

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPS23008-URC001
Claimant:	Aqua Dive Services, LLC
Type of Claimant:	Corporate
Type of Claim:	Removal Cost
Claim Manager:	(b) (6)
Amount Requested:	\$8,459.00
Action Taken:	Offer in the amount of \$8,459.00

EXECUTIVE SUMMARY:

On March 20, 2023, the United States Coast Guard (USCG) received a report that the T/V VIGOROUS was sinking and discharging an unknown amount of motor oil into the water at the Ballard Oil Company dock in Seattle, Washington.² The discharged oil impacted Salmon Bay, a navigable waterway of the United States.³

Based on the location of the spill, the Federal On Scene Coordinator (FOSC) for this incident was the United States Coast Guard, Sector Puget Sound.⁴ The vessel, which is known to be derelict, was abandoned over 20 years ago.⁵ The last reported owner of the vessel, Mr. (b) (6), was determined to be the responsible party (RP) for this incident.⁶

The claimant, Aqua Dive Services, LLC (“Aqua Dive” or “Claimant”), was doing work nearby the incident, and as a good Samaritan quickly responded and deployed boom around the vessel to contain any oil that might discharge prior to the arrival of the Coast Guard’s pollution responders. Once the responders were on scene, they were able to confirm the vessel had no fuel onboard because it had been removed during previous incidents with this vessel back in 2015 and 2021. Despite no fuel on board, within two hours of arrival, the vessel had completely sank and began discharging used motor oil, from the submerged engine, into the waterway. With no way to get in touch with the vessel’s owner, the Coast Guard decided to federalize the incident and accessed the Oil Spill Liability Trust Fund (“OSLTF” or “Fund”) via Federal Project Number (FPN) S23008 to hire the contractor U.S. Ecology to clean up the oil spill.⁷

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 NRC Report # 1362627, dated March 20, 2023.

³ SITREP-POL ONE, dated March 22, 2023.

⁴ See, 40 CFR 300.120(a)(2).

⁵ SITREP-POL ONE, dated March 22, 2023.

⁶ Dock Rental Agreement indicating (b) (6) as the owner of the VIGOROUS; Clear Report indicating (b) (6) as the registered user of the PO Box listed on the Dock Agreement.

⁷ See, SITREP-POL ONE, dated March 22, 2023.

Although the Coast Guard FOSC never directed the claimant to deploy the containment boom around the vessel, it was decided to leave the boom in place until after the cleanup was completed.⁸

The claimant, who is requesting compensation for the usage of their containment boom, presented their claim for uncompensated removal costs totaling \$8,459.00 to the responsible party on July 28, 2023.⁹ However, despite their effort to present the claim, on August 21, 2023 the claimant received a return to sender notice from the post office indicating the claim was not delivered.¹⁰ The National Pollution Funds Center (NPFC) began the adjudication of this claim, on August 21, 2023.¹¹

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined the requested amount of \$8,459.00 is compensable and offers this amount as full and final compensation of the claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On March 20, 2023, the United States Coast Guard received a report the T/V VIGOROUS was sinking and discharging an unknown amount of motor oil into the water at the Ballard Oil Company dock in Seattle, Washington.¹² The discharged oil impacted Salmon Bay, a navigable waterway of the United States. The vessel, which was known to be derelict, was abandoned over 20 years ago and had no fuel onboard because it had been removed during previous incidents with this vessel back in 2015 and 2021. Despite no fuel on board, when the vessel sank it began discharging used motor oil, from the engine once it became submerged.¹³

Responsible Party

(b) (6) is the owner of the T/V VIGOROUS that discharged the oil¹⁴ and, thus, the RP under the Oil Pollution Act.¹⁵

Recovery Operations

The claimant, Aqua Dive Services, LLC, was doing work nearby the incident, and as a good Samaritan, quickly responded and deployed boom around the vessel to contain any oil that might discharge prior to the arrival of the Coast Guard's pollution responders. Once the responders

⁸ Email from FOSC, dated July 19, 2023.

⁹ Certified Mail Slip – RP Presentment

¹⁰ Post Office Return to Sender Notice

¹¹ Original Claim Submission dated April, 19, 2023, the claim included the Optional OSLTF Claim Form, Photographs of the incident, and invoice # 2023065.

¹² NRC Report # 1362627, dated March 20, 2023.

¹³ See, SITREP-POL ONE, dated March 22, 2023.

¹⁴ Dock Rental Agreement indicating (b) (6) as the owner of the VIGOROUS; Clear Report indicating (b) (6) as the registered user of the PO Box listed on the Dock Agreement.

¹⁵ See, 33 U.S.C. § 2701(32).

were on scene, and with no way to get in touch with the RP, they decided to federalize the incident and access the Oil Spill Liability Trust Fund via Federal Project Number S23008 to hire the contractor U.S. Ecology to clean up the motor oil that was discharging out of the submerged engine.¹⁶ Although the Coast Guard FOSC never directed the claimant to deploy their containment boom around the vessel, it was decided to leave the boom in place until after the cleanup¹⁷ was completed on March 30, 2023.¹⁸

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁹ require all claims for removal costs or damages must be presented first to the responsible party before seeking compensation from the NPFC.²⁰

The claimant, who is requesting compensation for the usage of their containment boom, presented their claim for uncompensated removal costs totaling \$8,459.00 to the responsible party on July 28, 2023, via certified mail.²¹ However, despite their effort to present the claim, on August 21, 2023 the claimant received a return to sender notice from the post office indicating the claim was not delivered.²²

III. CLAIMANT AND NPFC:

Initially on April 19, 2023, the claimant submitted their claim to the NPFC because they were unaware of the responsible party.²³ After being provided the correct information for the responsible party,²⁴ the claimant was able to properly present their claim to the RP on July 28, 2023,²⁵ and the NPFC waited to begin adjudication of the claim until after receiving notification, by the claimant, the post office issued a return to sender notice for their claim, which occurred on August 21, 2023.²⁶ On August 24, 2023, the NPFC requested some additional information from the claimant, and they promptly provided the information back to the NPFC, as requested.²⁷

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund.²⁸ 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.

¹⁶ See, SITREP-POL ONE, dated March 22, 2023.

¹⁷ Email from FOSC, dated July 19, 2023.

¹⁸ SITREP-POL TWO AND FINAL.

¹⁹ 33 U.S.C. § 2701 *et seq.*

²⁰ 33 CFR 136.103.

²¹ Certified Mail Slip – RP Presentment.

²² Post Office Return to Sender Notice.

²³ Original Claim Submission dated April, 19, 2023, the claim included the Optional OSLTF Claim Form, Photographs of the incident, and invoice # 2023065.

²⁴ Email to claimant, dated July 24, 2023 providing contact information of the RP.

²⁵ Certified Mail Slip – RP Presentment

²⁶ Post Office Return to Sender Notice

²⁷ Email from claimant dated September 8, 2023, Providing Additional Information which included the RP's Return to Sender Notice, HazMat Containment Boom Pricing, and Daily logs.

²⁸ 33 CFR Part 136.

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.²⁹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁰ 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.³¹ An RP's liability is strict, joint, and several.³² 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."³³ 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."³⁴ 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."³⁵

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

²⁹ 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)).

³⁰ 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).

³¹ 33 U.S.C. § 2702(a).

³² See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³³ *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).

³⁴ 33 U.S.C. § 2701(31).

³⁵ 33 U.S.C. § 2701(30).

³⁶ See generally, 33 U.S.C. § 2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁷ 33 CFR Part 136.

documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.³⁸

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.³⁹
- (d) That the removal costs were uncompensated and reasonable.⁴⁰

The NPFC analyzed each of these factors and determined that 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 contractor's published rate schedule for personnel, equipment, and materials.

Based on the location of this incident, the FOSC is the United States Coast Guard Sector Puget Sound.⁴¹ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan.⁴²

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$8,459.00.⁴³

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Aqua Dive Services, LLC's request for uncompensated removal costs is approved in the amount of \$8,459.00.

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

³⁸ 33 CFR 136.105.

³⁹ Email from FOSC, dated July 19, 2023, acknowledging the actions taken were consistent with the National Contingency Plan.

⁴⁰ 33 CFR 136.203; 33 CFR 136.205.

⁴¹ 40 CFR 300.120(a)(2).

⁴² Original Claim Submission dated April, 19, 2023, the claim included the Optional OSLTF Claim Form, Photographs of the incident, and invoice # 2023065; Email from claimant dated September 8, 2023, Providing Additional Information which included the RP's Return to Sender Notice, HazMat Containment Boom Pricing, and Daily logs; Email from FOSC, dated July 19, 2023, acknowledging the actions taken were consistent with the National Contingency Plan.

⁴³ Enclosure 3 to this determination provides a detailed analysis of the amounts approved by the NPFC.

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

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.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *10/4/2023*

Supervisor Action: *Offer Approved*

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).