

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP925007-URC001
Claimant:	RI DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
Type of Claimant:	STATE
Type of Claim:	REMOVAL COSTS
Claim Manager:	(b) (6)
Amount Requested:	\$758.50
Action Taken:	Offer in the amount of \$758.50

EXECUTIVE SUMMARY:

On January 18, 2022, the Rhode Island Department of Environmental Management (“RIDEM” or “Claimant”) received a call from the local fire department about an abandoned 55-gallon drum of oil on the beach near Round Hill Road, in Little Compton, Rhode Island.² The drum had washed up on the shore of Rhode Island Sound, a navigable waterway of the United States.³ The container, which appeared to be new, still had its original seal around the bung, however, it was in very poor condition from smashing into the rocks.⁴ Given the poor condition, RIDEM decided to hire the cleanup contractor Newton B. Washburn, LLC to remove it from the beach. Newton B. Washburn responded with their vac truck and removed the oil from the drum.⁵ No spill of oil ever occurred during the incident.⁶ After the container was opened, a visual assessment determined the material inside to be motor oil.⁷

The United States Coast Guard (“USCG”) Sector Southeastern New England is the Federal On Scene Coordinator (“FOSC”) for the incident,⁸ and while they did not respond to this incident directly, the Federal On Scene Coordinator Representative (“FOSCR”) did provide indirect coordination of the removal actions taken.⁹

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, Rhode Island Department of Environmental Management (RIDEM) Emergency Response Report (ERP) for case number 2022-44 dated January 18, 2022.

³ See, RIDEM ERP for case number 2022-44 dated January 18, 2022; See also, map image of incident location.

⁴ RIDEM ERP for case number 2022-44 dated January 18, 2022.

⁵ See, RIDEM ERP for case number 2022-44 dated January 18, 2022.

⁶ See, National Response Center (NRC) Report # 1326792 dated January 18, 2022, indicating a potential release.

⁷ See, email from RIDEM dated January 23, 2025, indicated a visual assessment of the material determined it was motor oil.

⁸ See, Federal On Scene Coordinator Representative’s (FOSCR) letter providing coordination for the removal actions taken.

⁹ See, FOSCR letter providing coordination for the removal actions taken.

On January 8, 2025, RIDEM presented its claim to the National Pollution Funds Center (NPFC) for \$758.50.¹⁰ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that all the requested \$758.50 is compensable and offers this amount as full and final compensation of the 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

On January 18, 2022, the RIDEM received a call from the local fire department about an abandoned 55-gallon drum of oil on the beach near Round Hill Road, in Little Compton, Rhode Island.¹⁴ The drum had washed up on the shore of Rhode Island Sound, a navigable waterway of the United States.¹⁵ The container, which appeared to be new, still had its original seal around the bung, however, it was in very poor condition from smashing into the rocks.¹⁶

The USCG Sector Southeastern New England is the FOSC for the incident,¹⁷ and while they did not respond to this incident directly, the FOSCR did provide indirect coordination of the removal actions taken.¹⁸

¹⁰ Original claim submission received August 1, 2025.

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).

¹⁴ See, RIDEM ERP for case number 2022-44 dated January 18, 2022.

¹⁵ See, RIDEM ERP for case number 2022-44 dated January 18, 2022; See also, map image of incident location.

¹⁶ See, RIDEM ERP for case number 2022-44 dated January 18, 2022.

¹⁷ See, FOSCR letter providing coordination for the removal actions taken.

¹⁸ *Id.*

Responsible Party

The Oil Pollution Act of 1990 (OPA) considers a drum of oil to be an onshore facility.¹⁹ OPA defines the Responsible Party (RP) for a discharge or potential discharge from an onshore facility as “any person or entity owning or operating such facility.”²⁰ The owner / operator of the drum was never determined and, thus, the RP was not identified.

Recovery Operations

Given the poor condition of the drum, RIDEM decided to hire the cleanup contractor Newton B. Washburn, LLC to remove it from the beach. Newton B. Washburn responded with their vac truck and removed the oil from the drum.²¹ No spill of oil ever occurred.²² After the container was opened, a visual assessment determined the material inside to be motor oil.²³

III. CLAIMANT AND NPFC:

On January 8, 2025, RIDEM presented its claim to the NPFC for \$758.50.²⁴ Their claim was for the costs they incurred to hire the cleanup contractor to remove the oil and drum from the beach. On January 22, 2025, and again on January 28, 2025, the NPFC requested additional information from the claimant to support their claimed costs. The claimant promptly provided all requested information.²⁵

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.²⁶ An RP’s liability is strict, joint, and several.²⁷ 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

¹⁹ An “onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 2701(24). OPA further defines “facility” as “any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil.” 33 U.S.C. § 2701(9).

²⁰ 33 U.S.C. § 2701(32)(b).

²¹ See, RIDEM ERP for case number 2022-44 dated January 18, 2022.

²² See, NRC Report # 1326792 dated January 18, 2022, indicating a potential release.

²³ See, email from RIDEM dated January 23, 2025, indicated a visual assessment of the material determined it was motor oil.

²⁴ Original claim submission received August 1, 2025.

²⁵ Additional information included: Email from the claimant dated January 23, 2025, providing AI; Email from the claimant dated January 29, 2025, providing second round of AI; 2022-44 Images; Emergency Response Report; Image at 202pm PXL_20220118_190252471; Little Compton beach drum facility work up; Little Compton lost drum at sea January 18, 2022; PXL_20250123_150829670.

²⁶ 33 U.S.C. § 2702(a).

²⁷ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

favoring those responsible for the spills.”²⁸ 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.”²⁹ 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.”³⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³² 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.³³

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;³⁴
- (d) That the removal costs were uncompensated and reasonable.³⁵

The NPFC analyzed each of these factors and determined that all the costs incurred and submitted by RIDEM 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 for personnel labor and equipment.³⁶

²⁸ *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).

²⁹ 33 U.S.C. § 2701(31).

³⁰ 33 U.S.C. § 2701(30).

³¹ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³² 33 CFR Part 136.

³³ 33 CFR 136.105.

³⁴ See, FOSCR letter indicating the actions taken were consistent with the National Contingency Plan.

³⁵ 33 CFR 136.203; 33 CFR 136.205.

³⁶ Newton B. Washburn, LLC Service Agreement and Rate Sheet for the effective period of October 1 2021 through February 5, 2024.

The FOSC for the incident was the USCG, Sector Southeastern New England.³⁷ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the NCP.³⁸

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$758.50.³⁹

V. CONCLUSION:

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC determines and finds as a matter of fact that there was a potential discharge from a 55-gallon drum of motor oil.⁴⁰ The drum had washed up on the beach, and threatened to impact the Rhode Island Sound, a navigable waterway of the United States,⁴¹ and RIDEM hired the cleanup contractor Newton B. Washburn, LLC to remove the oil and drum from the shoreline.⁴² All removal costs approved for payment to the claimant were determined to be reasonable and uncompensated and were determined by the FOSC to be consistent with the NCP.⁴³

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 **\$758.50**.

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

³⁷ See, FOSCR letter providing coordination for the removal actions taken.

³⁸ See, Original Claim submission received August 1, 2025, including all additional information outlined above and referenced in footnote # 22; See also, FOSCR letter indicating the actions taken were consistent with the National Contingency Plan.

³⁹ Enclosure 3 to this determination which provides a detailed analysis of the amounts approved and denied by the NPFC.

⁴⁰ See, RIDEM ERP for case number 2022-44 dated January 18, 2022; See also, NRC Report # 1326792 dated January 18, 2022, indicating a potential release.

⁴¹ See, RIDEM ERP for case number 2022-44 dated January 18, 2022; See also, NRC Report # 1326792 dated January 18, 2022; See also, map image of incident location.

⁴² See, Newton B. Washburn, LLC Service Agreement and Rate Sheet for the effective period of October 1 2021 through February 5, 2024; See also, RIDEM ERP for case number 2022-44 dated January 18, 2022.

⁴³ See, FOSCR undated letter indicating the actions taken were consistent with the National Contingency Plan.

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 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).

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.

<p>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review: <i>02/03/2025</i></p> <p>Supervisor Action: <i>Offer Approved</i></p> <p>Supervisor's Comments:</p>

⁴⁶ 33 CFR 136.115(b).