

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924017-URC001
Claimant:	Oregon Department of Environmental Quality
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$31,243.56
Action Taken:	Offer in the amount of \$30,274.95

EXECUTIVE SUMMARY:

On December 20, 2021, at approximately 5:45pm local time, Oregon Department of Environmental Quality (“ORDEQ” or “Claimant”) reported to the National Response Center (NRC), an accident involving a semi tractor trailer truck releasing diesel fuel into Buck Creek.² Golden Temple Trucking, LLC (“Golden Temple” or “RP”) operated the semi-truck that was traveling on I-5 North when it hit an overpass during rainy conditions and crashed into a ditch in Curtain, Oregon on Highway 38.³ During the crash, the fuel tanks from the truck ruptured and released about 100 gallons of diesel oil.⁴ The diesel oil traveled from the ditch line, catch basin, and to a stormwater drain system.⁵ The oil traveled through the storm drain into a settling pond and into an underground culvert which leads to Buck Creek.⁶ Buck creek travels downstream toward Pass Creek, a tributary of Elk Creek and the Umpqua River, a navigable waterway of the United States.⁷

The United States Environmental Protection Agency Region 10 (“USEPA” or “FOSC”) is the Federal On-Scene Coordinator (FOSC) based on the location of this incident. The FOSC

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 NRC Report #1295130 dated December 20, 2021.

³ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the ‘Narrative’ section, page 5 of 98.

⁴ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the ‘Description of the Threat’ section, page 5 of 98.

⁵ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the ‘Narrative’ section, page 5 of 98.

⁶ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the ‘Narrative’ section, pages 5-6 of 98.

⁷ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the ‘Narrative’ section, page 6 of 98.

determined all actions taken by the ORDEQ were consistent with the National Contingency Plan (NCP).⁸

On December 20, 2023, the National Pollution Funds Center (NPFC) received ORDEQ's claim submission in the amount of \$31,243.56.⁹ The NPFC has thoroughly reviewed all documents submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration, has determined that \$30,274.95 is compensable and offers this amount as full compensation of this claim.¹⁰

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 20, 2021, at approximately 5:45pm local time, Oregon Department of Environmental Quality ("ORDEQ" or "Claimant") reported to the National Response Center (NRC), an accident involving a semi tractor trailer truck releasing diesel fuel into Buck Creek.¹¹ Golden Temple Trucking, LLC ("Golden Temple" or "RP") operated the semi-truck that was traveling on I-5 North when it hit an overpass during rainy conditions and crashed into a ditch in Curtain, Oregon on Highway 38.¹² During the crash, the fuel tanks from the truck ruptured and released about 100 gallons of diesel oil.¹³ The diesel oil traveled from the ditch line, catch basin, and to a stormwater drain system.¹⁴ The oil traveled through the storm drain into a settling pond and into an underground culvert which leads to Buck Creek.¹⁵ Buck creek travels downstream toward Pass Creek, a tributary of Elk Creek and the Umpqua River, a navigable waterway of the United States.¹⁶

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner/operator of the Golden Temple Trucking, LLC semi-truck is the Responsible Party for the incident.¹⁷ On December 20, 2023, the NPFC issued a Responsible Party Notification Letter to Golden Temple Trucking, LLC via certified mail.¹⁸ An RP Notification letter notifies the owner/operator that a claim was presented

⁸ ORDEQ revised claim submission received December 20, 2023, EPA FOSC Coordination email, page 8 of 98.

⁹ ORDEQ revised claim submission received December 20, 2023.

¹⁰ 33 CFR 136.115.

¹¹ NRC Report #1295130 dated December 20, 2021.

¹² ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the 'Narrative' section, page 5 of 98.

¹³ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the 'Description of the Threat' section, page 5 of 98.

¹⁴ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the 'Narrative' section, page 5 of 98.

¹⁵ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the 'Narrative' section, page 5-6 of 98.

¹⁶ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the 'Narrative' section, page 6 of 98.

¹⁷ 33 U.S.C. §2701(32).

¹⁸ NPFC RP Notification Letter sent to Golden Temple Trucking, LLC dated December 20, 2023.

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.¹⁹

Recovery Operations

Golden Temple hired NWFF Environmental (“NWFF”) for incident cleanup on December 21, 2020.²⁰ NWFF arrived at the scene and deployed absorbent booms along the drainage ditch and inspected nearby waterways.²¹ NWFF returned to the scene on December 22, 2020, in the daylight hours to examine Buck Creek and Pass Creek for contamination.²² Golden Temple became non-responsive to their contractor NWFF and ORDEQ after scheduling to dig out the contaminated soil from the incident.²³ After no response from the RP, ORDEQ hired a state contractor, US Ecology (“USE”) who subcontracted with NWFF to complete the cleanup.²⁴ Clean up was completed on December 29, 2020, after shipping contaminated soil for disposal. Samples confirmed no diesel oil remained in the soil onsite. The soil area was backfilled with crushed rock.²⁵

II. CLAIMANT AND NPFC:

On December 20, 2023, the NPFC received a claim for \$31,243.56 from ORDEQ. The claim included ORDEQ’s signed OSLTF Claim Form, ORDEQ POLREQ, EPA FOSC Coordination email, Site Maps, OERS Report #2020-3171, NRC Report #1295130, ORDEQ Time Reporting – Daily Log, ORDEQ Invoice OR-20-3171, ORDEQ Costs and Job Descriptions, US Ecology Invoice, NWFF Invoice, US Ecology rate sheet, NWFF Environmental 2015 rate sheet, NWFF clean up and disposal email to US Ecology, NWFF photo log, NWFF site maps, APEX Laboratories samples / invoice a, disposal documentation, NWFF Spill/Release Report, and Knife River Materials invoice.

On January 26, 2024, the NPFC requested additional information from ORDEQ relative to their costs claimed.²⁶ On February 12, 2024, ORDEQ replied to the NPFC’s request, providing contractor proof of payment, travel documentation, NWFF rate sheet, and NWFF onsite field worksheet.²⁷ On February 22, 2024, the NPFC requested additional information from ORDEQ relative to their costs claimed.²⁸ On March 1, 2024, ORDEQ replied to the NPFC’s request, providing time and billing documentation.²⁹

¹⁹ *Id.*

²⁰ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the ‘Response Actions to Date’ section, page 6 of 98.

²¹ ORDEQ revised claim submission received December 20, 2023, NWFF email to US Ecology, page 44 of 98.

²² ORDEQ revised claim submission received December 20, 2023, NWFF Environmental Release Report, page 94 of 98.

²³ ORDEQ revised claim submission received December 20, 2023, OR DEQ POLREP under the ‘Response Actions to Date’ section, page 6 of 98.

²⁴ *Id.*

²⁵ ORDEQ revised claim submission received December 20, 2023, NWFF Spill/Release Report section 4j and 5d, page 94 of 98.

²⁶ Email from NPFC to Claimant dated January 26, 2024.

²⁷ Email from Claimant to NPFC dated February 12, 2024.

²⁸ Email from NPFC to Claimant dated February 22, 2024.

²⁹ Email from Claimant to NPFC dated March 1, 2024.

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁰ 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.³¹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³² 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.³³ An RP's liability is strict, joint, and several.³⁴ 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."³⁵ 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."³⁶ 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."³⁷

³⁰ 33 CFR Part 136.

³¹ 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)).

³² 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).

³³ 33 U.S.C. § 2702(a).

³⁴ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁵ *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).

³⁶ 33 U.S.C. § 2701(31).

³⁷ 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁹ 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.⁴⁰

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.⁴¹
- (d) That the removal costs were uncompensated and reasonable.⁴²

The NPFC analyzed each of these factors and determined most of the costs incurred by Oregon Department of Environmental Quality and submitted herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

The amount of compensable removal costs is \$30,274.95 while \$968.61 is denied as follows:

NWFF Personnel Costs billed under NRC Environmental

1. NWFF invoiced a Technician for 8.5 hours totaling \$790.50 on December 21, 2020.⁴³ NWFF's Time and Billing document shows Technicians (b) (6) and (b) (6) both starting work at 2045 hours and stopping at 0000 hours.⁴⁴ According to the start and stop times, both Technicians worked 3.25 hours each for a total of 6.5 hours instead of the 8.5 hours listed on NWFF's invoice. Therefore, the NPFC denies \$186.00 for excessive Technician costs invoiced on December 21, 2020.⁴⁵
2. NWFF invoiced (b) (6) for 4.5 straight time hours and 1.75 overtime hours totaling \$755.25 on December 28, 2020.⁴⁶ NWFF's Time and Billing shows (b) (6) working from 0800 hours to 1200 hours and 1400 hours to 1615 hours.⁴⁷ According to NWFF's rate sheet terms and conditions, (b) (6)'s hours worked

³⁸ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁹ 33 CFR Part 136.

⁴⁰ 33 CFR 136.105.

⁴¹ ORDEQ revised claim submission received December 20, 2023, EPA FOSC Coordination email, page 8 of 98.

⁴² 33 CFR 136.203; 33 CFR 136.205.

⁴³ ORDEQ revised claim submission received December 20, 2023; NWFF Environmental Invoice, page 24 of 98.

⁴⁴ Additional information received March 1, 2024, NWFF Daily, page 1 of 41.

⁴⁵ Encl (3) Summary of Costs spreadsheet, NRC Environmental tab, line 7.

⁴⁶ ORDEQ revised claim submission received December 20, 2023, NWFF Environmental Invoice, page 24 of 98.

⁴⁷ Additional information received March 1, 2024, NWFF Daily, page 1 of 41.

on December 28, 2020 does not qualify to be billed as overtime.⁴⁸ All of (b) (6)'s hours worked on December 28, 2020 will be adjudicated at straight time rate based on the start and stop time period, therefore, the NPFC denies \$92.75.⁴⁹

Total denied this section - \$278.75

ORDEQ Personnel Costs

1. ORDEQ requested reimbursement of the labor costs for (b) (6) in the amount of \$37.64 on September 15, 2021, and \$168.64 on October 4, 2022.⁵⁰ The incident response ended on December 30, 2020, and as such, the NPFC denies all actions performed by (b) (6) after the end date of the response in the total of \$206.28.⁵¹

Total denied this section - \$206.28

ORDEQ Travel Costs

1. ORDEQ requested travel costs for (b) (6) in the amount of \$59.61.⁵² The claimant invoiced travel costs at the rate of \$0.6852 per mile for 87 miles. The public state rate was listed at \$0.575 per mile per the Oregon.gov website. Therefore, the NPFC denies \$9.58 in excessive travel costs.⁵³

Total denied this section - \$9.58

ORDEQ Indirect Costs

1. ORDEQ requested a total of \$49.07 in Agency Indirect costs for (b) (6) for labor performed on September 15, 2021, and October 4, 2022.⁵⁴ Labor costs performed after the incident response ended are denied and as such, Agency Indirect costs are also denied.⁵⁵
2. ORDEQ requested a total of \$424.93 in Land Quality Indirect costs for (b) (6) for labor performed on September 15, 2021, and October 4, 2022.⁵⁶ Labor costs performed after the incident response ended were denied, therefore, Land Quality Indirect costs are also denied.⁵⁷

⁴⁸ Additional Information received February 12, 2024, NWFF Rate Sheet, page 6 of 6.

⁴⁹ Encl (3) Summary of Costs spreadsheet, NRC Environmental tab, line 31.

⁵⁰ ORDEQ revised claim submission received December 20, 2023, Personnel Daily Log and Invoice, pages 19 & 20 of 98.

⁵¹ Encl (3) Summary of Costs spreadsheet, ORDEQ Personnel tab, lines 11 & 12.

⁵² Additional Information received February 12, 2024, Travel Costs Back Up page 1 of 4.

⁵³ Encl (3) Summary of Costs spreadsheet, ORDEQ Travel Costs tab, line 3.

⁵⁴ ORDEQ revised claim submission received December 20, 2023, Personnel Daily Log and Invoice, pages 19 & 20 of 98.

⁵⁵ Encl (3) Summary of Costs spreadsheet, ORDEQ Indirect Costs tab, lines 11 & 12.

⁵⁶ ORDEQ revised claim submission received December 20, 2023, Personnel Daily Log and Invoice, pages 19 & 20 of 98.

⁵⁷ Encl (3) Summary of Costs spreadsheet, ORDEQ Indirect Costs, lines 24 & 25.

3. *Total denied this section - \$474.00*

Overall Denied Costs = \$968.61

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Oregon Department of Environmental Quality request for uncompensated removal costs is approved in the amount of **\$30,274.95**.

This determination is a settlement offer,⁵⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶⁰ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor:

(b) (6)

Date of Supervisor's review: *3/22/24*

Supervisor Action: *Offer Approved*

⁵⁸ 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).

⁵⁹ 33 CFR § 136.115(b).

⁶⁰ 33 CFR § 136.115(b).