

CLAIM SUMMARY / DETERMINATION¹

| | |
|--------------------------|------------------------------------|
| Claim Number: | UCGPB22012-URC001 |
| Claimant: | Vane Line Bunkering, LLC |
| Type of Claimant: | Corporate |
| Type of Claim: | Removal Cost |
| Claim Manager: | (b) (6) |
| Amount Requested: | \$46,693.59 |
| Action Taken: | Offer in the amount of \$46,396.44 |

EXECUTIVE SUMMARY:

On September 10, 2022, the United States Coast Guard received a report of an unknown amount of dark oil in the water at the Maher Terminal in Port Newark, New Jersey. The discharged oil impacted the Elizabeth Channel, a navigable waterway of the United States.²

Based on the location of the spill, the Federal On Scene Coordinator (FOOSC) for this incident was the United States Coast Guard, Sector New York. Upon arrival, the Coast Guard Pollution Responders identified 11 vessels that had been impacted with oil and estimated the spill size to be approximately 100 – 200 gallons. The exact source of the spill could not be determined, so the Coast Guard federalized the incident and accessed the Oil Spill Liability Trust Fund (OSLTF or Fund) via Federal Project Number (FPN) B22012 to hire clean-up contractors. The National Response Corporation (NRC), with the help of four subcontractors, was hired to clean up the spill and decontaminate the impacted vessels. In addition to the Coast Guard-funded cleanup efforts, a few of the impacted vessels activated their vessel response plans (VRP) and hired NRC and subcontractors to get their vessels cleaned using their own funds.³ The claimant, Vane Line Bunkering, LLC (Vane Line or Claimant) did so for their barges, the DS 507, DS 309, DS 27, and DS 57.⁴

Oil samples were taken from the water and the suspected vessels in the area. The results came back from the lab as a heavy fuel oil; however, there were no matches to any of the suspected vessels.⁵ No responsible party was identified for this incident,⁶ so Vane Line Bunkering submitted their claim directly to the National Pollution Funds Center (NPFC) for

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 See, SITREP-POL ONE dated September 13, 2022.

³ See, SITREP-POL ONE; See also, MISLE Case Report #1321402.

⁴ CG Memo from FOOSCR dated February 14, 2023.

⁵ See, MISLE Case Report #1321402 pages 35-51 of 75, See also, MSL Oil Sample Analysis Report.

⁶ CG Memo from FOOSCR dated February 14, 2023.

reimbursement of their uncompensated removal costs totaling \$47,437.32, on January 26, 2023⁷ and later revised their sum certain to \$46,693.59, during the adjudication process, on July 10, 2023.⁸

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$46,396.44 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 September 10, 2022, at 0614 hrs, the National Response Center notified United States Coast Guard Sector New York of an unknown amount of dark oil in the water at the Maher Terminal in Port Newark, New Jersey. The discharged oil impacted the Elizabeth Channel, a navigable waterway of the United States. The exact source and quantity of oil discharged are both unknown, but the spill was estimated to be between 100 - 200 gallons.⁹

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.¹⁰ No Responsible Party has been identified for this incident.¹¹

Recovery Operations

When Coast Guard Pollution Responders arrived on scene, they identified 11 vessels that had been impacted by the spill. The responders were unable to determine the source of the oil, so they federalized the incident and accessed the Oil Spill Liability Trust Fund to hire clean-up contractors. The National Response Corporation, with the help of four subcontractors, was hired to clean up the spill and decontaminate the vessels. In addition to the Coast Guard-funded cleanup, a few of the impacted vessels activated their vessel response plans and hired NRC and subcontractors to get their vessels cleaned using their own funds.¹² The claimant, Vane Line Bunkering, LLC did so for their barges, the DS 507, DS 309, DS 27, and DS 57,¹³ however, the Coast Guard did require additional cleaning on barges DS 309, DS 57, and DS 27 which was paid for using the Coast Guards funds from the OSLTF.¹⁴ The barge DS 507 was cleaned and

⁷ Original claim submission dated January 26, 2023. (The claim included the Oil Spill Liability Trust Fund Optional Claim Form; Contractor and subcontractor invoices; Gallagher Marine Systems IMT Daily Status Reports with photographs; Proof of payment to contractors.)

⁸ Email from claimant dated July 10, 2023 amending sum certain.

⁹ See, SITREP-POL ONE; See also, MISLE Case Report #1321402.

¹⁰ 33 U.S.C. § 2701(32).

¹¹ CG Memo from FOSCR dated February 14, 2023.

¹² See, SITREP-POL ONE; See also, MISLE Case Report #1321402.

¹³ CG Memo from FOSCR dated February 14, 2023.

¹⁴ See, email from MST1 (b) (6) dated April 18, 2023 clarifying what barges were cleaned using CG funds. See also, email from MST1 (b) (6) dated April 18, 2023 informing what contactors did the additional cleanup.

cleared to depart on September 10, 2022, at 2105 hrs.¹⁵ Barges DS 309, DS 27, and DS 57 were determined to be cleaned and free to depart on September 11, 2022, at 1915 hrs.¹⁶ The response and clean up ended on September 13, 2022.¹⁷

II. CLAIMANT AND NPFC:

On January 26, 2023, the claimant submitted their claim to the NPFC for \$47,437.32¹⁸ and later revised the sum certain to \$46,693.59, on July 10, 2023.¹⁹ On multiple occasions, the NPFC requested additional information from the claimant, and they promptly provided the information back to the NPFC, as requested.²⁰

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²¹ 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.²² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²³ 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.

¹⁵ SITREP-POL ONE page 3 of 4 section 2 line V.

¹⁶ SITREP-POL ONE page 4 of 4 section 2 line QQ; *See also*, email from MST1 (b) (6) dated April 18, 2023 informing what contactors did the additional cleanup.

¹⁷ SITREP-POL TWO - FINAL page 2 of 3 section 2 line D.

¹⁸ Original claim submission dated January 26, 2023. (The claim included the Oil Spill Liability Trust Fund Optional Claim Form; Contractor and subcontractor invoices; Gallagher Marine Systems IMT Daily Status Reports with photographs; Proof of payment to contractors.)

¹⁹ Email from claimant dated July 10, 2023 amending sum certain.

²⁰ Additional information included: Schedule B rate sheet for GMS; Revised NRC invoice 777207; NRC T&M Rate Sheet 2022-2023; NRC OPA90 OSRO Agreement; ML Daily Ticket 9.10; ML T&M Rate Sheet; (b) (6) Barge Time Sheet; GMS Oil Spill Response Services Agreement; GMS Invoice # 127298; GMS Invoice # 126067; ATP from Vane Line Bunkering; ACV T&M Rate Sheet 2022-2023; ACV Invoice & Daily Logs; Disposal documentation.

²¹ 33 CFR Part 136.

²² *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)).

²³ *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).

IV. 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.²⁴ An RP's liability is strict, joint, and several.²⁵ 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."²⁶ 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."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 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 (NCP).³²
- (d) That the removal costs were uncompensated and reasonable.³³

²⁴ 33 U.S.C. § 2702(a).

²⁵ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁶ *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).

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.

³⁰ 33 CFR Part 136.

³¹ 33 CFR 136.105.

³² See, CG Memo from FOSCR dated February 14, 2023 acknowledging the actions taken were consistent with the National Contingency Plan.

³³ 33 CFR 136.203; 33 CFR 136.205.

The NPFC analyzed each of these factors and determined that the majority of the costs incurred and submitted by the claimant are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate contractors' published rate schedule for personnel, equipment, and materials.

Based on the location of this incident, the FOSC is the United States Coast Guard Sector New York.³⁴ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).³⁵

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$46,396.44 while \$297.15 are deemed non-compensable for the following reasons:³⁶

1. The NPFC denies \$130.00 of the \$1,600.00 claimed for a Miller's Launch 35-45ft workboat on NRC invoice 777207. The vessel was listed as a 32ft workboat on Miller's Launch Daily Job Report #342108 dated September 10, 2022. The rate was reduced to \$147.00 for a 25-34ft workboat in accordance with the Miller's Launch rate schedule.³⁷
2. The NPFC denies \$39.00 of the corresponding \$480.00 fuel surcharge on NRC invoice 777207 for the Miller's Launch workboat above as the 30% fuel surcharge is calculated on the invoiced amount for the vessel.³⁸
3. The NPFC denies \$25.50 of the \$529.50 charged for ACV's absorbent boom on NRC invoice 777207. The reduction is due to the amount charged being above the allowed rate on ACV's rate schedule. The NPFC reduced the \$176.50 per bale charge to the rate schedule amount of \$168.00 per bale.³⁹
4. The NPFC denies \$25.50 of the \$460.50 charged for ACV's absorbent sweep on NRC invoice 777207. The reduction is due to the amount charged being above the allowed

³⁴ 40 CFR 300.120(a)(2).

³⁵ See, Original claim submission dated January 26, 2023. (The claim included the Oil Spill Liability Trust Fund Optional Claim Form; Contractor and subcontractor invoices; Gallagher Marine Systems IMT Daily Status Reports with photographs; Proof of payment to contractors.); See also, Additional information included: Schedule B rate sheet for GMS; Revised NRC invoice 777207; NRC T&M Rate Sheet 2022-2023; NRC OPA90 OSRO Agreement; ML Daily Ticket 9.10; ML T&M Rate Sheet; (b) (6) Barge Time Sheet; GMS Oil Spill Response Services Agreement; GMS Invoice # 127298; GMS Invoice # 126067; ATP from Vane Line Bunkering; ACV T&M Rate Sheet 2022-2023; ACV Invoice & Daily Logs; Disposal documentation; MISLE Case Report; Oil Sample Analysis; SITREP-POL ONE; SITREP-POL TWO-FINAL; Email from MST1 (b) (6) dated April 18, 2023 clarifying what barges were cleaned using CG funds; Email from MST1 (b) (6) dated April 18, 2023 informing what contractors did the additional cleanup; CG Memo from FOSCR dated February 14, 2023 acknowledging the actions taken were consistent with the National Contingency Plan, Email from claimant dated July 10, 2023 amending sum certain and providing revised invoice.

³⁶ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

³⁷ See, Revised NRC Invoice page 3 of 8, Miller's Launch T&M Rate Sheet page 12 of 22, ML Daily Ticket 9.10 page 1 of 1.

³⁸ Id.

³⁹ See, Revised NRC Invoice page 3 of 8, ACV T&M Rate Sheet page 2 of 10, ACV Invoice & Daily logs page 8 of 15.

rate on ACV's rate schedule. The NPFC reduced the \$153.50 per bale charge to the rate schedule amount of \$145.00 per bale.⁴⁰

5. The NPFC denies \$2.00 of the \$21.00 charged for ACV's 12" PVC gloves on NRC invoice 777207. The reduction is due to the amount charged being above the allowed rate on ACV's rate schedule. The NPFC reduced the \$21.00 per pair of gloves to the rate schedule amount of \$19.00 per pair.⁴¹
6. The NPFC denies \$4.00 of \$38.00 charged for ACV's 8oz sample jars on NRC invoice 777207. The reduction is due to the amount charged being above the allowed rate on ACV's rate schedule. The NPFC reduced the \$19.00 per jar charge to the rate schedule amount of \$17.00 per jar.⁴²
7. The NPFC denies \$45.20 of the \$6,413.75 for the 20% subcontractor markup NRC charged on invoice 777207 for the Miller's Launch and ACV subcontractor costs. This reduction is a result of the overall reductions in total subcontractor charges allowed by the NPFC.⁴³
8. The NPFC denies \$0.19 of the \$3,773.59 claimed for the ESIC fee NRC charged on invoice 777207. This charge was based on 9.5% of the total invoice amount and NRC charged \$3,773.59 when they should have charged \$3,773.40. This reduction is for the amount charged above the amount that should have been charged.⁴⁴
9. The NPFC denies \$25.76 of the adjusted amount \$3,773.40 for the ESIC fee NRC charged on invoice 777207. This charge was based on 9.5% of the total invoice amount and was reduced as a result of the overall reductions in total charges allowed by the NPFC.⁴⁵

Overall Denied Costs = \$297.15⁴⁶

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Vane Line Bunkering, LLC's request for uncompensated removal costs is approved in the amount of **\$46,396.44**.

⁴⁰ *Id.*

⁴¹ *See*, Revised NRC Invoice page 3 of 8, ACV T&M Rate Sheet page 3 of 10, ACV Invoice & Daily Logs page 8 of 15.

⁴² *See*, Revised NRC Invoice page 3 of 8, ACV T&M Rate Sheet page 8 of 10, ACV Invoice & Daily Logs page 8 of 15.

⁴³ *See*, NRC Rate sheet page 16 of 17 indicating subcontractor costs are cost plus 20%.

⁴⁴ *See*, Revised NRC Invoice page 2 of 8, NRC Rate sheet page 16 of 17 explaining the ESIC fee.

⁴⁵ *Id.*

⁴⁶ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

This determination is a settlement offer,⁴⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁹ 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: 7/12/23

Supervisor Action: *Offer Approved*

⁴⁷ 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).

⁴⁸ 33 CFR § 136.115(b).

⁴⁹ 33 CFR § 136.115(b).