

CLAIM SUMMARY / RECONSIDERATION DETERMINATION¹

Claim Number:	UCGP923032-URC001
Claimant:	State of Rhode Island, Department of Environmental Management
Type of Claimant:	State
Type of Claim:	Removal Cost
Claim Manager:	(b) (6)
Amount Requested:	\$142,532.70
Action Taken:	Offer in the amount of \$129,524.07

EXECUTIVE SUMMARY:

On November 13, 2021, Reichert Oil (“Reichert”) delivered home heating oil to a residence on Hartford Pike in Foster, Rhode Island.² Four days later on November 17, 2021, the homeowner called Reichert to report having no heat. A Reichert technician investigated and discovered that the underground home heating oil tank was almost empty and presumably had a leak.³ A neighbor, Mr. (b) (6), discovered oil in his pond.⁴ The oil reached the neighboring property’s pond via groundwater flow and then via an aboveground flow of the oil.⁵ The pond is fed by Hannah Brook and drains to Windsor Brook,⁶ a navigable water of the United States.⁷

The Rhode Island Department of Environmental Management (“RIDEM” or “Claimant”) received a report of an oil release⁸ and responded to the incident in its capacity as the State On Scene Coordinator (SOSC). The SOSC informed the homeowner, Mr. (b) (6), of his responsibility for the oil spill.⁹ EPA Region 1 responded as the Federal On-Scene Coordinator (FOSC).¹⁰ The homeowner and his insurance were unable to pay for the response.¹¹ RIDEM hired Newton B Washburn LLC (“OSRO” or “NBW”) to remediate the release.¹² The response

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, RIDEM Emergency Response Report dated November 18, 2021, Summary section, pages 2-4 of 4.

³ *Id.*

⁴ See, RIDEM Emergency Response Report dated November 18, 2021, Summary section, page 2 of 4.

⁵ See, RIDEM Emergency Response Report dated November 18, 2021, Summary section, page 3 of 4.

⁶ Email from EPA Region 1 to NPFC dated October 31, 2023.

⁷ See, December 16, 2021 email from USEPA Region 1 to RIDEM subj: Memo to File email for Oil Release at (b) (6).

⁸ See, RIDEM call log # 21-21220 dated November 18, 2021.

⁹ See, RIDEM Emergency Response Report dated November 18, 2021, Summary section, page 3 of 4.

¹⁰ See, December 16, 2021 email from USEPA Region 1 to RIDEM subj: Memo to File email for Oil Release at (b) (6).

¹¹ See, RIDEM Emergency Response Report dated November 18, 2021, 11/22/21 entry, page 3 of 4.

¹² See, RIDEM state contract with Newton B Washburn LLC dated 9/7/21 for the response period of 10/1/21-9/30/24 providing hazardous and petroleum related services.

lasted for months, ending August 19, 2022 when NBW demobilized the remaining equipment and materials.¹³

I. CLAIM HISTORY:

On August 23, 2023, RIDEM presented its original claim to the NPFC for uncompensated removal costs seeking \$142,532.70.¹⁴ The NPFC thoroughly reviewed the original claim, all information provided by RIDEM and obtained independently, the relevant statutes and regulations, and ultimately offered \$122,737.23 and denied \$19,795.47 of the claim.¹⁵ The NPFC's initial determination is hereby incorporated by reference.

II. REQUEST FOR RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim.¹⁶ The claimant has the burden of providing all evidence, information, and documentation deemed necessary by NPFC's Director to support the claim.¹⁷ When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by the Claimant in support of its request for reconsideration. The written decision by the NPFC is final.¹⁸

On February 15, 2024, the NPFC received RIDEM's timely request for reconsideration and evidence supporting payment of some of the denied costs in their original claim. Specifically, RIDEM states that it provided an outdated NBW pricing sheet with the initial claim submission. To support its reconsideration request, RIDEM provided the updated NBW pricing sheet that was in place at the time of the incident response.¹⁹

III. ANALYSIS ON RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim in accordance with our governing claims regulations at 33 CFR 136.115(d).

The NPFC has thoroughly reviewed and considered the Claimants' request for reconsideration.

After reconsideration of the claim and the related costs, the NPFC has determined that the amount of compensable removal costs is \$129,524.07 while \$13,113.63 is deemed non-

¹³ NBW work order page 20 dated August 19, 2022, citing removing plates, backfilling ruts, spreading seed and closing the site.

¹⁴ RIDEM original claim submission dated August 3, 2023 and received at NPFC on August 23, 2023.

¹⁵ NPFC Offer package dated January 19, 2024.

¹⁶ 33 CFR 136.115(d).

¹⁷ 33 CFR 136.105(a).

¹⁸ *Id.*

¹⁹ See, Email from RIDEM to NPFC dated February 15, 2024 requesting reconsideration, with NBW updated rate sheet entitled "OET21000573 MPA 118 sheet 1, pages 1-74.

compensable as detailed in the spreadsheet enclosed with this determination.²⁰ Examples of reasons for denial of costs or reduction of amounts allowed are summarized below.

1. Numerous line items on each NBW invoice provided were charged at rates above those provided in the NBW pricing sheet submitted by the claimant. The NPFC utilized the rates in the updated NBW pricing sheet, resulting in denials of the differences in charged amounts over the amounts calculated using the updated rates. The total amount denied for this category is \$3,355.25²¹ and broken down below by invoice number:
 - 6464 –\$2,934.65
 - 6492 –\$0.60
 - 6647 –\$335.00
 - 6800 - \$85.00
2. Several line items were not itemized on the daily work orders that listed personnel, equipment and supplies utilized each day. These line items were denied. The total amount denied for this category is \$1,428.53²² and broken down below by invoice number:
 - 6464 –\$256.02
 - 6492 –\$490.00
 - 6723 –\$682.51
3. Some line items such as work hours or number of supplies used, were invoiced at a higher number or amount, than what were listed on the daily work orders. The NPFC reduced the allowed amount to the amount documented on the daily work orders. The total amount denied for this category is \$202.50²³ and broken down below by invoice number:
 - 6464 – Daily count adjustment total \$37.50
 - 6647 – Items not on daily total \$165.00
4. On invoice 6647, the NPFC denied \$45.00 for Analytical Fecal Coliform because the claimant provided no basis for the rate charged. It was not on the NBW pricing sheet and there was no receipt.
5. Certain third-party purchases (e.g., backfill) were denied because the claimant was unable to provide receipts, invoices or other documentation to support the amounts invoiced for these items. Further, some invoiced costs extended beyond the end of the

²⁰ See, Enclosure (3) NPFC Summary of Costs spreadsheet.

²¹ *Id.*

²² See, Enclosure (3) NPFC Summary of Costs spreadsheet.

²³ *Id.*

response and site closure, which were also denied. The total amount of third-party costs denied for this category is \$8,082.35²⁴ and broken down below by invoice number:

- 6647 – No invoice or receipts total \$1,316.60
- 6800 – No invoice or receipts, as well as costs beyond the end of the response total \$6,765.75

Overall Denied Costs: \$13,113.63²⁵

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, RIDEM's request for uncompensated removal costs is approved in the amount of **\$129,524.07**.

This determination on reconsideration is a settlement offer,²⁶ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁷ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.²⁸ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: **Russell C. Proctor**



Date of Supervisor's review: March 19, 2024

Supervisor Action: ***Offer Approved***

²⁴ See, Enclosure (3) NPFC Summary of Costs spreadsheet.

²⁵ For a more detailed description of the costs denied, see Enclosure (3) NPFC Summary of Costs spreadsheet.

²⁶ 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).

²⁷ 33 CFR § 136.115(b).

²⁸ *Id.*