

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPN21032-URC001
Claimant:	State of Louisiana
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$1,582.46
Action Taken:	Denied

EXECUTIVE SUMMARY:

United States Coast Guard (USCG) Sector New Orleans (SEC NOLA) notified the National Response Center (NRC) that on July 21, 2021, a Good Samaritan observed a 500'x100' silvery sheen in the area of a platform in Lake Hermitage with a drone.² A Coast Guard Auxiliary flight confirmed the sheen on July 22, 2021.³ SEC NOLA dispatched to the scene and discovered a hole in a saltwater storage tank on top of a cement barge discharging oily water into the waterway.⁴ SEC NOLA's Federal On-Scene Coordinator Representative (FOSCR) confirmed that the leaking saltwater storage tank had a 63,000-gallon capacity.⁵ The only tank at the facility with this capacity is identified as Tank 1 - a produced water storage tank.⁶

SEC NOLA determined that the lessee of the facility, Mesa Gulf Coast, LLC., was the responsible party (RP) for the spill.⁷ The RP allowed the facility to fall into disrepair after they filed for bankruptcy and abandoned the site, leaving the facility in extremely poor condition.⁸ SEC NOLA attempted to contact Mesa Gulf Coast, LLC., but was unable to reach them. SEC NOLA determined that Mesa Gulf Coast was unable to pay for the cleanup due to its bankruptcy and assumed the response.⁹

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 See, NRC Report #1311471 dated July 21, 2021. See also, USCG SITREP One dated July 26, 2021.

³ USCG SITREP One dated July 26, 2021.

⁴ *Id.*

⁵ FOSC Decision Memo dated August 20, 2021.

⁶ See, Sector New Orleans Incident Action Plan (IAP) dated July 26, 2021, ICS 201-1A Incident Maps & Schematics page 13 of 75.

⁷ USCG SITREP One dated July 26, 2021.

⁸ Notably, the RP allowed the facility to fall into disrepair after they filed for bankruptcy and abandoned the site, leaving the facility in extremely poor condition. See, USCG SITREP Three dated August 21, 2021. See also, Louisiana Orphaned Oil Field Site Inspection Report, dated March 25, 2021, which states the platform was abandoned. OPA provides in the case of an offshore facility, that liability is also properly found in the entity that would have been the RP immediately prior to abandonment. 33 U.S.C. § 2701(32)(G).

⁹ USCG SITREP One dated July 26, 2021 and SITREP Three dated August 21, 2021.

The FOSC accessed the Oil Spill Liability Trust Fund (OSLTF) via Federal Project Number (FPN) N21032 in order to hire Environmental Safety & Health (ES&H) to respond to the incident.¹⁰ SEC NOLA personnel, ES&H and staff from the Louisiana Oil Spill Coordinator's Office (LOSCO), acting as the State On-Scene Coordinator (SOSC), visited the site. LOSCO staff assessed the site, coordinated future activities and took photos to document the site conditions.¹¹

The state of Louisiana submitted its claim to the NPFC on July 24, 2023 for removal costs in the amount of \$1,582.46.¹² The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that this claim must be denied because the substance that spilled was not an oil as defined by OPA.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On July 21, 2021, SEC NOLA notified the NRC that there was a report of a silvery sheen on Lake Hermitage, a navigable waterway of the United States.¹³ A Coast Guard Auxiliary flight confirmed the sheen on July 22, 2021.¹⁴ SEC NOLA personnel dispatched to the scene and identified the source of the sheen as a saltwater storage tank. The FOSC identified the tank capacity; capable of holding 63,000 gallons of product, located on a cement barge on site.¹⁵ According to the schematics of the facility, the only storage tank at the site capable of storing 63,000 gallons of product is Tank 1, which is labeled as a produced water storage tank located on Cement Barge 1.¹⁶ The FOSC opened Federal Project Number N21032 and hired ES&H to conduct an assessment, deploy containment boom around the facility and to develop a plan to eliminate the threat.¹⁷

Responsible Party

The spill in this case occurred at an offshore facility as defined by the Oil Pollution Act of 1990 (OPA).¹⁸ OPA defines the Responsible Party (RP) for a discharge from an offshore facility

¹⁰ USCG FPN Notification dated July 21, 2021.

¹¹ State of Louisiana claim submission dated and received on July 24, 2023.

¹² *Id.*

¹³ NRC Report #1311471 dated July 21, 2021.

¹⁴ USCG SITREP One dated July 26, 2021.

¹⁵ FOSC Decision Memo, dated August 20, 2021.

¹⁶ *See*, Incident Action Plan, approved by Sector New Orleans, Forefront ICS 201-1A Incident Maps & Schematics page 13 of 75.

¹⁷ USCG SITREP Three dated August 31, 2021.

¹⁸ An "offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel." 33 U.S.C. § 2701(22).

as “the lessee or permittee of the area in which the facility is located.”¹⁹ Mesa is the lessee of the facility that contained the damaged saltwater storage tank.²⁰

Bankruptcy Proceedings

Mesa Gulf Coast, LLC filed chapter 11 bankruptcy on September 20, 2019 and converted to a chapter 7 proceeding on April 29, 2020.²¹ The bankruptcy case was filed nearly two years before the sheen was discovered in July 2021. According to the bankruptcy Trustee, Mesa Gulf Coast, LLC. has limited assets.²²

Recovery Operations

On July 23, 2021, SEC NOLA personnel and ES&H arrived on scene and identified the source of the sheen as a leaking saltwater tank at the facility and discovered 60 deteriorated drums of various hazardous materials as well.²³

ES&H deployed containment boom around the platform, sorbents around the area of the sheen and pumped oily water from the secondary containment of the cement storage barge. On July 26, 2021, ES&H, Forefront, and the FOSCR returned to the platform and conducted a second site visit to determine and develop a plan for removal and disposal of the 1200 barrels of oily water from the produced water tank. On July 30, 2023, ES&H personnel discovered a deteriorated drum leaking while they were pulling contaminated grass for bagging. Sorbent boom was placed around the drum containing unknown liquids.²⁴

From late July to early August, personnel from the State of Louisiana worked with the FOSC and ES&H to coordinate response activities and assess the site.²⁵ Recovery and clean-up operations continued until August 27, 2021,

II. CLAIMANT AND NPFC:

The State of Louisiana submitted its claim to the NPFC on July 24, 2023 for removal costs in the amount of \$1,582.46.²⁶ The costs were broken down as Louisiana Department of Public Safety costs totaling \$1,237.17 for labor and equipment costs from July 28, 2021 to August 9, 2021, and Louisiana Department of Natural Resources costs totaling \$345.29 for a Conservation Enforcement Specialist’s time to meet with SEC NOLA personnel on scene on July 26, 2021. The claim included the Optional OSTLF Claim Form, the NRC report, the LOSCO incident

¹⁹ 33 U.S.C. § 2701(26)(A)(iii).

²⁰ State of Louisiana Lease Inspection Report dated August 22, 2017.

²¹ Notice of Bankruptcy, 25th Judicial District Court for the Parish of Plaquemines, State of Louisiana, dated October 2, 2019.

²² *Nota Bene* - Mesa Gulf Coast, LLC is affiliated with two other companies also in bankruptcy. Tchefuncte Natural Resources LLC owns the platform. (Case No. 2-19-bk-12532. E.D. La.) TNR Holdings, LLC (Case No. 2-19-bk-12531. E.D. La.) holds 100% ownership in and is the sole member of both Tchefuncte Natural Resources LLC and Mesa Gulf Coast, LLC. According to the bankruptcy records, neither Tchefuncte Natural Resources LLC nor TNR Holdings, LLC have any assets.

²³ USCG SITREP One dated July 26, 2021.

²⁴ USCG SITREP Two dated August 6, 2021.

²⁵ State of Louisiana claim submission dated July 24, 2023.

²⁶ *Id.*

report, LOSCO and LDEQ hourly staff, equipment and incidental rates, equipment usage and rate documentation; USCG Press Release regarding the incident; and a copy of the USCG log of daily activities for August 4, 2021.²⁷ The claimant did not provide a spill sample analysis as part of its claim submission.

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁸ 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.²⁹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁰ 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.³¹ An RP's liability is strict, joint, and several.³² 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."³³ 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."³⁴ The term "remove" or "removal" means "containment and removal of oil [...]" from

²⁷ State of Louisiana claim submission dated and received on July 24, 2023.

²⁸ 33 CFR Part 136.

²⁹ 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)).

³⁰ 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).

³¹ 33 U.S.C. § 2702(a).

³² See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³³ *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).

³⁴ 33 U.S.C. § 2701(31).

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.”³⁵

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁶ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁷ 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.³⁸

OPA defines a “claim” as “a request made in writing for a sum certain, for compensation for damages or removal costs **resulting from an incident**.”³⁹

An “incident” under OPA is defined as “any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, **resulting in the discharge or substantial threat of discharge of oil**.”⁴⁰

OPA defines “oil” as “oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601) and which is subject to the provisions of that Act [42 USCA Section 9601 et seq.]”.⁴¹

Produced Water

The NPFC finds that the tank that leaked and discharged into the waterway contained produced water.⁴² When produced water is initially extracted from subsurface geological structures, unrefined crude oil typically includes portions of natural gas, silt, water, and sand, in addition to any chemical additives previously used during production to enhance extraction of the crude. In order to obtain a marketable product, some of these constituents must be removed from the crude oil. The separation process generates various types of wastes like produced water, cuttings, and drilling fluids. Produced water refers to the water separated from the crude oil.⁴³

³⁵ 33 U.S.C. § 2701(30).

³⁶ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁷ 33 CFR Part 136.

³⁸ 33 CFR 136.105.

³⁹ 33 U.S.C. § 2701(14).

⁴⁰ 33 U.S.C. § 2701(14) (emphasis added).

⁴¹ 33 U.S.C. § 2701(23).

⁴² Sector New Orleans Incident Action Plan (IAP), approved August 20, 2021; page 13 of 50; tanks 1,2 and 3. Notably, the claimant did not provide a sample analysis or any other evidence indicating the spilled material was an OPA oil.

⁴³ Produced water is more fully defined as follows:

A term used to describe water produced from a wellbore that is not a treatment fluid. The characteristics of produced water vary and use of the term often implies an inexact or unknown composition. It is generally

In addition to small parts of crude oil, produced water may include other contaminants that can be difficult to remove. The concentrations and types of pollutants in production water may vary significantly depending upon factors like the well's location and any treatment of the water. Production water commonly includes significant concentrations of chloride, sodium, calcium, magnesium, and potassium. Production water may also include varying concentrations of the following:

- Organic compounds: benzene, naphthalene, toluene, phenanthrene, bromodichloromethane, and pentachlorophenol;
- Inorganics: lead, arsenic, barium, antimony, sulfur, and zinc;
- Radionuclides: uranium, radon, and radium⁴⁴

In addition, and because of the potential for contaminants, production water must be managed and disposed of properly. In this instance, the produced water was held in three tanks, one of which developed a hole and discharged into Lake Hermitage untreated.⁴⁵ Produced water commonly includes varying concentration of organic compounds, inorganic compounds, and radionuclides, many of which are classified as CERCLA-listed hazardous substances.

CERCLA defines “hazardous substance” broadly.⁴⁶ However, the definition of “hazardous substance” under CERCLA specifically excludes “petroleum, including crude oil or any fraction thereof...” Further, the definition goes on to exclude “natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).”⁴⁷ Notwithstanding the statutory definitions, a question sometimes exists when the release involves a mixture of oil and hazardous substances that have commingled before substantially threatening to discharge, or discharging into a navigable waterway, such as the facts in this case.

accepted that water within the pores of shale reservoirs is not produced due to its low relative permeability and its mobility being lower than that of gas.

Schlumberger Oilfield Glossary, available online at: www.glossary.oilfield.slb.com/Terms/p/produced_water.asp

⁴⁴ See, United States Environmental Protection Agency, Office of Compliance, *Profile of the Oil and Gas Extraction Industry*, p 39 (October 2000) available online at: <https://archive.epa.gov/sectors/web/pdf/oilgas.pdf>. See also, United States Department of the Interior, Bureau of Reclamation, *Oil and Gas Produced Water Management and Beneficial Use in the Western United States*, p. 41-60 (September 2011) available online at: <https://www.usbr.gov/research/dwpr/reportpdfs/report157.pdf>; United States Environmental Protection Agency, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*, p. ES-17 (June 2015) (External Review Draft)—EPA/600/R-15/047, available online at http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=523539. Additionally, many other constituents found within produced water are CERCLA hazardous materials. (A listing of CERCLA hazardous substances is found at 40 CFR 302.

⁴⁵ USCG SITREP One dated July 26, 2021.

⁴⁶ 42 U.S.C. § 9601(14). “Hazardous substance means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606

⁴⁷ *Id.*

The analysis of these types of releases must begin by analyzing the purpose of each of the statutes and how Congress and the agencies have intended them to apply.

OPA's legislative history clearly highlights the intent of Congress that OPA liability and, by extension OPA claim compensation, only applies to discharges of "oil" and not "oil mixed with hazardous substances".

The definition [of oil] has been modified... to clarify that it does not include any constituent or component of oil which may fall within the definition of "hazardous substances", as that term is defined for the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). **This ensures that there will be no overlap in the liability provisions of CERCLA and the Oil Pollution Act.**⁴⁸

The legislative history of CERCLA likewise is instructive: "The reported bill [CERCLA] does not cover spills or other releases **strictly** of oil."⁴⁹ Contemporaneous congressional debate further elucidated how it intended CERCLA to apply to spills of oil mixed with hazardous substances.⁵⁰ Both Representative Edgar and Senator Randolph specifically discussed oil slicks that were mixed with hazardous materials present on a navigable waterway, with the intent of ensuring the final legislation was broad enough to cover these events. By all accounts, it was.

Since the passage of CERCLA, the EPA has promulgated several policy documents explaining its position with respect to discharges of oil. Taken holistically and simplistically, the policies explain that CERCLA excludes discharges of oil⁵¹ but CERCLA could impose liability on certain discharges of substances that contain oil in an adulterated form. Because of the adulteration of the oil, if released, it would be considered a "hazardous material" not "oil" as defined.⁵² While most of the jurisprudence in this area concerns cases where the EPA is asserting jurisdiction under CERCLA and the defendant asserts the "petroleum exclusion" as a defense, the decisions discussing the intent and application of CERCLA are instructive to how to analyze a commingled spill. For example, one court after reviewing the legislative history of CERCLA and analyzing EPA's policy documents on CERCLA's application to oil concluded pointedly, "the EPA determined that the purpose of the petroleum exclusion was 'to remove from CERCLA jurisdiction spills only of oil, not releases of hazardous substances mixed with oil.'"⁵³

⁴⁸ H. R. Rep. No. 653, 101st Cong., 2d Sess. 102 (1990). S. Rep. No. 101-94 (1989) (emphasis added)

⁴⁹ S. Rep. No. 96-848, 96th Cong., 2d Sess. 29-30 (1980) (emphasis added).

⁵⁰ See, e.g., at 126 Cong. Rec. H11798 (Rep. Edgar) (oil slicks and industrial oil waste); 126 Cong. Rec. S14963 (daily ed. November 24, 1980) (Sen. Randolph) (contaminated oil slick), and other petroleum products containing hazardous substance additives intended to be addressed by the legislation including PCBs in transformer fluid, *id.* at S14963 (Sen. Randolph) and S14967 (Sen. Stafford); dioxin in motor fuel used as a dust suppressant, *id.* at S14974 (Sen. Mitchell); PCB's in waste oil, *id.* (Sen. Mitchell) and contaminated waste oil, *id.* at S14980 (Sen. Cohen).

⁵¹ This has become known colloquially as EPA's "petroleum exclusion".

⁵² Several courts have analyzed whether or not a particular discharge falls under CERCLA or has been exempted from CERCLA jurisdiction because of the application of the "petroleum exclusion". For example, when discussing lead in waste oil discharge: "If the lead results from its use as an additive to petroleum products, and was found at the level expected of purely petroleum additives, it would fall under the petroleum exclusion and would not be a "hazardous substance" for the purpose of CERCLA liability. If, on the other hand, the level exceeded the amount that would have occurred in petroleum during the refining process, then the petroleum exclusion would not apply." *Mid Valley Bank v. North Valley Bank*, 764 F.Supp. 1377 (E.D. Cal. 1991). See also, e.g., *State of Wash. v. Time Oil Co.*, 687 F.Supp. 529 (W.D. Wa. 1988), *City of New York v. Exxon*, 744 F. Supp. 474 (S.D.N.Y. 1990).

⁵³ *Mid Valley Bank v. North Valley Bank*, 764 F.Supp. 1377, 1383-4 (E.D. Cal. 1991).

Moreover, the Tenth Circuit analyzed the commingling of petroleum products and hazardous materials in the soil and floating in the groundwater beneath an oil refinery.⁵⁴ In that case, the sampling results and expert testimony confirmed that certain soil at the refinery, as well as the petroleum plume in the groundwater aquifer beneath the refinery, contained a mixture of petroleum and hazardous wastes.⁵⁵ In holding that the petroleum exclusion did not apply to these facts, the court indicated that in order for CERCLA to be inapplicable, the moving party would have to have provided testing to show that unadulterated petroleum was the *only* contaminant in the ground water plume. Moreover, the court would have required an expert to opine that the hazardous waste *did not commingle* with petroleum products.⁵⁶

V. CONCLUSION:

The NPFC determines as matter of fact, that the tank that discharged was a produced water tank. As such, the NPFC finds the claimant's costs were not the result of a discharge of oil as defined by OPA and, therefore, the OSLTF is not available to pay claims based on the administrative record and applicable law and regulations. 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.⁵⁷

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

<div>(b) (6)</div> <div>Claim Supervisor: (b) (6)</div> <div>Date of Supervisor's review: 10/27/23</div> <div>Supervisor Action: <i>Denied</i></div>
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⁵⁴ *Tosco Corp. v. Koch Indus., Inc.*, 216 F.3d 886 (10th Cir. 2000).

⁵⁵ *Id.*

⁵⁶ *Id.* at 894. *See also, Eastman v. Brunswick Coal & Lumber Co.*, No. CIV. 95-255-P-C, 1996 WL 911200, (D. Me. Apr. 19, 1996) (A truck loaded with diesel fuel (an OPA oil) overturned and caught fire releasing its contents, and in conjunction with the fire, hazardous materials mixed with the diesel fuel. This mixture entered the [plaintiffs'] soil and groundwater, and ultimately, a navigable waterway of the United States. The court indicated that the petroleum exception would not apply and these facts, if alleged and proven, would constitute a CERCLA release. Clear I

⁵⁷ 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.