

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPJ18004-URC001
Claimant:	State of Alaska
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$548.68
Action Taken:	Offer of full amount

EXECUTIVE SUMMARY:

On October 30, 2017, United States Coast Guard Sector Juneau (USCG) received reports of a sinking vessel in Indian Cove, a navigable waterway of the United States. The owner of the vessel is (b) (6), and as such, he is the responsible party (RP) for the incident. USCG personnel contacted the owner of the vessel, who said he would attempt to salvage the vessel himself. The owner placed boom and sorbent materials around the vessel on October 31, 2017. The vessel had about 150 gallons of diesel on board. The owner towed the vessel to an area where he could access it during low tide and pumped the fuel off the vessel and into 55-gallon drums.²

On October 30, 2017, the State of Alaska Department of Environmental Conservation Spill Prevention & Response (ADEC or Claimant) received the spill report via the National Response Center (NRC) notification (Report #1194720). An ADEC employee communicated telephonically with the USCG responder on October 31, 2017 regarding the incident and was informed that the RP would raise the vessel himself. ADEC opened a case on the spill incident, making a series of phone calls to Sector Juneau and the RP, and uploading information into ADEC's database. ADEC personnel made one site visit on November 2, 2017,³ but this action is not part of the claimed costs.

On May 25, 2023, ADEC presented costs to the National Pollution Funds Center (NPFC) in the amount of \$548.68.⁴ 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 costs may be paid from the OSLTF.

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 CG MISLE case report #1105199 p.4 of 15.

³ Spill Summary Report p. 2 of 3 provide with claim submission dated May 24, 2023.

⁴ ADEC claim submission received May 25, 2023.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On October 30, 2017, United States Coast Guard Sector Juneau (USCG) received reports of a sinking vessel in Indian Cove, a navigable waterway of the United States. USCG personnel went to the scene and identified a light sheen on the water. They contacted the owner of the vessel, who said he would attempt to salvage the vessel himself. The owner placed boom and sorbent materials around the vessel on October 31, 2017. The vessel had about 150 gallons of diesel on board. The owner towed the vessel to an area where he could access it during low tide and pumped the fuel off the vessel and into 55-gallon drums.⁵ He collected all but 20 gallons of fuel, which was unaccounted for.

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.⁶ The USCG identified (b) (6) as the owner of the EXODUS, which is the source of the discharge of oil.⁷ As such, (b) (6) is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.⁸

Recovery Operations

On October 31, 2017, the owner boomed off the vessel to secure any discharge of the 150 gallons of diesel onboard. He towed the vessel using a skiff to an area where it could be accessible during low tide and pumped out the fuel onboard into 55-gallon drums.⁹ Sorbent material was also used to soak up oil in the water. The CG responder reported to ADEC that no more sheening was visible during his site visit on November 4, 2017.¹⁰ The RP took the oily waste and sorbent material to the Hoonah Waste Disposal incinerator.¹¹

II. CLAIMANT AND RP:

ADEC presented its costs related to an ADEC employee's work on the response to the RP monthly since July 2021. ADEC provided NPFC copies of two communications sent to the RP: Invoice SPR-157146 dated July 31, 2019, for \$548.68 and a past due notice for the same dated May 24, 2023. The RP has not paid the invoice. However, as a state agency seeking reimbursement from the OSLTF, the law did not require ADEC to present its claim to the RP first.¹²

⁵ CG MISLE case report #1105199 p.4 of 15.

⁶ 33 U.S.C. § 2701(32).

⁷ CG MISLE case report #1105199 p.14 of 15.

⁸ 33 U.S.C. § 2701(32).

⁹ CG MISLE case report #1105199 p.4 of 15.

¹⁰ Spill Summary Report p. 2 of 3 provide with claim submission dated May 24, 2023.

¹¹ Spill Summary Report p. 3 of 3 provide with claim submission dated May 24, 2023.

¹² 33 U.S.C. § 2713.

III. CLAIMANT AND NPFC:

On May 25, 2023, the NPFC received a claim for \$548.68 from ADEC.¹³ ADEC provided the NPFC with an OSLTF claim form; ADEC Spill Summary Report #17119930301; emails between ADEC and the RP; emails between ADEC and the USCG Sector Juneau; a Transport, Treatment, & Disposal Approval Form; photographs; Invoice #SPR-157146 and a past due notice for the same invoice; and NRC Report #1194720.¹⁴

On June 12, 2023, the NPFC requested additional information from ADEC relative to their costs claimed.¹⁵ On June 15, 2023, ADEC replied to the NPFC's request, providing their billing rates for Fiscal Year 2018 and the claimed employee's activity details related to the spill.¹⁶

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁷ 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.¹⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁹ 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.²⁰ An RP's liability is strict, joint, and several.²¹ 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

¹³ ADEC claim submission received May 26, 2023.

¹⁴ ADEC claim submission received May 26, 2023.

¹⁵ NPFC email to Claimant dated June 12, 2023.

¹⁶ ADEC email to NPFC dated June 15, 2023.

¹⁷ 33 CFR Part 136.

¹⁸ 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)).

¹⁹ 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).

²⁰ 33 U.S.C. § 2702(a).

²¹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."²² 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."²³ 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."²⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁶ 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.²⁷

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.

The NPFC analyzed each of these factors and determined that the actions taken by ADEC were necessary to prevent, minimize, or mitigate the effects of the incident. The claimant stated that the ADEC employee communicated directly with the vessel owner/RP on multiple occasions regarding the use of absorbents around the vessel, closing vents on and removing fuel from the vessel. The claimant admitted that the State's work was not directed by the FOSC, argued that the work was consistent with the NCP because the State On-Scene Coordinators represent the state in the Unified Command, which would be consistent with the NCP.²⁸ However, there was no Unified Command for this incident and the argument does not satisfy the requirements for FOSC coordination. Therefore, because the ADEC employee's actions were not specifically

²² *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).

²³ 33 U.S.C. § 2701(31).

²⁴ 33 U.S.C. § 2701(30).

²⁵ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁶ 33 CFR Part 136.

²⁷ 33 CFR 136.105.

²⁸ Email from ADEC to NPFC dated June 15, 2023.

directed by the CG FOSC, the NPFC reached out to a current FOSCR at the CG Sector Juneau Incident Management Division for a determination of consistency with the NCP.²⁹ The FOSCR reviewed ADEC's actions and stated that they were consistent with the NCP.³⁰ After careful analysis of all costs, actions, and supporting documentation submitted to the NPFC, the NPFC determines that the actions undertaken by ADEC assisted in the mitigation of the oil spill incident in accordance with the NCP and are compensable by the OSLTF under OPA.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the State of Alaska Dept. of Environmental Conservation, Spill Prevention & Response request for uncompensated removal costs is approved in the amount of **\$548.68**.

This determination is a settlement offer,³¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³³ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor:	(b) (6)
Date of Supervisor's review:	8/7/23
Supervisor Action:	<i>Offer Approved</i>
Supervisor's Comments:	

²⁹ Email from NPFC to CPO (b) (6) at Sector Juneau IMD dated July 14, 2023.

³⁰ Email from CPO (b) (6) to NPFC dated July 14, 2023.

³¹ 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).

³² 33 CFR § 136.115(b).

³³ 33 CFR § 136.115(b).