

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924048-URC001
Claimant:	MILLER ENVIRONMENTAL GROUP INC.
Type of Claimant:	CORPORATE
Type of Claim:	REMOVAL COSTS
Claim Manager:	(b) (6)
Amount Requested:	\$36,788.66
Action Taken:	Offer in the amount of \$32,222.34

EXECUTIVE SUMMARY:

On May 13, 2022, the United States Coast Guard (“USCG”) Marine Safety Detachment (MSD) Coram responded to a discharge of fuel oil into the North Sea Harbor, a tributary to the Little Peconic Bay, a navigable waterway of the United States.² The discharge came from the Motor Vessel (MV) HUGHLEE after it sank while moored up at a residential dock in Southampton, New York.³

USCG Sector Long Island Sound is the Federal On Scene Coordinator (“FOSC”) for this incident and MSD Coram responded on their behalf as the Federal On Scene Coordinator’s Representative (“FOSCR”).⁴ Upon arrival, Coast Guard responders met with New York Department of Environmental Conservation (“NYDEC” or “SOSC”), the Southampton Town Marine Patrol, and the Southampton Town Fire Marshal, to obtain current operations and plans.⁵

At the time, the Responsible Party (“RP”), (b) (6),⁶ identified as the owner and operator of the vessel, had expressed a desire to mitigate the incident and contacted Seatow to try and refloat the vessel. However, once Seatow arrived on scene, they refused to assist due to the age of the vessel and potential structural issues.⁷ In a second attempt to hire a response contractor and using sources recommended by the NYDEC, Mr. (b) (6) contacted the Oil Spill

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 with 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, United States Coast Guard (USCG) Investigator Statement dated May 15, 2022. See also, USCG Letter of Warning issued to (b) (6) dated May 7, 2022.

³ See, USCG Investigator Statement dated May 15, 2022. See also, National Response Center (NRC) Report # 1335895 dated May 13, 2022.

⁴ United States Coast Guard (USCG) Notice of Federal Interest issued to (b) (6) dated May 13, 2022.

⁵ See, USCG Investigator Statement dated May 15, 2022.

⁶ See, USCG Notice of Federal Interest issued to (b) (6) dated May 13, 2022. See also, USCG Letter of Warning issued to (b) (6) dated May 7, 2022.

⁷ USCG Investigator Statement dated May 15, 2022.

Removal Organization (“OSRO”) Miller Environmental Group Inc. (“Claimant” or “Miller”) to pump all fuel off the vessel and further contain and cleanup oil that spilled into the waterway.⁸

When Miller arrived on scene, they immediately began pumping out the engine compartment and fuel tanks. Once the fuel was removed from those spaces, they placed additional absorbent materials within the engine compartment and replaced existing absorbent boom around the vessel. Once there was no visible sheen coming from the vessel, Miller put the site into an ongoing maintenance phase and would follow up to assess and change out absorbent materials, as needed, until the cleanup was completed.⁹ To date, the RP, Mr. (b) (6), has not paid Miller for the services they provided.

On September 18, 2024, Miller presented their removal costs claim to the National Pollution Funds Center (NPFC) for \$36,788.66.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$32,222.34 of the requested \$36,788.66 is compensable and offers this amount as full and final compensation of this claim.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹¹ 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.¹² The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹³ 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.

II. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

⁸ See, USCG Investigator Statement dated May 15, 2022.

⁹ *Id.*

¹⁰ Original claim submission received September 18, 2024.

¹¹ 33 CFR Part 136.

¹² 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)).

¹³ 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).

On May 13, 2022, MSD Coram responded to a discharge of fuel oil into the North Sea Harbor, a tributary to the Little Peconic Bay, a navigable waterway of the United States.¹⁴ The discharge came from the M/V HUGHLEE after it sank while moored up at a residential dock in Southampton, New York.¹⁵

USCG Sector Long Island Sound was the FOOSC for this incident and MSD Coram responded on their behalf as the FOOCR.¹⁶

Responsible Party

The spill resulted from a vessel as defined by the Oil Pollution Act of 1990 (OPA).¹⁷ OPA defines the Responsible Party (RP) for a discharge from a vessel as “any person owning, operating, or demise chartering the vessel.”¹⁸ From all accounts, it appears Mr. (b) (6) was the owner and operator of the vessel at the time of incident. However, when the NPFC sent Mr. (b) (6) a courtesy letter informing him that he may be the RP, he responded by sending a copy of 2016 “Certificate of Documentation (COD)” for the vessel that listed his deceased spouse, (b) (6), as the owner. The COD expired on July 31, 2017. According to multiple reports, Mrs. (b) (6) died in March 2021, over a year before this incident.¹⁹

On the day before the incident occurred, Mr. (b) (6) improperly docked the vessel at the site where the incident occurred on May 12, 2022.²⁰ Further, Mr. (b) (6) held himself out as the owner of the vessel when he hired Miller Environmental to clean up the spill,²¹ and paid the bill issued to him by the Fire Marshal for the costs they incurred during the incident response.²² His ownership was further evidenced through the investigations of the U.S Coast Guard FOOSC²³ and

¹⁴ See, USCG Investigator Statement dated May 15, 2022. See also, USCG Letter of Warning issued to (b) (6) (b) (6) dated May 7, 2022.

¹⁵ See, USCG Investigator Statement dated May 15, 2022. See also, NRC Report # 1335895 dated May 13, 2022.

¹⁶ USCG Notice of Federal Interest issued to (b) (6) dated May 13, 2022.

¹⁷ A “vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.” 33 U.S.C. § 2701(37).

¹⁸ 33 U.S.C. § 2701(32)(A)

¹⁹ See, CLEAR Report for (b) (6) indicating (b) (6) as his spouse. See also, CLEAR Report for (b) (6). See also, (b) (6) obituary in the Southampton Press dated October 3, 2021, indicating she passed away in March of 2021.

²⁰ See, Supporting Deposition Statement made by (b) (6), who is a neighbor to Mr. (b) (6). Her statement indicates that Mr. (b) (6) docked his boat at (b) (6), where she resides, without permission from the tenants. See also, Recreational Boating Accident Report which states the Operator (Mr. (b) (6)) docked his boat at the spill site on May 12, 2022.

²¹ See, USCG Investigator Statement dated May 15, 2022. See also, email from the FOOCR dated November 15, 2024, indicating she saw the Responsible Party call Miller Environmental on the phone and give them his credit card information.

²² See, Fire Marshal Letter/Invoice dated June 29, 2022, demanding payment of costs incurred during the incident; and a Payment Receipt showing Mr. (b) (6) paid the Fire Marshal’s invoice.

²³ See, USCG Notice of Federal Interest issued to (b) (6) dated May 13, 2022. See also, USCG Letter of Warning issued to (b) (6) dated May 7, 2022.

the Southampton Town Police Department²⁴ who both identified Mr. (b) (6) as the owner of the vessel.²⁵

Recovery Operations

Upon arrival, Coast Guard responders met with NYDEC, the Southampton Town Marine Patrol, and the Southampton Town Fire Marshal, to obtain current operations and plans.²⁶

At the time of the incident, the owner/operator of the vessel had expressed a desire to mitigate the incident and contacted Seatow to try and refloat the vessel. However, once Seatow arrived on scene they refused to assist due to the age of the vessel and potential structural issues. In a second attempt to hire a response contractor and using sources recommended by the NYDEC, Mr. (b) (6) contacted Miller to pump all fuel off the vessel and further contain and cleanup oil that spilled into the waterway.²⁷

When Miller arrived on scene, they immediately began pumping out the engine compartment and fuel tanks. Once the fuel was removed from those spaces, they placed additional absorbent materials within the engine compartment and replaced existing absorbent boom around the vessel. Once there was no visible sheen coming from the vessel, Miller put the site into an ongoing maintenance phase and would follow up to assess and change out absorbent materials, as needed, until the cleanup was completed.²⁸

III. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁹ require all claims for removal costs or damages be presented first to the responsible party before seeking compensation from the NPFC.³⁰

²⁴ See, email statement from Officer [REDACTED] dated February 28, 2025, affirming (b) (6) as the owner of the vessel. His statement further states “Mr. (b) (6) responded to the location and claimed ownership of the vessel and was issued multiple summons by myself for the discharge of fuel into the waterways as well as causing a navigational hazard.” See also, evidence provided in Officer [REDACTED]’s email statement which indicates and/or suggests Mr. (b) (6) as the owner of the vessel. The evidence includes: a Recreational Boating Accident Report; Accusatory Instruments, which also include a Supporting Deposition Statement made by (b) (6), who is a neighbor to Mr. (b) (6). Her statement indicates that Mr. (b) (6) docked his boat at (b) (6), where she resides, without permission from the tenants; a Court Appearance Ticket; Fire Marshal Letter/Invoice dated June 29, 2022, demanding payment of costs incurred during the incident; and a Payment Receipt showing Mr. (b) (6) paid the Fire Marshal’s invoice.

²⁵ Moreover, and notwithstanding, Mr. (b) (6) is certainly putative owner of the vessel. Additionally, Mr. (b) (6) exercised dominion and control of the vessel when he docked it on the day before the incident and during the response. As such, he meets the definition of the “operator” of the vessel at the time of the incident as that term is defined by OPA and its jurisprudence.

²⁶ See, USCG Investigator Statement dated May 15, 2022.

²⁷ *Id.*

²⁸ See, USCG Investigator Statement dated May 15, 2022.

²⁹ 33 U.S.C. § 2701 *et seq.*

³⁰ 33 CFR 136.103.

On September 26, 2024, Miller satisfied its presentment requirements under OPA.³¹ The invoices were inclusive of labor, equipment, materials, and supplies totaling \$36,788.66.³² The RP has not paid the costs subject of the claim.

IV. CLAIMANT AND NPFC:

On September 18, 2024, Miller presented its claim to the NPFC for \$36,788.66.³³ Their claim was for the labor, equipment, material, and supply costs they incurred while responding and cleaning up the spill. On October 17, 2024, and again on November 7, 2024, the NPFC requested additional information from Miller to support their claimed costs and they promptly provided all requested information.³⁴

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.³⁵ An RP's liability is strict, joint, and several.³⁶ 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."³⁷ 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."³⁸ 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."³⁹

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁰ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such

³¹ Miller submitted their invoice for all costs to the RP on September 26, 2024. These costs are subject of the claim. See, Letter to (b) (6) with attachments dated September 26, 2024.

³² Original claim submission received September 18, 2024.

³³ *Id.*

³⁴ Additional information included: Letter Responding to NPFC Claim Submission with attachments dated October 29, 2024; Letter Responding to NPFC Claim Submission – 11.2024 – Final – with attachments dated November 14, 2024.

³⁵ 33 U.S.C. § 2702(a).

³⁶ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁷ *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).

³⁸ 33 U.S.C. § 2701(31).

³⁹ 33 U.S.C. § 2701(30).

⁴⁰ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

claims.⁴¹ 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.⁴²

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;⁴³
- (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;⁴⁴
- (d) That the removal costs were uncompensated and reasonable.⁴⁵

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by Miller are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate contractor rate schedule pricing/terms for personnel labor, equipment and materials.⁴⁶

The Federal On Scene Coordinator (FOSC) for the incident was the USCG Sector Long Island Sound.⁴⁷ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁴⁸

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$32,222.34 while \$4,566.32 in costs are deemed denied for the following reasons:⁴⁹

1. The NPFC denies \$1,396.50 of the \$2,565.00 claimed for the line item titled “10 – 14 ft. Workboats – Fleet #9977,” on May 17, 2022. According to the daily log for May 17, 2022, under the section titled “Equipment”, it states the vessel as “ABS Miller 34 ft by 12 ft Truckable Catamaran Vessel,” however, according to the “Notes” section of the daily log the vessel used on scene was a “19-foot workboat No. 4009a.” The rate for this type of workboat is \$123.00 per hour. The NPFC will pay the rate for the “19-foot workboat

⁴¹ 33 CFR Part 136.

⁴² 33 CFR 136.105.

⁴³ See, email from the FOSCR to the NPFC dated November 21, 2024, indicating the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident.

⁴⁴ See, email from the FOSCR to the NPFC dated November 21, 2024, indicating the actions taken were directed by her and were determined to be consistent with the National Contingency Plan.

⁴⁵ 33 CFR 136.203; 33 CFR 136.205.

⁴⁶ See, Letter Responding to NPFC Claim Submission with attachments dated October 29, 2024, which includes the 2022 Time & Material Rate Schedule.

⁴⁷ USCG Notice of Federal Interest issued to (b) (6) dated May 13, 2022.

⁴⁸ See, Original claim submission received September 18, 2024. See also, additional information which included: Letter Responding to NPFC Claim Submission with attachments dated October 29, 2024; Letter Responding to NPFC Claim Submission – 11.2024 – Final – with attachments dated November 14, 2024. See also, email from the FOSCR to the NPFC dated November 21, 2024, indicating the actions taken were determined to be consistent with the National Contingency Plan.

⁴⁹ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

No. 4009a,” which was indicated on the daily log by the technician to correct the mistake. The difference is denied.⁵⁰

2. The NPFC denies all the \$2,807.20 claimed for the line item titled “Insurance, Security & Training,” on May 31, 2022. The NPFC denies this expense because it is not considered an OPA compensable removal cost.⁵¹
3. The NPFC denies \$.05 of the sales tax claimed. The New York sales tax in this location is 8.625%, however, the company's tax software rounds it to 8.63%. Also, because of other potential rounding issues with the software the total amount of tax charged was off by 5 cents. The company is charging \$2,790.34 in sales tax when they should be charging \$2,790.29. The difference is denied.⁵²
4. The NPFC denies \$362.57 of the \$2,790.29 that the company should have claimed for sales tax. (See number 3 above for an explanation regarding why they should have charged \$2,790.29 for sales tax). This reduction is because the total taxable amount approved for payment was reduced from \$32,351.18 to \$28,147.48 upon adjudication of the costs. When the 8.625% tax rate is applied to the reduced taxable amount of \$28,147.48, the total amount of taxes being approved for payment was \$2,427.72. The \$362.57 difference is denied.⁵³

Overall Denied Costs = \$4,566.32⁵⁴

VI. CONCLUSION:

After careful analysis of all the supporting documentation provided by Miller, and the entire administrative record, the NPFC determines and finds as a matter of fact that there was a discharge of approximately 25 gallons of diesel fuel, which is an OPA oil, into the North Sea Harbor, a tributary to the Little Peconic Bay, a navigable waterway of the United States.⁵⁵ The discharge came from the M/V HUGHLEE,⁵⁶ and the Responsible Party hired Miller to contain and clean up the spill.⁵⁷ All removal costs approved for payment to Miller were determined to be reasonable and uncompensated and were determined by the FOOSC to be consistent with the National Contingency Plan.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Miller’s request for uncompensated removal costs is approved in the amount of \$32,222.34.

⁵⁰ Enclosure 3 Line 35.

⁵¹ Enclosure 3 Line 54.

⁵² Enclosure 3 Line 58.

⁵³ Enclosure 3 Line 57.

⁵⁴ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

⁵⁵ See, USCG Investigator Statement dated May 15, 2022. See also, USCG Letter of Warning issued to (b) (6) (b) (6) dated May 7, 2022.

⁵⁶ See, USCG Investigator Statement dated May 15, 2022.

⁵⁷ See, USCG Investigator Statement dated May 15, 2022.

This determination is a settlement offer,⁵⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶⁰ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review: <i>03/07/2025</i></p> <p>Supervisor Action: <i>Offer Approved</i></p>

⁵⁸ 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).

⁵⁹ 33 CFR 136.115(b).

⁶⁰ 33 CFR 136.115(b).