

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924042-URC001
Claimant:	Upper Pine River Fire Protection District
Type of Claimant:	Municipality
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$20,533.20
Action Taken:	Denial

EXECUTIVE SUMMARY:

On July 26, 2024, at approximately 16:35 local time, Upper Pine River Fire Protection District notified the United States Coast Guard's ("USCG") National Response Center ("NRC") of a tractor trailer truck that was transferring material into two bobtails with waste oil and road tar oil when a leak occurred due to equipment failure in Bayfield, Colorado.² The spill threatened Dry Creek, a navigable waterway of the United States.³

The Upper Pine River Fire Protection District ("Claimant" or "UPR Fire") maintained communications with the United States Environmental Protection Agency (USEPA) Region 8 ("USEPA" or "FOSC").⁴ USEPA Region 8 is the Federal On-Scene Coordinator ("FOSC") based on the location of this incident. No Responsible Party ("RP") has been identified.⁵

UPR Fire presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$20,533.20 on August 2, 2024.⁶ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that the claim is not compensable under the Oil Pollution Act and must be denied.

I. DETERMINATION PROCESS:

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 National Response Center (NRC) Incident Report # 1406043 dated July 26, 2024.

³ See, NRC Incident Report # 1406043 dated July 26, 2024; See also, email from United States Environmental Protection Agency (USEPA) Federal On Scene Coordinator (FOSC) to NPFC dated October 10, 2024, question #1 whereby the FOSC determines that the incident substantially threatened Dry Creek, a navigable waterway of the US.

⁴ Email from USEPA FOSC to NPFC dated October 10, 2024, question #1 whereby the FOSC determines that the incident substantially threatened Dry Creek, a navigable waterway of the US.

⁵ Email from USEPA FOSC to NPFC dated October 17, 2024, question #3 whereby the FOSC stated that no viable RP has been identified for this incident.

⁶ UPR Fire District Original Claim submission dated August 1, 2024, with attachments.

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁷ 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.⁸ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁹ 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.

II. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On July 26, 2024 at approximately 16:35 local time, the National Response Center (NRC) was notified of a spill caused by two bobtails that were carrying oil and road tar oil that leaked due to equipment failure.¹⁰ UPR Fire Department units responded to a spill incident at US 160 MM 97, where two bobtail trucks and a tractor-trailer were involved.¹¹ According to the FOSC, if the UPR Fire had failed to take immediate action, the tack oil would have inevitably reached Dry Creek, a navigable waterway of the United States.¹² No Responsible Party (RP) has been identified.¹³

Recovery Operations

A bobtail truck discharged oil and tar into the soil, which flowed downhill toward an irrigation ditch that led to Dry Creek, a navigable waterway of the US.¹⁴ The UPR Fire Department responded to the scene and initiated immediate spill control efforts, including the deployment of hazardous materials containment measures such as hazardous materials pigs and a containment dam built by a Colorado Department of Transportation (“CDOT”) front loader.¹⁵ Despite several attempts to plug the leak, including using wax plugs, hazardous material plugs,

⁷ 33 CFR Part 136.

⁸ 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)).

⁹ 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).

¹⁰ National Response Center (NRC) Incident Report # 1406043 dated July 26, 2024.

¹¹ Incident 24UP-0516.pdf provided by the Claimant with Additional Information on November 15, 2024.

¹² Email from USEPA FOSC to NPFC dated October 10, 2024, question #1 whereby the FOSC determines that the incident substantially threatened Dry Creek, a navigable waterway of the US.

¹³ Email from USEPA FOSC to NPFC dated October 17, 2024, question #3 whereby the FOSC stated that no viable RP has been identified for this incident.

¹⁴ See, Email from UPR Fire to NPFC dated November 15, 2024, providing UPR Fire Report entitled ‘Incident 24UP-0516’ dated July 26, 2024, pg. 15 of 16, Primary Narrative section.

¹⁵ *Id.*

and a rag-and-Tyvek seal, the leak continued. A rag was pressed into the hole, temporarily stopping most of the leak. The leak was eventually contained after the remaining product in the truck's system drained out.¹⁶

The trucks were unregistered, uninsured, and lacked identifiable license plates.¹⁷ The vehicles also had defective valves and a disabled air system, complicating efforts to stop the leak. Firefighters sustained minor burns from exposure to the hot oil and tar and were decontaminated before being transported to the hospital. The spill was ultimately contained, and the scene was released to CDOT and an outsourced contractor for cleanup. The cleanup was scheduled to begin with the contractor's arrival at approximately 2 a.m. on Saturday.¹⁸

III. CLAIMANT AND NPFC:

On August 2, 2024, UPR Fire presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$20,533.20.¹⁹ The claim sought compensation for costs incurred by UPR Fire for tar and oil contaminated safety gear and injuries sustained by two firefighters. The safety gear was used while firefighters attempted to stop the spill and decontaminate first responders.²⁰ UPR Fire's claim included the optional OSLTF Claim Form; photos of the incident, itemized expenses list, a Mercy Medical Center medical bill for (b) (6), UPR Fire Report # UP24-0516, and Material Safety Data Sheet (MSDS) for the Chip Seal oil contained in the truck at the incident scene.²¹

On August 14, 2024, the NPFC requested information pertaining to the incident location so that the NPFC could better understand the location where the incident occurred.²² On August 16, 2024, UPR Fire responded to the NPFC's request and provided the coordinates for the incident location and provided incident photos.²³

On October 31, 2024, the NPFC requested that UPR Fire provide the following information:

1. For all damaged equipment, the NPFC asked how the equipment was damaged in the response and if so, to provide a photo of the damaged items, age of the damaged items and provide a receipt for the original cost of the items at purchase and if the receipt is not available, provide an estimate from a provider on the actual cost of the item;
2. A rate sheet that validates the price for all items invoiced. If a rate sheet is not available, provide a receipt, purchase order or document from the source where the items were acquired that validates the price;

¹⁶ See, Email from UPR Fire to NPFC dated November 15, 2024, providing UPR Fire Report entitled 'Incident 24UP-0516' dated July 26, 2024, pg. 15 of 16, Primary Narrative section.

¹⁷ UPR Fire Original Claim submission, Oil Spill Liability Trust Fund (OSLTF) Claim form, question 6, pg. 1 of 4, dated August 1, 2024.

¹⁸ See, Email from UPR Fire to NPFC dated November 15, 2024, providing UPR Fire Report entitled 'Incident 24UP-0516' dated July 26, 2024, pg. 15 of 16, Primary Narrative section..

¹⁹ UPR Fire Original Claim submission dated August 1, 2024, with attachments.

²⁰ UPR Fire Original Claim submission, Oil Spill Liability Trust Fund (OSLTF) Claim form, questions 9 & 10, pg. 2 of 4, dated August 1, 2024.

²¹ UPR Fire Original Claim submission dated August 1, 2024, with attachments.

²² Email from NPFC to UPR Fire dated August 14, 2024.

²³ Email from UPR Fire to NPFC dated August 16, 2024.

3. The names of the UPR Fire personnel that were onsite and a listing of the equipment that was issued (i.e., boots, gloves, pants, jackets).²⁴

On October 31, 2024, UPR Fire sent an email to NPFC explaining that only a certain number of people were in the hot zone and because the spilled material was hot chip seal oil, the tar and chip seal contaminated the firefighter turnout gear, therefore there was no way to clean the equipment.²⁵ Later the same day, the NPFC sent a follow-up email to UPR Fire stating that the photos provided previously were not of the damaged equipment and that we needed the names of the people that were using the damaged gear.²⁶

On November 7, 2024, UPR Fire responded to the NPFC and provided all available information requested by the NPFC on October 31, 2024.²⁷ On November 8, 2024, the NPFC sent a follow-on request for details associated with the individual items claimed.²⁸ On November 9, 2024, UPR Fire sent an email to NPFC asking if they could add staff time in order to obtain the information to support their claim.²⁹

On November 12, 2024, the NPFC and UPR Fire shared an exchange of emails regarding the information to support the claim and finally had a conference call to discuss the claim issues.³⁰ On November 20, 2024, UPR Fire sent an email with a document identified as state approved rates.³¹ Then on November 21, 2024, UPR Fire stated that it would provide the following information the NPFC requested by Friday, November 22, 2024, but these items remain unanswered or incomplete:

1. During the conference call on November 12, 2024, a revised sum certain for the claim was discussed. The NPFC cannot assume that the total from the excel spreadsheet provided on November 20, 2024 represents the new claimed amount. The NPFC requested that the amended sum certain be in writing and clearly represent all costs being claimed.
2. Information on claimed personnel and equipment. In the state approved rates document provided on November 20, 2024, for equipment, it indicates what the work rate is for each item listed in the document, however it was not clear exactly what pieces of equipment were being claimed and how those items were associated with the removal of oil and/or response. Additionally, on November 15, 2024, UPR Fire provided a spreadsheet that contained what appeared to be personnel last names with an hourly rate and total. However, the NPFC cannot decipher if the hourly rates are payroll rates or in accordance with a state designated hourly rate nor can the NPFC determine what dates are affiliated with the hours claimed. UPR Fire must provide either a state personnel

²⁴ Email from NPFC to UPR Fire dated October 31, 2024 @ 9:53am local time.

²⁵ Email from UPR Fire to NPFC dated October 31, 2024.

²⁶ Email from NPFC to UPR Fire dated October 31, 2024 @ 12:41pm local time.

²⁷ Email from UPR Fire to NPFC dated November 7, 2024, with attachments.

²⁸ Email from NPFC to UPR Fire dated November 8, 2024.

²⁹ Email from UPR Fire to NPFC dated November 9, 2024.

³⁰ See, email exchanges between NPFC and UPR Fire dated November 12, 2024, including an email recapping a conference call to discuss incident details and documentation requirements.

³¹ Email from UPR Fire to NPFC dated November 20, 2024, with attachment.

hourly rate sheet based on labor categories, or payroll records to support the rate claimed per person.

3. A detailed description/narrative for the personnel and equipment used during the response, and all costs claimed including a daily accounting of services performed as discussed during the November 12, 2024 conference call between NPFC and UPR Fire.³² The request was made so that the NPFC could make a proper determination as to whether the costs claimed were uncompensated removal costs.

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

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:

³² Email Re November 12, 2024 Call Summary.

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).

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.

- (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 that UPR Fire's claimed costs are not compensable removal costs based on the lack of supporting documentation provided following the November 12, 2024 conference call between UPR Fire and the NPFC as noted above. UPR Fire indicated that it intended to amend its sum certain and submit new personnel and equipment costs along with proper supporting documentation and a revised narrative statement with detailed descriptions associated with each cost claimed to establish its relevance to the removal of oil.⁴³

The NPFC contacted USEPA Region 8 in its capacity as the Federal On Scene Coordinator (FOSC) for the incident based on the location and to obtain after-the-fact FOSC Coordination. The NPFC provided the FOSC with all the documents included in the claimant's submission. In response to the NPFC's request for FOSC coordination, the FOSC confirmed that this spill involved an OPA oil and further confirmed that had UPR Fire not respond to the spill and had they not taken immediate action, the tack oil, also referred to as chip seal oil, would have reached Dry Creek, a navigable waterway of the United States.⁴⁴ The FOSC explained that "during an emergency response, the USEPA does a quick assessment on whether the oil spill threatens or impacts a waterway of the United States. When the call occurred in this case, the FOSC determined that there was a threat to a navigable waterway of the US."⁴⁵ The FOSC determined UPR Fire's actions were consistent with the National Contingency Plan (NCP) and Regional Contingency Plan (RCP).⁴⁶

Upon adjudication of the claim and because UPR Fire never amended their sum certain as agreed on November 12, 2024, nor did UPR Fire provide proper supporting documentation including either personnel state hourly rate documentation or payroll records and other requested documentation, the NPFC provides this decision based on the original sum certain claimed.

The NPFC determined that removal costs claimed in the amount of \$20,533.20 are denied based on the following:

- (1) The medical costs associated with the Mercy Medical Center hospital services provided for (b) (6) on July 26, 2024, in the amount of \$1,531.15 is denied because medical expenses are not removal costs as defined under the Oil Pollution Act (OPA)⁴⁷; and

⁴¹ 33 CFR 136.203.

⁴² 33 CFR 136.203; 33 CFR 136.205.

⁴³ Email from NPFC to UPR Fire recapping the conference call dated November 12, 2024.

⁴⁴ Email from EPA to NPFC dated October 10, 2024 Re After the Fact FOSC Coordination Response

⁴⁵ Email from EPA to NPFC dated October 17, 2024 Re After the Fact FOSC Coordination Follow Up Response

⁴⁶ Email from EPA to NPFC dated October 10, 2024 Re After the Fact FOSC Coordination Response

⁴⁷ See, UPR Fire Original Claim submission dated August 1, 2024, with attachment entitled UP24-0516 Medical Bill.

(2) The following items are denied by claimed category:

- a. ***Damaged Turnout Gear*** – (1) Turnout Jackets – quantity of four for a total amount of \$8,780.00; (2) Turnout Pants – quantity of four for a total amount of \$6,432.00; (3) Structure Firefighting Boots – quantity of four pairs for a total amount of \$2,240.00; and (4) Structure Firefighting Gloves – quantity of 3 pairs for a total amount of \$348.00.

These costs are denied because the damage sustained to the turnout gear occurred when the gear was damaged by chip seal oil before it threatened a navigable waterway and are considered damages upstream from a navigable waterway. By this, we mean that even if the above threshold criteria could be met, and it could be demonstrated that the chip seal oil and tar had a hydrological connection to a navigable waterway, there would still be the claim issue of damages occurring prior to the oil reaching a navigable waterway – the upstream concept. This claim notes the chip seal oil and tar leaked from the vehicles resulting in the cause of the damages to the firefighter turnout gear. For a damage to be compensable, it must be downstream; after the oil has reached the navigable water, not before. As such, these costs are denied.

Total costs denied - \$17,800.00

- b. ***Miscellaneous Itemized Supplies*** – This category of claimed costs are denied for a variety of reasons. UPR Fire did not provide individual receipts or provide any documentation to establish (1) that the items were in the inventory or (2) provide an explanation on why the items are claimed and if any of the listed items were damaged, lost, or replenished. Based on the foregoing, these items are denied as not properly supported by documentation.

<i>Item</i>	<i>Quantity</i>	<i>Price</i>	<i>Total</i>
Odorless Mineral Spirits	3	\$21.99	\$65.97
Paint Spirits	1	\$22.99	\$22.99
Long Cuff PVC Chemical Gloves	3	\$10.99	\$32.97
Round Point Shovel	1	\$27.99	\$27.99
Transfer Shovel	1	\$39.99	\$39.99
Grain Scoop Shovel	1	\$54.99	\$54.99
Axe Handle	1	\$32.99	\$32.99
Mallet Rubber Wood Handle	1	\$8.69	\$8.69
16" Toolbox	1	\$14.99	\$14.99
Sledgehammer	1	\$119.13	\$119.13
Wax Rings	3	\$14.38	\$43.14
Gas Plugs (Grainger Kit)	1	\$211.63	\$211.63
20'x30' Tarp	2	\$116.99	\$233.98
5-gallon bucket	5	\$12.99	\$64.95

Assorted Scrub Brushes	6	\$14.98	\$89.88
45"x10" Kiddie Pool	3	\$12.80	\$38.40
32-gallon Rubbermaid Trash Container	2	\$4370	\$87.40
Nitrile Gloves	1	\$11.97	\$11.97
TOTAL			\$19,002.05

Total costs denied - \$19,002.05

Lastly, following the November 12, 2024 conference call, UPR Fire failed to amend their sum certain and provide a new itemization of costs along with all supporting documentation for the claimed costs, including but not limited to, state rate documentation, payroll records or state labor rates, daily breakdown by person, hours, and equipment with a detailed description of how the costs were for the purpose of removing oil as determined by the FOSC. The NPFC made additional attempts to follow up with UPR Fire to obtain the missing additional information but did not receive a response.⁴⁸

Overall Denied Costs: \$20,533.20

V. CONCLUSION:

The NPFC has thoroughly reviewed the entirety of the administrative record, analyzed the applicable law and regulations, and as discussed in detail above and previously, has concluded that UPR Fire has not demonstrated by a preponderance of the evidence, that it is entitled to compensation from the OSLTF. NPFC specifically finds that UPR Fire failed to provide evidence to properly support its original claimed costs and also failed to amend its sum certain and provide an itemized breakdown of newly amended costs supported by proper documentation. As such, the claim must be denied.

(b) (6)

Claim Supervisor: **(b) (6)**

Date of Supervisor's review: *December 18, 2024*

Supervisor Action: *Denial Approved*

⁴⁸ See, Email from NPFC to Claimant dated November 18, 2024, Re Additional Information Request Follow Up; See also, Email from NPFC to Claimant dated November 22, 2024, Re AI Request Follow Up III.