

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924019-URC001
Claimant:	Alaska Department of Environmental Conservation
Type of Claimant:	State
Type of Claim:	Uncompensated Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$1,004.16
Action Taken:	Offer in the amount of \$1,004.16

EXECUTIVE SUMMARY:

On July 10, 2023, the Alaska Department of Fish and Game (ADFG) received an email regarding an oil sheen near the Ninilchik Harbor that extended from the Harbor to the mouth of the Ninilchik River a navigable waterway of the United States.² The reporter explained the 15-foot sheen was pervasive and was still seen, even after the vessels in the harbor had all left.³ The ADFG alerted the Alaska Department of Environmental Conservation (“ADEC” or “Claimant”), who was already investigating the incident.⁴

ADEC and the United States Coast Guard (USCG) Marine Safety Detachment (MSD) Homer, in its capacity as the Federal On Scene Coordinator (FOSC) made a site visit to assess the site and attempt to find the source of the sheen.⁵ The owner of a nearby seafood plant, OBI Seafoods, visited the site to verify that the sheen was not coming from their old plant and both ADEC and USCG confirmed the plant was not the source.⁶ The source of the sheen was suspected to be at least one of the fishing vessels located in the Ninilchik Harbor, but the source was never identified.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 State of Alaska claim submission dated and received on December 28, 2023. *See*, July 10, 2023, email from (b) (6) to (b) (6) of ADFG, pages 4 & 5 of 9, reporting the sheen and included a photo.

³ *Id.*

⁴ State of Alaska claim submission dated and received on December 28, 2023. *See*, July 10, 2023, email from (b) (6) to (b) (6) of ADFG, pages 4 of 9, reporting the sheen and included a photo.

⁵ *See*, Email from FOSC to NPFC dated February 13, 2024, confirming joint site assessment with ADEC on July 10, 2023.

⁶ State of Alaska claim submission dated and received on December 28, 2023, OSLTF Claim Form, question 2, page 1 of 9.

⁷ *Id.* 4

The NPFC received ADEC’s uncompensated removal cost claim in the amount of \$1,004.16 on December 28, 2023. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that \$1,004.16 is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On July 10, 2023, the Alaska Department of Fish and Game (ADFG) received an email regarding an oil sheen near the Ninilchik Harbor that extended from the Harbor to the mouth of the Ninilchik River a navigable waterway of the United States.⁸ The reporter explained the 15-foot sheen was pervasive and was still seen, even after the vessels in the harbor had all left.⁹ The ADFG alerted the Alaska Department of Environmental Conservation (“ADEC” or “Claimant”), who was already investigating the incident.¹⁰

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.¹¹ The source of the spill could not be identified by the FOSC or by ADEC.¹²

Recovery Operations

ADEC and the FOSC performed a joint site assessment on July 10, 2023, to confirm the reports of sheening.¹³ No immediate action was undertaken because the sheen was thin and steadily dissipated over several days.¹⁴

II. CLAIMANT AND NPFC:

The Claimant submitted their uncompensated removal costs claim to the NPFC on December 28, 2023.¹⁵ On January 23, 2024, the NPFC requested additional information from the claimant relating to their claimed labor costs. On January 24, 2024, the claimant responded with a clarification of the activities performed on July 12, 2023, while responding to the spill.¹⁶

⁸ State of Alaska claim submission dated and received on December 28, 2023. *See*, July 10, 2023, email from (b) (6) to (b) (6) of ADFG, pages 4 & 5 of 9, reporting the sheen and included a photo.

⁹ *Id.*

¹⁰ State of Alaska claim submission dated and received on December 28, 2023. *See*, July 10, 2023, email from (b) (6) to (b) (6) of ADFG, pages 4 of 9, reporting the sheen and included a photo.

¹¹ 33 U.S.C. § 2701(32).

¹² *See*, Email from FOSC to NPFC dated February 13, 2024. No source could be identified.

¹³ State of Alaska claim submission dated and received on December 28, 2023, OSLTF Claim Form, question 2, page 1 of 9.

¹⁴ *See*, Email from FOSC to NPFC dated February 13, 2024. No source could be identified.

¹⁵ State of Alaska claim submission dated and received on December 28, 2023,

¹⁶ *See*, Email from ADEC to NPFC dated January 24, 2024.

III. 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.

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.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 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

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.

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).

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.²⁸

The NPFC analyzed each of these factors and determined that the costs incurred and submitted by ADEC are compensable removal costs based on the supporting documentation provided.²⁹ All costs approved for payment were verified as being invoiced at the appropriate ADEC rates for personnel labor.³⁰

Based on the location of this incident, the FOSC is the United States Coast Guard, Marine Safety Detachment Homer. All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).³¹

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Alaska Department of Environmental Conservation's request for uncompensated removal costs is approved in the amount of \$1,004.16.

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 33 CFR 136.203; 33 CFR 136.205.

²⁹ See, NPFC Summary of Costs.

³⁰ State of Alaska claim submission dated and received on December 28, 2023. See, State Employee Bill rate on page 9 of 9.

³¹ See, Email from FOSC to NPFC dated February 13, 2024.

This determination is a settlement offer,³² the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³³ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³⁴ 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:	<i>2/20/2024</i>
Supervisor Action:	<i>Offer Approved</i>

³² 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).

³³ 33 CFR § 136.115(b).

³⁴ 33 CFR § 136.115(b).