

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	916003-0001
<b>Claimant:</b>	Rhode Island Department of Environmental Management
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	██████████
<b>Amount Requested:</b>	\$14,927.78

### FACTS:

**Oil Spill Incident:** On July 10, 2015, the FV ELIZABETH VICTORIA, owned by Mr. ██████████ was set on fire by parties unknown at Pier X, State Street, Narragansett, RI. The Narragansett Fire Department responded, extinguishing the fire but also contributed to the vessel sinking at the pier by placing large amounts of water on the already compromised vessel. With the vessel lying on its starboard side, diesel fuel and lube oil began discharging from the vessel into Pettaquamscutt Cove, a navigable waterway of the United States. The Rhode Island Department of Environmental Management (DEM) and CG Sector Southeast New England responded to the spill. As the owner of the sunken vessel was unable to fund a proper response to the oil spill, the Rhode Island DEM hired Clean Harbors, Inc. to conduct appropriate pollution removal activities.<sup>1</sup>

**Description of Removal Activities for this Claimant:** On July 10, 2015, the Rhode Island DEM hired Clean Harbors, Inc. to remove approximately 60 gallons of diesel fuel and lube oil from the waters of Pettaquamscutt Cove, Narragansett, RI. Clean Harbors deployed 200' of hard boom around the vessel and lined the hard boom with sorbent boom and pads. Clean Harbors personnel returned on July 15, 2015, to replace oiled sorbent and to tend their hard boom. Cleanup was deemed complete on July 20, 2015, when the hard boom was removed from the water and the oiled sorbents were properly disposed of at Spring Grove Resources Recovery, Inc. in Cincinnati, OH.<sup>2</sup>

**Responsible Party:** The owner of the FV ELIZABETH VICTORIA is ██████████. ██████████ was on-scene during the pollution removal activities but was unable to fund a proper response. ██████████ was issued an RP notification letter by the NPFC notifying him of our pending claim with the Rhode Island DEM on November 18, 2015.<sup>3</sup>

**The Claim:** On October 13, 2015, the Rhode Island DEM submitted a pollution removal cost claim to the National Pollution Fund Center (NPFC) for reimbursement of their uncompensated pollution removal costs of State personnel and equipment as well as the costs incurred by Clean Harbors, Inc. totaling \$14,927.78<sup>4</sup>

<sup>1</sup> See Rhode Island DEM claim dated October 13, 2015.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

**APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. 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".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

- (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 determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

**DETERMINATION OF LOSS:**

**A. Overview:**

1. MSTC ██████████ CG Sector Southeast New England, as the Federal On-Scene Coordinator (FOSC) for this incident, determined that the actions undertaken by Rhode Island Department of Environmental Management. were consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);<sup>5</sup>
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

**B. Analysis:**

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of the costs incurred by the Claimant in this determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedule in place at the time the services were rendered and were determined by the NPFC to be consistent with the NCP. The only cost denied by the NPFC were the hourly rates in excess of the day rate charged by

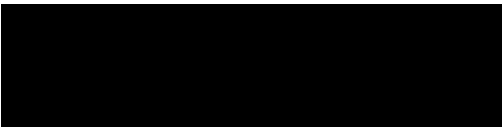

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<sup>5</sup> See email from MSTC ██████████, CG Sector SE New England to ██████████, NPFC dated November 18, 2015.

Clean Harbors for the use of their Power Workboat, Fast Response, 18-22ft as they charged an hourly rate on July 15, 2015, when a day rate was available and appropriate. In addition, Clean Harbors also incorrectly billed their disposal costs by charging \$372.00 per flexbin for the disposal of oiled sorbents when the correct disposal cost of oiled sorbents should have been \$367.50 per flexbin.<sup>6</sup>

The NPFC therefore determines that the OSLTF will pay \$14,809.08 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916003-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

**AMOUNT: \$14,809.08**


Claim Supervisor: 
Date of Supervisor's review: <i>November 23, 2015</i>
Supervisor Action: <i>Approved</i>
Supervisor's Comments:

<sup>6</sup> See email from , Clean Harbors, Inc to , NPFC dated November 20, 2015.