

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE20704-URC001
Claimant:	Missouri Department of Natural Resources Environmental Emergency Response (MDNR)
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$1,208.12
Action Taken:	Denied

EXECUTIVE SUMMARY:

On April 15, 2020 at approximately 3:00 p.m., Missouri Department of Natural Resources (“MDNR” or “Claimant”) reported to the National Response Center (NRC) that five 5-gallon buckets of an unknown oily substance were found dumped in Opossum Branch, a tributary of Elkhorn Creek, a navigable waterway of the United States.²

Based on the location of this incident, the Federal On-Scene Coordinator (FOSC) is the United States Environmental Protection Agency Region 7, Mr. (b) (6).³ The FOSC reported that MDNR dispatched a State On Scene Coordinator (SOSC) to conduct an assessment of the incident. Upon completion of the preliminary assessment, no Responsible Party (RP) was identified, therefore the FOSC made the decision to open federal project number (FPN) UCGPE20704 and hired MDNR through a Pollution Removal Funding Authorization (PRFA) to remove the oil containers and the oil and oily waste from the scene.⁴ On April 28, 2021, the National Pollution Funds Center (NPFC) Case Management Division closed the FPN because MDNR never submitted their cost reimbursement package in a timely fashion⁵ in order to receive compensation under the FPN leaving MDNR the only remaining option for reimbursement which was to submit a removal cost claim to the Fund.⁶

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 National Response Center Report # 1275452 dated April 14, 2020.

³ USEPA Region7 Polrep First and Final dated April 27, 2020.

⁴ USEPA Region7 Polrep First and Final dated April 27, 2020, page 2 of 3, section 2.2 Planning Section. The FOSC executed the PRFA with MDNR on April 16, 2020 however MDNR did not submit their cost recovery package under the FPN in a timely fashion in order to receive compensation for their response and remediation actions performed, so on April 28, 2021, the NPFC Case Management Division (who handles federal project cases), closed the FPN as no cost documentation was ever received.

⁵ See, PRFA Statement of work follow up timeframe and due date for cost documentation outlined as July 31, 2020, page 28 of 32 of MDNR claim submission package.

⁶ MDNR Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form received January 23, 2023.

MDNR presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$1,208.12 on January 23, 2023.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that this claim must be denied.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On April 15, 2020, MDNR reported five 5-gallon buckets of oil dumped into Opposum Branch at Route CC near Buell, Missouri. A sheen and oil slick was visible by MDR on the water's surface. State On Scene Coordinator (SOSC) (b) (6) observed a sheen and oil slick in the Opposum Branch from Route CC upon arrival for about 90 feet in Opposum Branch downstream of Route CC.⁸

Responsible Party

No Responsible Party (RP) for the incident has been identified by either the SOSC or the FOSC following a preliminary assessment and response.⁹

Recovery Operations

On April 15, 2020, SOSC Cortvrient of MDNR performed a preliminary assessment and relayed the results to the USEPA FOSC, Mr. (b) (6), advising oil had been spilled into Opposum Branch from five 5-gallon buckets. Oil was observed covering the surface waters and emulsified in Opposum Branch waterway near Highway CC. At the time of the initial report, rain was in the forecast.¹⁰

The FOSC opened federal project number (FPN) UCGPE20704 and hired MDNR to perform assessment, remediation and disposal of contaminated waste. The SOSC deployed sorbent pads and boom to recover the spilled oil from Opposum Branch. Oil was reported to persist along the waterway for approximately 100 feet downstream of the spill area. Oil impacted water was field-screened for chlorinated compounds. The results of the field screening were negative. Five 5-gallon buckets were removed from the scene and transported for recycling at a used oil receiving center (Jefferson City Oil Company) in Jefferson City, Missouri. MDNR also generated and removed three 42-gallon trash bags containing spent oil sorbents.¹¹

⁷ Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form received January 23, 2023.

⁸ MDNR claim submission, page 9 of 32, Incident Summary dated June 4, 2020.

⁹ USEPA POLREP One and Final dated April 27, 2020.

¹⁰ USEPA POLREP One and Final dated April 27, 2020, section 2.1.2 Response Actions to Date.

¹¹ *Id.*

II. CLAIMANT AND NPFC:

On January 23, 2023, the claimant submitted its claim to the NPFC for \$1,208,12.¹² On June 12, 2023, the NPFC requested additional information from MDNR and offered a tolling agreement to extend the timeframe to submit the necessary cost documentation.¹³ On June 14, 2023, Mr. (b) (6) responded to the request and provided four (4) attachments: (1) MDNR ICRP FY2021 documentation; (2) FY20 Fringes; (3) NJ20ERTW PS Amounts; and (4) Fuel receipts.¹⁴ Later the same day, Mr. (b) (6) sent another email with a timesheet attached for the SOSC.¹⁵

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁶ 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.¹⁷ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁸ 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.

IV. DISCUSSION:

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).¹⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁰ The claimant bears the burden of providing all evidence, information, and

¹² The claim included the Oil Spill Liability Trust Fund Optional Claim Form received on January 23, 2023; USEPA Region 7 POLREP One and Final dated April 27, 2020; Photos; 2-page Pollution Funding Removal Authorization for MDNR dated April 16, 2020; and NRC report # 1275452 dated April 15, 2020.

¹³ Additional information email to MDNR dated June 12, 2023, again requesting supporting documentation for the costs claimed and offering a tolling agreement.

¹⁴ See, Email from Claimant to NPFC with four attachments to support amount claimed.

¹⁵ June 14, 2023 second email from claimant with SOSC timesheet attached.

¹⁶ 33 CFR Part 136.

¹⁷ 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)).

¹⁸ 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).

¹⁹ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁰ 33 CFR Part 136.

documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.²¹

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.²²
- (d) That the removal costs were uncompensated and reasonable.²³

The NPFC analyzed each of these factors and determined that the majority of the costs incurred and submitted by MDNR would be compensable removal costs if MDNR had provided the following requested additional information:

1. A copy of the current agency indirect cost rate calculation for the applicable Fiscal Year associated with this response. The Pollution Removal Funding Authorization (PRFA) cost documents indicate a 22.54% indirect rate calculation however the backup documentation provided does not equate to the amount claimed in the claims documentation therefore the NPFC is unable to reach the requested percentage amount.
2. The claimant provided the daily SOSC field logs, including start and stop times, and the state payroll salary and fringe benefit calculation for the SOSC responding to the incident during the applicable Fiscal Year however the NPFC is unable to determine exactly what dates and hours make up the amount requested. Additionally, the hourly rate provided does not total to the amount claimed; and
3. Other than a picture that was provided, the NPFC has not received any documentation as it pertains to the disposal claimed.

Overall Denied Costs = \$1,208.12²⁴

²¹ 33 CFR 136.105.

²² USEPA POLREP One and Final dated April 27, 2020.

²³ 33 CFR 136.203; 33 CFR 136.205.

²⁴ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, MDNR's request for uncompensated removal costs is denied as unsupported by the record.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: 7/24/2023

Supervisor Action: *Denial approved*