed for Officer (b) (6) and Chief ;
3. Please provide the invoices from Lazy Otter Charters, Whittier Commercial Marine Services, and Passage Canal & Co for the services provided by each company for this incident and claimed by the City of Whittier. Additionally, please provide any contracts/service agreements/rate schedules for the rates charged by each and proof of payment from the City of Whittier to each company;
4. Please provide a copy of any and all daily field logs associated with the personnel, materials and equipment charged and claimed; and
5. Please provide a copy of disposal documentation related to the removal of any spilled materials (if applicable) along with the disposal invoicing, disposal manifests and proof of payment for disposal of contaminated materials.

On May 28, 2021, Mr. (b) (6) responded to the NPFC's request for additional information and provided all requested information. Upon further review and adjudication, the NPFC has determined that all supporting documentation for the costs claimed support the amounts requested and the actions were coordinated with the FOSCR⁴⁰ The NPFC has further determined that the costs were invoiced in accordance with the pricing matrix for each cost claimed.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, City of Whittier Harbor's request for uncompensated removal costs is approved in the amount of **\$1,987.50**.

³⁸ 33 CFR 136.203; 33 CFR 136.205.

³⁹ NPFC email request for additional information dated April 29, 2021.

⁴⁰ USCG Pollution Responder Witness Statement of MST3 (b) (6) dated October 6, 2020.

This determination is a settlement offer,⁴¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴³ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *8/25/21*

Supervisor Action: *Offer Approved*

Supervisor's Comments:

⁴¹ 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).

⁴² 33 CFR § 136.115(b).

⁴³ 33 CFR § 136.115(b).