

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924014-URC001
Claimant:	Hazmat International, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$52,769.30
Action Taken:	Denial

EXECUTIVE SUMMARY:

On September 14, 2018, a semi-truck with trailer owned by Sure-Fire Carrier Inc. (“Sure-Fire” or “RP”), was traveling Eastbound on I-10 when it left the main lanes of the interstate and struck the guardrail of an overpass in Brookshire, Texas. The truck crashed onto Peach Ridge Road below, where it ruptured its saddle tanks and lost its load.² Hazmat International, Inc. (“Hazmat” or “Claimant”), reported that approximately 100 gallons of diesel fuel spilled from the ruptured saddle tanks onto the shoulder of the roadway, into a ditch next to the roadway, and onto the underpass of the freeway.³ The Claimant asserted that the roadside ditch affected by the spill is approximately one (1) mile from the incident location to the Brazos River; a navigable waterway of the United States.⁴

The United States Environmental Protection Agency Region 6 (“USEPA” or “FOSC”) is the Federal On-Scene Coordinator (FOSC) based on the location of this incident. The FOSC determined that the incident did not pose a substantial threat of discharge into a navigable waterway of the United States.⁵

On September 14, 2018, the RP hired Hazmat to perform cleanup operations.⁶ On November 1, 2018, final disposal actions were completed, and the incident response was complete.⁷

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 Hazmat International original claim submission, Incident Response Worksheet, page 3 of 4.

³ *Id.* pg. 4 of 4.

⁴ *Id.* pg. 3 of 4.

⁵ Email from FOSC to the NPFC dated February 5, 2024.

⁶ Hazmat International original claim submission, Incident Response Worksheet, page 3 of 4.

⁷ Hazmat International original claim submission received November 29, 2023. *See*, Waste Disposal Manifest, pg. 5 of 18.

On November 29, 2023, Hazmat presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$52,769.30.⁸ 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 September 14, 2018, a semi-truck with trailer driven by Mr. (b) (6), and owned by Sure-Fire Carrier Inc.¹⁰ (“Sure-Fire” or “RP”), was traveling Eastbound on I-10 when it left the main lanes of the interstate and struck the guardrail of an overpass in Brookshire, Texas. The truck crashed onto Peach Ridge Road below, where it ruptured its saddle tanks and lost its load.¹¹

Hazmat International, Inc. (“Hazmat” or “Claimant”), reported that approximately 100 gallons of diesel fuel spilled from the ruptured saddle tanks onto the shoulder of the roadway, into a ditch next to the roadway, and onto the underpass of the freeway.¹² The Claimant asserted that the roadside ditch affected by the spill is approximately one (1) mile from the incident location to the Brazos River; a navigable waterway of the United States.¹³

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner and operator of the semi-truck and trailer is the Responsible Party (RP) for the incident.¹⁴ Hazmat asserted that the RP for the incident was Sure-Fire Carrier, Inc.¹⁵ Hazmat provided a copy of an insurance denial dated February 6, 2019, that confirms Sure-Fire Carrier, Inc. as the owner and insured for the semi-truck and trailer.¹⁶

Recovery Operations

On September 14, 2018, Hazmat International Inc. (“Hazmat” or “Claimant”) contacted Sure-Fire, who ultimately hired Hazmat to perform cleanup operations.¹⁷ On September 14, 2018, the remaining diesel fuel was pumped out of the saddle tanks as requested by Gregory

⁸ Hazmat International original claim submission received November 29, 2023.

⁹ See, Insurance Denial letter to Hazmat International dated February 6, 2019, that shows the truck driver as (b) (6)

¹⁰ See, Texas Department of Motor Vehicles proof of ownership by Sure-Fire Carrier, Inc. for the semi-truck subject of the oil spill incident, page 2 of 5.

¹¹ Hazmat International original claim submission, Incident Response Worksheet, page 3 of 4.

¹² *Id.* pg. 4 of 4.

¹³ *Id.* pg. 3 of 4.

¹⁴ 33 U.S.C. § 2701(32).

¹⁵ Hazmat International original claim submission, Incident Response Worksheet, section Responsible Party Information, page 3 of 4.

¹⁶ See, Insurance denial letter dated February 6, 2019, and Texas Department of Motor Vehicles proof of ownership by Sure-Fire Carrier, Inc. for the semi-truck subject of the oil spill incident, pages 1-5.

¹⁷ Hazmat International original claim submission, Incident Response Worksheet, pg. 3 of 4.

Towing.¹⁸ All contaminated debris and multiple bags of spilled diatomaceous earth were placed in roll-off containers, while a 130-barrel¹⁹ tanker truck was brought in to pump any existing water out of the ditch. Evidence does not confirm whether the water in the ditch resulted from the cleanup activities or if the water was present in the ditch prior to the incident and ensuing response.²⁰

On September 15, 2018, 25-gallons of remediation agent was sprayed on the affected areas to assist in the breakdown of petroleum hydrocarbons.²¹ Cleanup operations continued through October 30, 2018, when 4 roll-off boxes were brought to contain “fuel impacted soil.”²² Approximately 85 yards of dirt was excavated, with 4 loads of dirt delivered to replace the removed soil. On November 1, 2018, the 4 roll-off loads were removed for disposal and cleanup activities ended.²³

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁴ require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.²⁵ Hazmat submitted its costs incurred as result of the September 14, 2018, incident to the responsible party on October 9, 2018, but reported receiving no payments from the RP.^{26,27}

The NPFC issued a RP Notification letter to Sure-Fire Carrier, Inc., dated November 30, 2023.²⁸ An RP Notification letter notifies the owner/operator that a claim was presented to the NPFC seeking reimbursement of uncompensated removal costs incurred as a result of a discharge of oil to navigable waters of the United States.

Sure-Fire contacted the NPFC on December 20, 2023, advising that Sure-Fire is no longer in business after filing a Chapter 7 bankruptcy in September 2020.²⁹ The RP did not settle the claim within 90 days from presentment.³⁰ As such, the NPFC adjudicated the claim.

III. CLAIMANT AND NPFC:

When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.³¹ On November 29, 2023, the National Pollution

¹⁸ *Id.* pg. 4 of 4.

¹⁹ One barrel is equivalent to 42-gallons.

²⁰ Hazmat International original claim submission received November 29, 2023. *See*, Photos, pg. 6 of 9.

²¹ Hazmat claim submission received November 29, 2023, with Incident Response Worksheet, pg. 4 of 4.

²² Hazmat claim submission received November 29, 2023. *See*, Invoice #18091402-2, pg. 2 of 3.

²³ Hazmat claim submission received November 29, 2023. *See*, Waste Disposal Manifest, pg. 5 of 18.

²⁴ 33 U.S.C. § 2701 *et seq.*

²⁵ 33 CFR 136.103.

²⁶ Hazmat claim submission received November 29, 2023, pg. 1 of 4.

²⁷ *See*, Insurance denial letter to Hazmat dated February 6, 2019, stating the insurance policy benefits were exhausted.

²⁸ *See*, RP Notification Letter dated November 30, 2023.

²⁹ *See*, Email from NPFC to Sure-Fire detailing Phone Conversation Summary dated December 20, 2023.

³⁰ 33 CFR 136.103(c).

³¹ 33 CFR 136.103.

Funds Center (NPFC) received Hazmat's claim for uncompensated removal costs in the amount of \$52,769.30.³² In its claim submission to the NPFC, Hazmat provided an executed OSLTF Claim Form; a copy of Invoice #18091402-2, information pertaining to Sure-Fire Carrier's Insurance Group, a sample analysis report taken from the spill location, a disposal manifest affiliated with the spill incident, and photographs taken on-scene from the spill location.³³

On November 30, 2023, the NPFC requested additional information from Hazmat.³⁴ On December 1, 2023, Hazmat submitted their reply to the NPFC's request, including the insurance denial letter due to the RP's policy exhaustion.³⁵ On December 11, 2023, the NPFC requested additional information, again from Hazmat.³⁶ On December 28, 2023, the NPFC reminded Hazmat of the request for additional information,³⁷ and on January 8, 2024, the NPFC contacted Hazmat by telephone, further explaining our need for additional information.³⁸

On January 11, 2024, Hazmat submitted their reply to the NPFC's request with several attachments including the soil analysis with vendor invoice, the disposal manifest with vendor invoice, affiliated worksheets and narrative reports, the hazmat rate sheet for 2018, the SDS sheet for the cargo that impacted the ditch area, and a Google map.³⁹ On January 12, 2024, the NPFC notified Hazmat that the evidence submitted does not substantiate that the spill discharged into a "navigable waterway" as asserted, therefore a request for evidentiary documentation was made.⁴⁰ On January 12, 2024, Hazmat responded to the NPFC's request with a document showing photographs that display water at the scene of the spill incident location.⁴¹

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁴² 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.⁴³ The NPFC may rely upon, is not bound by the findings of fact, opinions,

³² See, Optional OSLTF Claim Form dated November 2, 2023, and received by NPFC on November 29, 2023.

³³ Hazmat claim submission received November 29, 2023, with Attachments.

³⁴ Email from NPFC to Hazmat dated November 30, 2023.

³⁵ Email from Hazmat to NPFC dated December 1, 2023, with Attachment.

³⁶ Email from NPFC to Hazmat dated December 11, 2023.

³⁷ Email from NPFC to Hazmat dated December 28, 2023.

³⁸ Email from NPFC to Hazmat detailing Phone Conversation Summary dated January 8, 2024.

³⁹ Email from Hazmat to NPFC dated January 11, 2024, with Attachments.

⁴⁰ Email from NPFC to Hazmat dated January 12, 2024.

⁴¹ Email from Hazmat to NPFC dated January 12, 2024, with Attachment.

⁴² 33 CFR Part 136.

⁴³ 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)).

or conclusions reached by other entities.⁴⁴ 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.⁴⁵ An RP's liability is strict, joint, and several.⁴⁶ 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."⁴⁷ 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."⁴⁸ 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."⁴⁹

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁵⁰ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁵¹ 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.⁵²

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;

⁴⁴ 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).

⁴⁵ 33 U.S.C. § 2702(a).

⁴⁶ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴⁷ *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).

⁴⁸ 33 U.S.C. § 2701(31).

⁴⁹ 33 U.S.C. § 2701(30).

⁵⁰ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁵¹ 33 CFR Part 136.

⁵² 33 CFR 136.105.

- (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.⁵³

Based on the location of this incident, the FOSC for this incident is the United States Environmental Protection Agency (USEPA).⁵⁴ 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.⁵⁵

The FOSC found that the actions taken by the claimant were not consistent with the NCP because the incident did not discharge into a navigable waterway of the United States, nor did it substantially threaten a navigable waterway of the United States.⁵⁶ 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.⁵⁷

The NPFC has not specifically adjudicated the specific underlying claimed costs because it has denied the claim on the jurisdictional grounds of not being compensable under OPA.⁵⁸

VI. CONCLUSION:

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


Claim Supervisor: 
Date of Supervisor's review: <i>2/15/2024</i>
Supervisor Action: <i>Denial approved</i>

⁵³ 33 CFR 136.203; 33 CFR 136.205.

⁵⁴ See generally, 40 CFR 300.120(a)(2).

⁵⁵ See, Email from NPFC to EPA FOSC dated November 30, 2023, requesting after-the-fact FOSC coordination for the incident and response.

⁵⁶ See, Email from USEPA FOSC to NPFC dated February 5, 2024.

⁵⁷ See, 33 U.S.C. § 2712(a)(4); 33 CFR 136.205.

⁵⁸ Because NPFC has determined that the claimant is not entitled to compensation, NPFC did not adjudicate whether these claimed expenses met the other regulatory requirements outlined in 33 CFR Part 136.