

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPP24018-URC001
Claimant:	Hoffman's Marina
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$259.14
Action Taken:	Offer in the amount of \$259.14

EXECUTIVE SUMMARY:

On July 4, 2024, at 0130 local time, United States Coast Guard (“USCG”) Sector Delaware Bay (“SDB”) received multiple reports of a red-colored sheen with strong diesel odor appearing on the west side of Hoffman’s Marina (“Hoffman’s” or “Claimant”) near the Brielle Yacht club, on the Manasquan River; a navigable waterway of the United States, in Brielle, New Jersey.²

USCG SDB’s Incident Management Division (“IMD”) served as the Federal On-Scene Coordinator (“FOSC”) for the incident,³ and deployed Pollution Responders (“PRS”) to the incident location. They were joined by Brielle County Hazmat, New Jersey State Police and the local Fire Department, who assisted PRS in conducting their investigation.⁴ PRS observed a 1000’ long by 50’ wide sheen containing several pockets of red-dye diesel product.⁵ Following an extensive investigation into the source of the product, a responsible party could not be identified.⁶

The FOSC’s representative (FOSCR) federalized the incident under Federal Project Number (“FPN”) UCGPP24018 when no responsible party was identified.⁷ The FPN was used to hire ACV Enviro (“ACV”), a USCG response contractor, to recover and dispose of 10-15 gallons of the mystery discharge.⁸ At 1015 local time, ACV arrived on scene with a vac truck and boat

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 Situation Report (SITREP)-POL 1 and Final dated July 4, 2024. See also, National Response Center Report #1403742 dated July 4, 2024.

³ See, 40 CFR 300.120(a)(1), 33 CFR 3.40-15. See Also, email from USCG SDB to the NPFC dated August 10, 2024.

⁴ USCG SITREP-POL 1 and Final, section 1A Overview dated July 4, 2024.

⁵ USCG SITREP-POL 1 and Final, section 2D dated July 4, 2024.

⁶ USCG SITREP-POL 1 and Final, section 1A Overview dated July 4, 2024.

⁷ USCG SITREP-POL 1 and Final, section 1A Overview dated July 4, 2024.

⁸ USCG SITREP-POL 1 and Final, sections C and F dated July 4, 2024.

crew.⁹ The FOSC representatives monitored all ACV activities during cleanup. At 1450 local time, ACV completed clean up by removing and properly disposing of all saturated sorbent pads and sorbent booms.¹⁰ The FOSC representatives departed the spill location at 1500 hours, and it was noted that no further assistance was needed.¹¹

On August 7, 2024, Hoffman's presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$259.14.¹² The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$259.14 of the claimed costs are 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).¹³ 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.¹⁴ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁵ 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 July 4, 2024, at 0130 local time, the USCG received report of a sheen discovered on the Manasquan River; a navigable waterway of the United States.¹⁶ The FOSC was notified and received multiple reports confirming a red-colored sheen with strong diesel odor's appearance on the Manasquan River on the west side of Hoffman's Marina and near the Brielle Yacht club, in Brielle, New Jersey.¹⁷

⁹ USCG SITREP-POL 1 and Final, section K dated July 4, 2024.

¹⁰ USCG SITREP-POL 1 and Final, section P dated July 4, 2024

¹¹ USCG SITREP-POL 1 and Final, section Q dated July 4, 2024.

¹² Hoffman's Marina Original Claim Submission received August 7, 2024.

¹³ 33 CFR Part 136.

¹⁴ 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)).

¹⁵ 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).

¹⁶ National Response Center Report #1403742 dated July 4, 2024.

¹⁷ See, USCG SITREP-POL 1 and Final dated July 4, 2024.

USCG SDB's IMD deployed its PRS to the scene of the spill. They were joined by Brielle County Hazmat, New Jersey State Police, and the local Fire Department, who assisted PRS in conducting their investigation.¹⁸ PRS observed a 1000' long by 50' wide sheen containing several pockets of red-dye diesel product.¹⁹ Fuel docks were immediately checked, with no found leaks or loss of product from any fuel tanks detected. Following an extensive investigation into the source of the product, a responsible party could not be identified.²⁰

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.²¹ The source of the spill could not be identified by the FOOSC, New Jersey State Police, Brielle County Hazmat, or the local Fire Department.²²

Recovery Operations

The FOOSC's representative (FOOSCR) federalized the incident under Federal Project Number ("FPN") UCGPP24018 when no responsible party was identified.²³ The FPN was used to hire ACV Enviro ("ACV"), a USCG response contractor, to recover and dispose of 10-15 gallons of the mystery discharge.²⁴ At 1015 local time, ACV arrived on scene with a vac truck and boat crew.²⁵ The FOOSC representatives monitored all ACV activities during cleanup. At 1450 local time, ACV completed clean up by removing and properly disposing of all saturated sorbent pads and sorbent booms.²⁶ The FOOSC representatives departed the spill location at 1500 hours, and it was noted that no further assistance was needed.²⁷

III. CLAIMANT AND NPFC:

On August 7, 2024, Hoffman's presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$259.14.²⁸ The claim included Hoffman's signed OSLTF form, an email from the FOOSCR to Hoffman's Marina dated July 22, 2024, and a photograph of the Mesco Marine Equipment Company Shopping Cart, noting the rates of 5' x 10' oil booms.²⁹

On August 19, 2024, the NPFC requested any receipts or proofs of payment to confirm the costs incurred by Hoffman's for the oil booms expended during the response.³⁰ Hoffman's

¹⁸ USCG SITREP-POL 1 and Final, section 1A Overview dated July 4, 2024.

¹⁹ USCG SITREP-POL 1 and Final, section 1A Overview dated July 4, 2024.

²⁰ USCG SITREP-POL 1 and Final, section 1A Overview dated July 4, 2024.

²¹ 33 U.S.C. § 2701(32).

²² USCG SITREP-POL 1 and Final dated July 4, 2024.

²³ USCG SITREP-POL 1 and Final, section 1A Overview dated July 4, 2024.

²⁴ USCG SITREP-POL 1 and Final, sections C and F dated July 4, 2024.

²⁵ USCG SITREP-POL 1 and Final, section K dated July 4, 2024.

²⁶ USCG SITREP-POL 1 and Final, section P dated July 4, 2024.

²⁷ USCG SITREP-POL 1 and Final, section Q dated July 4, 2024.

²⁸ Hoffman's Original Claim Submission received August 7, 2024.

²⁹ Hoffman's Original Claim Submission received August 7, 2024.

³⁰ Email from the NPFC to Hoffman's dated August 19, 2024.

submitted copies of both the original payment made for the oil booms expended on July 4, 2024,³¹ and the payment made for the replacement of expended oil booms.³²

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.³³ An RP's liability is strict, joint, and several.³⁴ 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."³⁵ 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."³⁶ 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."³⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁹ 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.⁴⁰

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;

³¹ Email from Hoffman's to the NPFC dated August 19, 2024. *See Also*, Mesco Invoice #96324600 dated July 20, 2023, pg. 1 of 1.

³² Email from Hoffman's to the NPFC dated August 19, 2024. *See Also*, Mesco Invoice #53244000 dated July 25, 2024, pg. 1 of 1.

³³ 33 U.S.C. § 2702(a).

³⁴ *See*, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁵ *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).

³⁶ 33 U.S.C. § 2701(31).

³⁷ 33 U.S.C. § 2701(30).

³⁸ *See generally*, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁹ 33 CFR Part 136.

⁴⁰ 33 CFR 136.105.

- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan;⁴¹
- (d) That the removal costs were uncompensated and reasonable.⁴²

The NPFC analyzed each of these factors and determined all the costs incurred and submitted by Hoffman's herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate pricing⁴³ and all costs were supported by adequate documentation which included invoices and/or proof of payment⁴⁴ where applicable.

All approved costs are supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).⁴⁵

VI. 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 on July 4, 2024, a sheen of diesel oil was discovered on the Manasquan River; a navigable waterway of the United States, on the west side of the Hoffman's Marina in Brielle, New Jersey.⁴⁶ Following an extensive investigation into the source of the product, a responsible party could not be identified.⁴⁷

Hoffman's Marina expended 7 oil booms in the process of containing the spill,⁴⁸ as confirmed by the FOSCR.⁴⁹

As such, the NPFC finds that the claimant's costs were the result of a discharge of oil as defined by OPA and, therefore, the OSLT is available to pay this claim based on administrative record and applicable law and regulations.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Hoffman's Marina's request for uncompensated removal costs is approved in the amount of **\$259.14**.

⁴¹ Email from FOSC to the NPFC dated August 10, 2024.

⁴² 33 CFR 136.203; 33 CFR 136.205.

⁴³ Hoffman's Marina Original Claim Submission received August 7, 2024. *See Also*, Mesco Shopping Cart, pg. 4 of 4.

⁴⁴ Email(s) from Hoffman's Marina to the NPFC dated August 19, 2024. *See Also*, Mesco Invoice #96324600 dated July 20, 2023, pg. 1 of 1. *See also*, Mesco Invoice #53244000 dated July 25, 2024, pg. 1 of 1.

⁴⁵ Email from FOSC to the NPFC dated August 10, 2024.

⁴⁶ *See*, USCG SITREP-POL 1 and Final dated July 4, 2024. *See Also*, National Response Center Report #1403742 dated July 4, 2024.

⁴⁷ USCG SITREP-POL 1 and Final dated July 4, 2024.

⁴⁸ Hoffman's Marina Original Claim Submission received August 7, 2024.

⁴⁹ Email from FOSC to the NPFC dated August 10, 2024.

This determination is a settlement offer,⁵⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵² 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>8/23/2024</i></p> <p>Supervisor Action: <i>Offer Approved</i></p> <p>Supervisor's Comments:</p>
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⁵⁰ 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).

⁵¹ 33 CFR § 136.115(b).

⁵² 33 CFR § 136.115(b).