

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP922013-URC001
Claimant:	Marion Environmental Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$11,903.00
Action Taken:	Offer in the amount of \$10,104.25

EXECUTIVE SUMMARY:

On April 14, 2021 at approximately 9:45 am local time, the National Response Center (NRC) was notified by the Tennessee Emergency Management Agency (TEMA) of a boat that discharged fuel due to the activation of the bilge pump that subsequently pumped fuel out into the Watts Bar Lake, a navigable waterway of the United States.² Multiple agencies responded to the incident initiating containment of the spill. The lead response activities were turned over to Marion Environmental Inc. (MEI), to conduct clean up as the prime response contractor and complete clean up.³

TEMA concluded the spill quantity to be approximately 30 gallons of off-road (pink) diesel fuel that was discharging from a large cabin cruiser boat in a slip.⁴ The spill is reported to have occurred when a mechanic had been working on a boat with Tennessee registration TN-2101-CF. The vessel name is STOCKS AND BLONDES. MEI reports that the mechanic allowed the diesel fuel to gather in the hull and the bilge pump activated and pumped the fuel into the lake.⁵ MEI personnel deployed additional soft boom and cleaned the engine compartment using absorbent pads and all waste was placed into drums and transported to a facility for disposal.⁶

Marion Environmental Inc. (MEI) presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$11,903.00 on May 12, 2022. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant's rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant's rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² National Response Center Incident Report # 1302665 dated April 14, 2021.

³ TEMA Master Incident Form dated April 14, 2021, page 5 of 6.

⁴ TEMA Master Incident Form dated April 14, 2021, page 5 of 6, entry dated 4/14/21 at 1456:05 as reported by

(b) (6)
⁵ (b) (6) Chronology Report, page 2 of 9.

⁶ (b) (6) Chronology Report, page 2 of 9.

and regulations, and after careful consideration has determined that \$10,104.25 of the requested \$11,903.00 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On April 14, 2021 at approximately 9:45 am local time, the National Response Center (NRC) was notified by the Tennessee Emergency Management Agency (TEMA) of a boat that discharged fuel due to the activation of the bilge pump that subsequently pumped the fuel out into the Watts Bar Lake, a navigable waterway of the United States.⁷ The location of the incident is identified as Spring City Resort and Marina, 2109 New Lake Rd, Spring City, Tennessee. The NRC received a report that indicated a large sheen was noticed on the water, assuming it to be fuel.⁸

TEMA concluded the spill quantity to be approximately 30 gallons of off road (pink) diesel that was discharging from a large cabin cruiser boat in a slip.⁹ The spill is reported to have occurred when a mechanic had been working on a boat with Tennessee Registration TN-2101-CF. The work performed resulted in diesel fuel gathering in the hull causing the bilge pump to kick on and pumped the fuel into the lake.¹⁰ Local fire departments and hazardous materials personnel responded and deployed hard boom on the north side of the Marina and soft boom around the boat.¹¹

Responsible Parties

(b) (6) is listed as the Responsible Party (RP) of the vessel TN-2101-CF, STOCKS AND BLONDES and was identified as the responsible party (RP) for the oil spill incident by the State On Scene Coordinator (SOSC), Tennessee Department of Environmental Conservation (TDEC).¹²

The NPFC issued two Responsible Party (RP) Notification letters dated May 16, 2022 to (b) (6). One was sent to the residential address and the other was sent to a known Post Office Box address.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.

⁷ National Response Center Incident Report # 1302665 dated April 14, 2021.

⁸ TEMA Master Incident Form dated April 14, 2021, page 1 of 6.

⁹ TEMA Master Incident Form dated April 14, 2021, page 5 of 6.

¹⁰ (b) (6) Chronology Report, page 2 of 9.

¹¹ (b) (6) Chronology Report, page 2 of 9.

¹² Email between NPFC and TDEC dated May 31, 2022 confirming Responsible Party identification.

¹³ NPFC RP Notification Letters dated May 16, 2022.

The RP Notification letters were sent through United States Postal Service (USPS) via certified mail. The USPS confirmed receipt for the RP Notification Letter that was sent to the residential address.¹⁴

Recovery Operations

Hamilton County Haz Mat Team arrived on scene and deployed absorbent booms across Watts Bar Lake in order to block the inlet/cove where the marina is located.¹⁵ The Rhea County Rescue Squad assisted with boom placement including around the leaking vessel; Hamilton County Emergency Management Agency (EMA) Drone Team arrived on scene and deployed drones for aerial photo footage to define the footprint of the sheen; Rhea County Fire Department arrived on scene with foam capabilities in the event it was needed.¹⁶

After MEI performed an assessment of the spill site, they deployed additional soft boom on the south side of the marina and then deployed a boat in order to force the product to the soft boom by using air blowers.¹⁷ After the spill was contained, MEI crew cleaned the engine compartment using absorbent pads. Prior to MEI leaving the site, the hard boom that had been deployed by the local fire departments was removed and staged for pickup on April 15, 2021.¹⁸

On April 15, 2021, MEI crew returned to the site for an inspection. No product was noted therefore the soft boom was removed. All waste was placed into drums and transported to Aqua Treat Inc. in Chattanooga, Tennessee for disposal.¹⁹

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 costs to the RP via MEI Invoice 173323 dated April 30, 2021.²² In its claim submission to the NPFC, MEI provided a copy of an undated communication it received from the RP. That communication identified as the “Morgan Letter” references MEI’s project number identified on the invoice sent to the RP. The RP denies all culpability for the incident and stated they were forwarding a copy of the “Morgan Letter” to the United States Coast Guard in response to the NPFC’s RP Notification letter they received on May 16, 2022.²³

The claimant initially presented its claim in the form of an invoice to (b) (6) (b) (6) on April 30, 2021. Having not received payment from the RP after ninety days, MEI

¹⁴ See, Signed certified mail receipt received June 15, 2022.

¹⁵ TEMA Master Incident Form dated April 14, 2021, page 5 of 6.

¹⁶ TEMA Master Incident Form dated April 14, 2021, page 5 of 6.

¹⁷ (b) (6) Chronology Report, page 2 of 9.

¹⁸ (b) (6) Chronology Report, page 2 of 9.

¹⁹ (b) (6) Chronology Report, page 2 of 9.

²⁰ 33 U.S.C. § 2701 *et seq.*

²¹ 33 CFR 136.103.

²² See, MEI Invoice 173323 dated April 30, 2021 as part of the MEI original claim submission.

²³ Email from claimant Re Additional information dated June 29, 2022 answering NPFC’s questions.

presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$11,903.00 on May 12, 2022.²⁴

III. CLAIMANT AND NPFC:

On May 12, 2022 the NPFC received a claim for uncompensated removal costs from Marion Environmental Inc. dated May 2, 2022. The claim included the Optional OSLTF Claim form, Field Report for April 14, 2021 and April 15, 2021, (b) (6) Boat Response Chronology Report, Invoice sent to the RP dated April 30, 2021, follow up letter sent to the RP, NRC Incident Report, TEMA Master Incident Form.

The NPFC requested additional information and the Claimant provided MEI Emergency Fee Schedule 2021, RP letter response, email with job positions for employee's by name on invoice, disposal manifests and requested clarification on invoiced costs for disposal manifest #157832.

IV. DETERMINATION PROCESS:

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

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁹ 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.³⁰

²⁴ NPFC OSLTF Claim Form dated May 2, 2022.

²⁵ 33 CFR Part 136.

²⁶ 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)).

²⁷ 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).

²⁸ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁹ 33 CFR Part 136.

³⁰ 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.³¹
- (d) That the removal costs were uncompensated and reasonable.³²

The NPFC analyzed each of these factors and determined that the majority of the costs incurred and submitted by Marion Environmental Inc. herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate MEI published rates and all approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).³³

Based on the location of this incident, the FOSC for this incident is the United States Environmental Protection Agency (USEPA).³⁴ There is no evidence in the administrative record that the FOSC was notified of this incident, and as such, it did not direct any actions. The NPFC contacted the FOSC to ascertain whether or not it considered the actions taken to be consistent with the NCP. The FOSC found that the actions taken by the claimant were consistent with the NCP after reviewing all available incident and response documentation.³⁵

After a complete review of all documentation and after contacting the FOSC, the NPFC was able to corroborate the actions undertaken by the claimant and confirm that the FOSC determined MEI's actions to be properly coordinated with the FOSC. The NPFC has determined that the invoiced costs were billed in accordance with the 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 RP.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$10,083.25 while \$1,798.75 are deemed non-compensable for the following reasons:³⁶

³¹ Email from USEPA OSC to NPFC Re Additional Information dated July 25, 2022 acknowledging the actions taken by the Marion Environmental Inc. were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

³² 33 CFR 136.203; 33 CFR 136.205.

³³ Marion Environmental Inc. claim submission dated May 2, 2022 and additional information requested by NPFC on multiple dates and an email from USEPA OSC to NPFC Re Additional Information dated July 25, 2022 acknowledging the actions taken by the MEI were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

³⁴ *See generally*, 40 CFR 300.120(a)(2).

³⁵ Email from USEPA OSC to NPFC Re Additional Information dated July 25, 2022 acknowledging the actions taken by the Marion Environmental Inc. were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

³⁶ Enclosure 3 to this determination provides a detailed analysis of these costs.

1. MEI invoice number 173323 invoiced N/H Waste Disposal Manifest #157832 at a rate of \$65.00 for each of the 7 bags disposed of on April 15, 2021. The seven bags at a rate of \$65.00 each comes to a total of \$455.00.³⁷ MEI's Rate Schedule does not support a charge of \$65.00 per bag but rather a charge of \$3.00 per bag with no provision in the rate schedule for the difference as claimed.³⁸ The NPFC made a request for additional information regarding the pricing and the claimant responded stating that the bags are the same size as a drum therefore the price for each bag is the same as the price per drum.³⁹ NPFC is allowing \$3.00 per bag in accordance with the MEI rate schedule pricing.

The claimant explained that since they do their own disposal at the Aqua Treat Inc. facility that is a subsidiary of Marion Inc., the disposal is an internal charge. The MEI rate schedule pricing does not support the invoiced amount therefore the NPFC denies the price differential in the amount of \$434.00;

2. MEI charged 1% interest on the \$10,538.25 invoice total for thirteen (13) months. Because there is no express provision for the payment of interest on a claim, the NPFC denies interest in the amount of \$1,369.97; and
3. The claimant has requested a sum certain of \$11,903.00 which is inclusive of interest added however the invoiced amount of \$10,538.25 plus the 1% interest for 13 months which comes to the total of \$1,369.97, when added together, the total amount comes to \$11,908.22 vice the amount requested of \$11,903.00 so the NPFC is crediting the (\$5.22) as an unidentified difference.

Overall Denied Costs = \$1,798.75⁴⁰

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Somerset County's request for uncompensated removal costs is approved in the amount of **\$10,104.25**.

³⁷ MEI Invoice 173323 dated April 30, 2021

³⁸ MEI Emergency Fee Schedule for 2021 provided via email dated June 29, 2022. See page 4 of 5, item # X021 Trash bags.

³⁹ See, email from claimant to NPFC dated August 12, 2021.

⁴⁰ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

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:	8/31/2022
Supervisor Action:	<i>Offer Approved</i>

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 *Id.*