

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP922002-URC001
Claimant:	Atlantic Coast Marine Group Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$4,973.52
Action Taken:	Denial

EXECUTIVE SUMMARY:

On April 14, 2019, the United States Coast Guard (USCG) Sector North Carolina reported that the Motor Vessel (M/V) ALBANY SOUND was moored at Morehead City State Port berth #2 when the ship's fixed fire detection and alarm system indicated a fire in the accommodation space on B deck. A fire was discovered in the fitter's cabin by the ship's Master. The Master instructed the crew to begin firefighting and notified the ship's agent and requested shore side fire fighting assistance.²

Morehead City Fire Department (MCFD) responded to the fire onboard the M/V ALBANY SOUND at approximately 9:33 am local time.³ The MCFD report indicated that the crew had extinguished the fire and no additional firefighting actions were needed. The MCFD performed a joint fire investigation with the USCG in order to determine the cause of the fire which ultimately was "undetermined".⁴ On April 14, 2019, Atlantic Coast Marine Group, Inc. ("Claimant" or "ACMG"), was hired and responded to the incident.⁵

Pacific Basin Chartering (No. 8) Limited is the owner of the vessel and Pacific Basin Shipping (HK) Limited is the operator of the vessel.⁶ As such, both are considered a Responsible Party (RP) under the Oil Pollution Act (OPA).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 See, USCG Pollution Investigator statement dated May 8, 2019.

³ Morehead City Fire Department fire report dated April 15, 2019.

⁴ Morehead City Fire Department fire report dated April 15, 2019.

⁵ See, Email from (b) (6) of Fulweiler LLC as Counsel for ACMG dated April 16, 2019 confirming that ACMG was requested by both the Captain and the MCFD.

⁶ Vessel Critical Profile for ALBANY SOUND Vin Number: 9260859

⁷ 33 U.S.C. § 2701(32).

ACMG presented the claimed costs to Pacific Basin Chartering (No. 8) Limited and Pacific Basin Shipping (HK) Limited via ACMG invoice # 2019-0415.4 dated April 15, 2019.⁸ To date, ACMG has not received payment for its services.⁹

Having not received payment for ninety days,¹⁰ ACMG presented its claim for \$4,973.52 of uncompensated removal costs to the National Pollution Funds Center (NPFC) on November 29, 2021.¹¹ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, determined ACMG has not demonstrated that the claimed response efforts mitigated a substantial threat of discharge of oil as defined in the OPA¹², has not proven the oil posed a substantial threat of discharge into a navigable waterway of the United States¹³ nor has it provided evidence that a Federal On Scene Coordinator (FOOSC) directed its response actions or determined its actions were consistent with the National Contingency Plan (NCP).¹⁴ As such, the claim is not compensable by the Oil Spill Liability Trust Fund (OSLTF) and must be denied.¹⁵

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

A fire was discovered by the ship's Master in the fitter's cabin, located in the accommodation spaces on Deck B of the M/V ALBANY SOUND. The Master instructed the crew to begin fire fighting and notified the ship's agent and requested shore side fire fighting assistance.¹⁶ Upon the arrival of MCFD, the fire had already been extinguished by the vessel crew and was under control.¹⁷ USCG Sector North Carolina and MCFD performed a joint fire investigation on April 15, 2019. The cause of the fire was "undetermined".¹⁸

Responsible Party

Pacific Basin Chartering (No. 8) Limited is the owner of the vessel and Pacific Basin Shipping (HK) Limited is identified as the operator of the vessel.¹⁹ As such, both are considered a Responsible Party under OPA.²⁰

Recovery Operations

⁸ ACMG Invoice # 2019-0415.4 dated April 15, 2019.

⁹ See, OSLTF Claim Form, question #6, dated November 18, 2021.

¹⁰ See, OSLTF Claim Form, question #5 and 6, dated November 18, 2021.

¹¹ See ACMG claim submission dated November 18, 2021.

¹² 33 U.S.C. § 2701(23).

¹³ 33 U.S.C. § 2701(14).

¹⁴ 33 CFR 136.205.

¹⁵ Because this claim is denied on threshold jurisdictional issues, the NPFC did not adjudicate the viability or compensable amount, if any, of the specific expenses claimed.

¹⁶ See, USCG Pollution Investigator statement dated May 8, 2019.

¹⁷ Morehead City Fire Department fire report dated April 15, 2019.

¹⁸ Morehead City Fire Department fire report, page 3 of 6, Narrative 3, dated April 15, 2019.

¹⁹ USCG Vessel Critical Profile.

²⁰ 33 U.S.C. § 2701(32).

ACMG responded to the incident at the request of the ship's Master and the MCFD, ACMG provided two boats, personnel, boom and absorbent pads to the scene. ACMG stated their personnel dammed up unspecified deck drains to prevent over the side discharge of free standing oil.²¹

There is no evidence in the record that demonstrates the FOSC directed or coordinated any of these response actions or determined the actions were consistent with the National Contingency Plan (NCP).²²

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)²³ require all claims for removal costs or damages to be presented to the RP before seeking compensation from the NPFC.²⁴ ACMG presented its claim to Pacific Basin Chartering (No. 8) Limited and Pacific Basin Shipping (HK) Limited via ACMG invoice # 2019-0415.4 in the amount of \$4,973.52 dated April 15, 2019.²⁵ The invoice was sent via email by the claimant²⁶ to the RP on April 16, 2019.²⁷ To date, ACMG has not received payment for its services.²⁸

III. CLAIMANT AND NPFC:

On November 29, 2021, the NPFC received a claim for uncompensated removal costs from ACMG in the amount of \$4,973.52 dated November 18, 2021. The claim included the Optional Oil Spill Liability Trust Fund Claim Form, incident scene photos, invoice to Pacific Basin Chartering #8 and Pacific Basin Shipping (HK) Ltd, and an email from claimant's legal counsel to Pacific Basin Shipping. Upon review of the submission, the NPFC requested additional information via email inquiring whether or not samples were taken.²⁹ The claimant responded that no samples were taken.³⁰

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³¹ 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.

²¹ See, OSLTF claim submission dated November 18, 2021 and email from Claimant regarding sample analysis and response actions taken dated December 10, 2021.

²² 33 CFR 136.203.

²³ 33 U.S.C. § 2701 *et seq.*

²⁴ 33 CFR 136.103.

²⁵ ACMG Invoice # 2019-0415.4 dated April 15, 2019.

²⁶ Maritime Counsel for ACMG.

²⁷ Email with attachments from Mr. (b) (6) on behalf of ACMG to Ms. (b) (6) for the RP dated April 16, 2019.

²⁸ See, OSLTF Claim Form, question #6, dated November 18, 2021.

²⁹ Email from NPFC to Claimant dated December 10, 2021

³⁰ Email from Claimant to NPFC dated December 10, 2021.

³¹ 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.³² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³³ 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.³⁴ An RP's liability is strict, joint, and several.³⁵ 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."³⁶ 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."³⁷ 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."³⁸

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

³² 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)).

³³ 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).

³⁴ 33 U.S.C. § 2702(a).

³⁵ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁶ *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).

³⁷ 33 U.S.C. § 2701(31).

³⁸ 33 U.S.C. § 2701(30).

³⁹ See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁰ 33 CFR Part 136.

documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.⁴¹

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.
- (d) That the removal costs were uncompensated and reasonable.⁴²

Before NPFC can authorize payment from the OSLTF for any claim, the claimant must show that the costs claimed are compensable under OPA. The NPFC requested oil sample results or evidence from the claimant that would demonstrate that the product was in fact an OPA oil.

“Oil” means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act [42 U.S.C.A. § 9601 et seq.]⁴³ The definition specifically excludes hazardous substances under section 101(14) of CERCLA. OPA defines “incident” as any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil.”⁴⁴ Accordingly, OPA only applies to incidents involving oil, and, by definition, excludes those involving CERCLA hazardous substances. The claimant was unable to provide any evidence, such as a sample analysis, to substantiate that the product recovered on the deck of the vessel was strictly a petroleum product. Based on the record, it is quite possible that any substance that was present on the deck was commingled with the fire fighting product used by the crew to extinguish the vessel fire.⁴⁵

Additionally, the evidence provided by the claimant does not demonstrate how their actions prevented a discharge or substantial threat of a discharge of oil into a navigable waterway of the United States. No documentation was provided which showed the path from the deck drains which would have allowed the product on the deck to discharge from the ship into the water, if left unattended. Finally, the claimant did not provide evidence that the FOSC directed any of its response actions or that the FOSC determined their response actions were in accordance with the National Contingency Plan (NCP).⁴⁶

Based on a preponderance of the credible evidence, the NPFC has determined that the claimant has failed to demonstrate (1) that the product spilled was an OPA compensable oil, (2)

⁴¹ 33 CFR 136.105.

⁴² 33 CFR 136.203; 33 CFR 136.205.

⁴³ 33 U.S.C. § 2701(23).

⁴⁴ 33 U.S.C. § 2701(14).

⁴⁵ Email from Claimant to NPFC dated December 10, 2021 Re Additional Information.

⁴⁶ 33 CFR 136.203

that the incident discharged into, or posed a substantial threat of discharge into, a navigable waterway of the United States, or (3) that the response actions were directed by the FOSC or were determined by the FOSC to be consistent with the NCP as required.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Atlantic Coast Marine Group Inc.'s request for uncompensated removal costs is denied.

Claim Supervisor	(b) (6)
Date of Supervisor's review:	<i>3/28/2022</i>
Supervisor Action:	<i>Denial Approved</i>