

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP922010-URC001
Claimant:	Lone Star Hazmat Response, LLC
Type of Claimant:	Corporate
Type of Claim:	Removal
Claim Manager:	(b) (6)
Amount Requested:	\$1,936.94
Action Taken:	Denied

EXECUTIVE SUMMARY:

On September 24, 2021 at approximately 9:20pm local time, Wilmer Police Department responded to a vehicle accident located on Pleasant Run Road, Wilmer, Texas², where a vehicle left the roadway, hit a guardrail and landed in a culvert.³ The vehicle was reported to be leaking fluids, later determined to be motor oil,⁴ into the culvert which leads to Cottonwood Creek, then to Tenmile Creek, and ultimately to Trinity River, a navigable waterway of the United States.⁵ Wilmer Fire Department requested Lonestar Hazmat Response, LLC (“Lone Star” or “Claimant”) clean up the spill.⁶

Mr. (b) (6), was the operator the vehicle, and Mr. (b) (6), was the owner of the vehicle. In accordance with the Oil Pollution Act of 1990 (OPA),⁸ both are responsible parties (“Responsible Parties” or “RPs”).⁹ Lone Star presented its claimed costs to (b) (6) on December 6, 2021.¹⁰ Having not received payment after ninety days, Lone

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 Texas Peace Officer’s Crash Report dated September 24, 2021 (Crash Report).

³ *Id.*

⁴ In this case, the Federal On-Scene Coordinator (FOSC) determined from all the available evidence that this fluid was more likely than not, motor oil.

⁵ See, email from Lone Star to NPFC providing waterway information dated March 21, 2022; and email from the FOSC to NPFC identifying discharge pathway dated April 4, 2022.

⁶ Crash Report.

⁷ Mr. (b) (6) is also referred to as (b) (6) in the claim submission and on (b) (6) (b) (6) insurance card.

⁸ 33 U.S.C. § 2701(32).

⁹ Crash Report.

¹⁰ See, email from Lone Star to NPFC dated March 29, 2022. For completeness, Lone Star also submitted its costs to the other RP (b) (6) on April 1, 2022 as well.

Star presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$1,936.94 on March 17, 2022.¹¹

In order for a claim to be compensable, *inter alia*, the removal actions taken by the claimant must be directed by the Federal On-Scene Coordinator (FOSC) or determined by the FOSC to be consistent with the National Contingency Plan (NCP).¹² Based on the location of this incident, the FOSC for this incident is the United States Environmental Protection Agency (USEPA).¹³

There is no evidence in the administrative record that the FOSC was notified of this incident, and as such, it did not direct any actions. The NPFC contacted the FOSC to ascertain whether or not it considered the actions taken by the claimant to be consistent with the NCP. The FOSC found that the actions taken by the claimant were not consistent with the NCP because the claimant used a dispersant which was not on the approved schedule of dispersants; and the FOSC did not authorize its use.¹⁴

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that since the actions taken that led to the claim were not consistent with the NCP, the claim must be denied.¹⁵

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On September 24, 2021, the RP was traveling on Pleasant Run Road in Wilmer, Texas and was approaching South Parkway in a 2006 gold Chevrolet Tahoe. Another vehicle turned out onto Pleasant Run Road in front of the RP. The RP performed an evasive action to avoid hitting the turning vehicle. The RP then struck a guardrail on the south side of Pleasant Run Road, leaving the roadway and landing in a culvert. After landing in the culvert, the RP's vehicle leaked one quart of oil.¹⁶

Responsible Party

In accordance with the Oil Pollution Act of 1990 (OPA),¹⁷ Mr. (b) (6), was the operator the vehicle, and Mr. (b) (6), was the owner of the vehicle. Both were identified as responsible parties ("Responsible Parties" or "RPs").¹⁹

Recovery Operations

¹¹ Lone Star Original Claim Submission dated March 17, 2022 (Claim Submission).

¹² 33 CFR 136.205.

¹³ See generally, 40 CFR 300.120(a)(2).

¹⁴ See, email from FOSC to NPFC dated April 4, 2022. See also, 40 CFR 300.905(c); 40 CFR 300.910.

¹⁵ See, 33 U.S.C. § 2712(a)(4); 33 CFR 136.205.

¹⁶ Crash Report.

¹⁷ 33 U.S.C. § 2701(32).

¹⁸ Mr. (b) (6) is also referred to as (b) (6) in the claim submission and on (b) (6) (b) (6) insurance card.

¹⁹ Crash Report.

On September 24, 2021, Lone Star arrived to the scene and found the vehicle accident and located the spill in the culvert. Lone Star utilized a pump sprayer to administer a dispersant product identified as Performance Wash to treat the area of the creek that contained the discharged oil.²⁰ Lone Star did not sample the leaked fluid, but the FOOSC was able to determine after the fact that it was more than likely than not, an OPA oil.²¹

II. CLAIMANT, RP, AND THE NPFC:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²² require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²³ When an RP has not settled a claim after ninety days of receipt or denies a claim, a claimant may elect to present its claim to the NPFC.²⁴ Lone Star presented its claimed costs to (b) (6) on December 6, 2021.²⁵ Having not received payment after ninety days, Lone Star presented its uncompensated removal cost claim to the NPFC for \$1,936.94 on March 17, 2022.²⁶

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁷ 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.²⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁹ 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.

²⁰ See, Lone Star “Response Summary” (pgs 2-3), contained within the claim submission.

²¹ The NPFC cautions that claimants have the burden of proof to demonstrate that the event was an “incident” as defined by OPA. One of the factors that they must establish is that the released substance that led to the removal actions was, in fact, an OPA oil. This is best accomplished by taking a sample of the spilled substance and submitting the results to the NPFC in the claims submission. *See generally*, 33 U.S.C. § 2701(14); 33 CFR 136.105.

²² 33 U.S.C. § 2701 et seq.

²³ 33 CFR 136.103(c)(1).

²⁴ 33 CFR 136.103.

²⁵ See, email from Lone Star to NPFC dated March 29, 2022. For completeness, Lone Star also submitted its costs to the other RP, (b) (6) on April 1, 2022 as well.

²⁶ Claim submission.

²⁷ 33 CFR Part 136.

²⁸ 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)).

²⁹ 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).

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.³⁰ An RP's liability is strict, joint, and several.³¹ 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."³² 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."³³ 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."³⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁶ 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.³⁷

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.³⁸

³⁰ 33 U.S.C. § 2702(a).

³¹ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³² *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).

³³ 33 U.S.C. § 2701(31).

³⁴ 33 U.S.C. § 2701(30).

³⁵ See generally, 33 U.S.C. § 2712 (a)(4); and 33 CFR Part 136.

³⁶ 33 CFR Part 136.

³⁷ 33 CFR 136.105.

³⁸ 33 CFR 136.203; 33 CFR 136.205.

Based on the location of this incident, the FOSC for this incident is the United States Environmental Protection Agency (USEPA).³⁹ There is no evidence in the administrative record that the FOSC was notified of this incident, and as such, it did not direct any actions. The NPFC contacted the FOSC to ascertain whether or not it considered the actions taken by the claimant to be consistent with the NCP. The FOSC found that the actions taken by the claimant were not consistent with the NCP because the claimant used a dispersant which was not on the approved schedule of dispersants; and the FOSC did not authorize its use.⁴⁰ Since the FOSC did not direct the actions of the claimant nor did the FOSC determine the claimant's actions were consistent with the NCP, the claim must be denied.⁴¹

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the claimant's request for reimbursement is denied.

Claim Supervisor: (b) (6)

(b) (6)

Date of Supervisor's review: *5/03/2022*

Supervisor Action: *Denial Approved*

Supervisor's Comments:

³⁹ See generally, 40 CFR 300.120(a)(2).

⁴⁰ See, email from FOSC to NPFC dated April 4, 2022. See also, 40 CFR 300.905(c); 40 CFR 300.910.

⁴¹ See, 33 U.S.C. § 2712(a)(4); 33 CFR 136.205.