

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPJ17014-URC001
Claimant:	Alaska Department of Environmental Conservation, Spill Prevention & Response
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$328.85
Action Taken:	Denial

EXECUTIVE SUMMARY:

On June 27, 2017, Marine Safety Detachment Ketchikan (MSD Ketchikan or FOSC) received notification from United States Coast Guard (USCG) Sector Juneau Command Center (SCC Juneau) that the fishing vessel, F/V VERA MARIE, was taking on water at its place of anchorage near the Northern tip of Pennock Island and was at risk of sinking.² At 2041 hours, F/V VERA MARIE sank at its previously reported place of anchorage.³ SCC Juneau reported a 20' x 30' sheen released from F/V VERA MARIE into the waters of the Tongass Narrows; a navigable waterway of the United States.⁴ The Federal On Scene Coordinator (FOSC) identified (b) (6); owner/operator of F/V VERA MARIE, as the responsible party (RP), as defined by the Oil Pollution Act of 1990.⁵

On June 28, 2017, MSD Ketchikan federalized the cleanup operation under FPN J17014 and hired Power Systems & Supplies of Alaska, LLC., (Power Systems or OSRO) to remove the oil substance from the waterway and dispose of any waste associated with the spill incident.⁶ MSD Ketchikan subcontracted Alaska Commercial Divers to send divers to remove any additional oil or threat of pollution from the vessel, and on June 28, 2017, divers completed their operations, reporting no recoverable oil products.⁷

During the FOSC's investigation and recovery operations, Alaska Department of Environmental Conservation, Spill Prevention & Response (ADEC or Claimant) opened a case on the spill incident, making a series of phone calls to MSD Ketchikan and uploading various data relevant to the F/V VERA

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 SITREP-1 and Final updated August 23, 2017.

³ *Id.*

⁴ Notice of Federal Interest dated August 23, 2017, and Warning in Lieu of Civil Penalty signed September 8, 2017.

⁵ 33 U.S.C. § 2701(32).

⁶ SITREP-1 and Final updated August 23, 2017.

⁷ SITREP-1 and Final updated August 23, 2017.

MARIE's cleanup operations into their spills database.⁸ ADEC closed the case on August 9, 2017, noting the FOSC had mitigated the spill.⁹

On May 26, 2023, ADEC presented costs to the National Pollution Funds Center (NPFC) in the amount of \$328.85.¹⁰ 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 must be denied.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On June 27, 2017, at approximately 1600 hours, MSD Ketchikan received notification from the Sector Juneau Command Center (SCC Juneau) that the fishing vessel, F/V VERA MARIE, was taking on water at its place of anchorage near the Northern tip of Pennock Island.¹¹ At 1800 hours, SCC Juneau reported 2 blue 55-gallon drums on board the vessel, but did not confirm what the drums contained.¹² At 2041 hours, SCC Juneau stated F/V VERA MARIE sank at its previously reported place of anchorage.¹³ SCC Juneau spotted a 20' x 30' sheen released from F/V VERA MARIE into the waters of the Tongass Narrows; a navigable waterway of the United States.¹⁴

At 2155 hours, MSD Ketchikan deployed a boat crew, who spotted a sheen approximately 30 yards x 50 yards.¹⁵ The boat crew stated the sheen appeared to dissipate while they were on-scene. Due to reduced visibility, MSD Ketchikan left the scene with the intention to return the following day for further observations. MSD Ketchikan contacted a local OSRO, Power Systems & Supplies of Alaska, LLC., who confirmed their availability for the following day, first light.¹⁶

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.¹⁷ On August 23, 2017, a Notice of Federal Interest (NOFI) was mailed to (b) (6); owner of the F/V VERA MARIE.¹⁸ On August 29, 2017, the FOSC spoke with Mr. (b) (6), who confirmed he was in fact, the owner/operator of the vessel at the time of the incident.¹⁹ Mr. (b) (6) accepted a warning in lieu of civil penalty in response to the incident.²⁰ As such, (b) (6) is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.²¹

⁸ ADEC claim submission received May 30, 2023 Attachment A: ADEC spill summary report 17119917802, pages 1-2 of 2, and Attachment D: Invoice SPR-157094, page 1 of 2.

⁹ ADEC claim submission received May 30, 2023 Attachment A: ADEC spill summary report 17119917802, page 2 of 2.

¹⁰ ADEC claim submission received May 30, 2023.

¹¹ SITREP-1 and Final updated August 23, 2017.

¹² MISLE Case Id: 1085903 Incident Investigation – General Information Summary, dated June 27, 2017.

¹³ MISLE Case Id: 1085903 Incident Investigation – General Information Summary, dated June 27, 2017.

¹⁴ SITREP-1 and Final updated August 23, 2017.

¹⁵ MISLE Case Id: 1085903 Incident Investigation – General Information Summary, dated June 27, 2017.

¹⁶ SITREP-1 and Final, updated August 23, 2017.

¹⁷ 33 U.S.C. § 2701(32).

¹⁸ Notice of Federal Interest dated August 23, 2017.

¹⁹ SITREP-1 and Final updated August 23, 2017.

²⁰ Warning in Lieu of Civil Penalty signed September 8, 2017.

²¹ 33 U.S.C. § 2701(32).

Recovery Operations

On June 28, 2017, MSD Ketchikan federalized the cleanup operation under FPN J17014 and hired Power Systems to remove the oil substance from the waterway and dispose of any waste associated with the spill incident.²² At approximately 0600 hours, MSD Ketchikan arrived back on scene and reported minimal, unrecoverable quantities of weathered diesel present in multiple locations along both the shoreline of Pennock Island and along a floating dock in the Tongass Narrows.²³ MSD Ketchikan found no sign of the 2 55-gallon drums, or any other contaminated debris from the vessel. Using downscan imaging, investigators determined the F/V VERA MARIE's location to be 55 degrees 20'.083 North, 131 degrees 39'.596 West.²⁴

Through Power Systems, MSD Ketchikan subcontracted Alaska Commercial Divers to deploy divers to remove any additional oil or threat of pollution from the vessel. At 1600 hours, divers completed their operations, reporting no recoverable oil products.²⁵

During recovery operations, ADEC made a series of phone calls to MSD Ketchikan.²⁶ On June 28, 2017, ADEC opened a case on the spill incident. Between June 28, 2017 and June 29, 2017, ADEC entered data regarding the F/V VERA MARIE's sinkage into their database.²⁷ ADEC closed the case on August 9, 2017, noting the FOSC had fully mitigated the spill.²⁸

II. CLAIMANT AND NPFC:

On May 30, 2023, the NPFC received a claim for \$328.85 from ADEC.²⁹ ADEC provided the NPFC with an OSLTF claim form, ADEC Spill Summary Report #1711917802, emails between ADEC and Alaska Department of Natural Resources (ADNR), Coding Request information, a costs statement, Invoice #SPR-157094, and the NRC Report #1182496.³⁰

On June 8, 2023, the NPFC requested additional information from ADEC relative to their costs claimed.³¹ On May 19, 2023, ADEC replied to the NPFC's request, providing their billing rates for Fiscal Year 2017.³²

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³³ 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.

²² SITREP-1 and Final updated August 23, 2017.

²³ MISLE Case Id: 1085903 Incident Investigation – General Information Summary, dated June 27, 2017.

²⁴ MISLE Case Id: 1085903 Incident Investigation – General Information Summary, dated June 27, 2017.

²⁵ SITREP-1 and Final updated August 23, 2017.

²⁶ ADEC claim submission received May 30, 2023 Attachment D: Invoice SPR-157094, page 1 of 2.

²⁷ ADEC claim submission received May 30, 2023 Attachment A: ADEC spill summary report 17119917802, pages 1-2 of 2.

²⁸ ADEC claim submission received May 30, 2023 Attachment A: ADEC spill summary report 17119917802, page 2 of 2.

²⁹ ADEC claim submission emailed to NPFC on May 26, 2023.

³⁰ ADEC claim submission received May 30, 2023.

³¹ NPFC email to Claimant dated June 8, 2023.

³² ADEC email to NPFC dated June 8, 2023.

³³ 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.³⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁵ 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:

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.³⁶ An RP's liability is strict, joint, and several.³⁷ 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."³⁸ 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."³⁹ 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."⁴⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴² 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.⁴³

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;

³⁴ 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)).

³⁵ 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).

³⁶ 33 U.S.C. § 2702(a).

³⁷ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁸ *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).

³⁹ 33 U.S.C. § 2701(31).

⁴⁰ 33 U.S.C. § 2701(30).

⁴¹ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴² 33 CFR Part 136.

⁴³ 33 CFR 136.105.

- (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.⁴⁴
- (d) That the removal costs were uncompensated and reasonable.⁴⁵

The NPFC analyzed each of these factors and determined that the actions taken by ADEC were not necessary to prevent, minimize, or mitigate the effects of the incident. Evidence supports the Claimant was not on scene and provided no spill cleanup oversight. Furthermore, no evidence was provided to support ADEC's actions mitigated the effects of the spill. After careful analysis of all costs, actions, and supporting documentation submitted to the NPFC, the NPFC must deny the costs claimed since there was no evidence that the actions undertaken by ADEC assisted in the mitigation of the oil spill incident.⁴⁶

V. CONCLUSION:

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

(b) (6)
Claim Supervisor: (b) (6)
Date of Supervisor's review: <i>6/21/2023</i>
Supervisor Action: <i>Denial approved</i>

⁴⁴ Email from MSD Ketchikan to NPFC dated June 13, 2023.

⁴⁵ 33 CFR 136.203; 33 CFR 136.205.

⁴⁶ Enclosure 3 provides a detailed analysis of the amounts denied by the NPFC.