

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP923018-URC001
Claimant:	City of Troy
Type of Claimant:	Municipality
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$28,160.15
Action Taken:	Denial

EXECUTIVE SUMMARY:

On July 12, 2021, at approximately 1:15 pm local time, the National Response Center (NRC) was notified by Oakland County Hazardous Response Team (OCHRT) that a tanker truck traveling northbound on I-75 through the City of Troy, Michigan struck the median wall rupturing the side of the tanker resulting in the release of gasoline and diesel onto the ground and into a drainage ditch that leads to a nearby storm drain.² The storm drain flows through four other cities and townships and ends at Lake St. Clair and the Detroit River³, navigable waterways of the United States. At the time of the accident, the tanker truck was carrying 14,600 gallons of fuel, which consisted of 10,000 gallons of gasoline and 4,600 gallons of diesel.⁴

The Troy Fire Department and OCHRT responded to the fire that ensued as a result of the truck's fuel tank rupturing and discharging unburned diesel and gasoline fuel onto the freeway.⁵ The fire was suppressed using Class B Fire Fighting Foam applied by members of OCHRT.⁶ The Troy Fire Department and OCHMRT physically contained the product to prevent it from escaping the drainage ditch and entering the storm drain that leads to Lake St. Clair.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 National Response Center (NRC) Incident Report # 1310467 dated July 12, 2021.

³ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 1 page 1 of 1.

⁴ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 6 page 8 of 8.

⁵ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 1 page 1 of 1.

⁶ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 2 page 1 of 1 and Exhibit 6 page 1-2 of 8

⁷ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 1 page 1 of 1.

US Environmental Protection Agency Region 5 (“USEPA” or “FOSC”) is the Federal On-Scene Coordinator (FOSC) based on the location of this incident. USEPA Region 5 received the NRC Report but did not respond to this incident and no federal assistance was requested.⁸ The FOSC states they provided the flow patterns to Michigan Environment, Great Lakes and Energy (“Michigan EGLE”), who is the State On Scene Coordinator (SOSC) for the incident. At the NPFC’s request, the FOSC did determine that the actions performed were consistent with the National Contingency Plan (NCP).⁹¹⁰

The City of Troy presented the invoice to Brazco Oil Company via a cover letter dated November 9, 2022¹¹ with the attached invoice¹². To date the City of Troy has not received payment. The City of Troy presented its claim for \$10,387.20 in uncompensated removal costs and \$17,772.95 for Public Services to the National Pollution Funds Center (NPFC) for a total of \$28,160.15 on May 19, 2023.¹³ All claimed costs were recategorized as removal costs on October 13, 2023.¹⁴

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. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On July 12, 2021, at approximately 1:15 pm local time, the National Response Center (NRC) was notified by Oakland County Hazardous Response Team (OCHRT) that a tanker truck traveling northbound on I-75 through the City of Troy, Michigan struck the median wall rupturing the side of the tanker resulting in the release of gasoline and diesel onto the ground and into a drainage ditch that leads to a nearby storm drain.¹⁵ The storm drain flows through four other cities and townships and ends at Lake St. Clair and the Detroit River¹⁶, navigable waterways of the United States. At the time of the accident, the tanker truck was carrying 14,600 gallons of fuel, which consisted of 10,000 gallons of gasoline and 4,600 gallons of diesel.¹⁷

⁸ Email from USEPA to NPFC Re FOSC Coordination AI Response dated June 8, 2023.

⁹ Email from USEPA OSC to NPFC Re Coordination Statement Response dated December 1, 2023 acknowledging the actions taken by the City of Troy were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

¹⁰ Email from USEPA to NPFC Re Response to FOSC Coordination with SOSC dated October 3, 2023.

¹¹ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 12 page 1 of 1.

¹² City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 10 pages 1-8.

¹³ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023.

¹⁴ Email from Claimant to NPFC Re Follow up Removal Costs and Safety Data Sheet dated October 12, 2023.

¹⁵ National Response Center (NRC) Incident Report # 1310467 dated July 12, 2021.

¹⁶ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 1 page 1 of 1.

¹⁷ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 6 page 8 of 8.

USEPA Region 5 received notification of NRC Report number 1310467 but did not respond to the incident and no federal assistance was requested.¹⁸

Responsible Party

In accordance with the Oil Pollution Act of 1990 (OPA), the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.¹⁹ Bazco Oil Company, is the owner of the truck and was identified as the responsible party (RP).²⁰ The NPFC issued an RP Notification Letter to Bazco Oil Company dated May 24, 2023.²¹ 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.

Recovery Operations

Upon arrival to the scene, Troy Fire Department requested that OCHRT provide firefighting foam to extinguish the fire. After the fire was extinguished, approximately 3,400 gallons of residual product remaining in the tanker truck was pumped out by a vac truck and disposed off-site.²²

Additionally, OCHRT constructed soil dams within the ditches to mitigate further migration of the released product. These dams were created by dumping soil before the channel from the east side ditch running beneath the freeway, and near a ditch that flowed into an underground drain.²³ Booms were also placed on the upstream and downstream portion of the dams placed in the ditch, as well as the inlets and outlets of the affected channels.²⁴ The Troy Fire Department completed their removal actions on July 14, 2021.²⁵

II. CLAIMANT AND RP:

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)²⁶ require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.²⁷

¹⁸ Email from USEPA to NPFC Re FOSC Coordination AI Response dated June 8, 2023.

¹⁹ 33 U.S.C. § 2701(32).

²⁰ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 12 page 1 of 1.

²¹ See, NPFC RP Notification Letter dated May 24, 2023.

²² Environmental Resources Group Spill Incident Summary Report provided to the NPFC by SOSC on July 24, 2023 dated October 14, 2021, page 1 of 161, Section 1.1.

²³ Environmental Resources Group Spill Incident Summary Report provided to the NPFC by SOSC on July 24, 2023 dated October 14, 2021, page 1 of 161, Section 1.2.

²⁴ Environmental Resources Group Spill Incident Summary Report provided to the NPFC by SOSC on July 24, 2023 dated October 14, 2021, page 2 of 161, Section 2.1.2.

²⁵ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 10, Post Incident Logistic Detail shows final response date, page 4 of 8.

²⁶ 33 U.S.C. § 2701 *et seq.*

²⁷ 33 CFR 136.103.

The claimant initially presented its claim in the form of an invoice to Bazco Oil Company's insurance company Federated Service Insurance Company and the claim was denied on November 4, 2021.²⁸ The claimant then presented their costs to Bazco Oil Company on November 9, 2022.²⁹

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.³⁰ On May 19, 2023, the National Pollution Funds Center (NPFC) received the City of Troy's claim for uncompensated removal costs in the amount of \$28,160.15.³¹

In its claim submission to the NPFC, City of Troy provided an executed OSLTF Claim Form; Exhibits answering OSLTF questions; Troy Fire Department Report, Troy Police Department Traffic Crash Report; Oakland County Hazardous Materials Response Team Report; NRC Incident Report; Detroit Free Press Article; Image of Drainage Path; Invoice and Breakdown of Costs; Emails sent to RP on multiple dates, and photos and videos of the incident.³²

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³³ 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.³⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁵ 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:

²⁸ See, Additional information email response dated July 19, 2023 and associated Exhibit 1, pages 1-5.

²⁹ City of Troy original claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023, Exhibit 12, page 1 of 1.

³⁰ 33 CFR 136.103.

³¹ See, City of Troy claim submission dated May 9, 2023, and received by the NPFC on May 19, 2023.

³² City of Troy original claim submission dated May 9, 2023 and received by the NPFC on May 19, 2023.

³³ 33 CFR Part 136.

³⁴ 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)).

³⁵ 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).

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.³⁶ An RP's liability is strict, joint, and several.³⁷ 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."³⁸ 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."³⁹ 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."⁴⁰

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴¹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴² 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.⁴³

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.⁴⁴
- (d) That the removal costs were uncompensated and reasonable.⁴⁵

³⁶ 33 U.S.C. § 2702(a).

³⁷ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

³⁸ *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).

³⁹ 33 U.S.C. § 2701(31).

⁴⁰ 33 U.S.C. § 2701(30).

⁴¹ See generally, 33 U.S.C. § 2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴² 33 CFR Part 136.

⁴³ 33 CFR 136.105.

⁴⁴ Email from USEPA OSC to NPFC Re Coordination Statement Response dated December 1, 2023 acknowledging the actions taken by the City of Troy were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

⁴⁵ 33 CFR 136.203; 33 CFR 136.205.

The NPFC analyzed each of these factors and determined the costs submitted herein by Claimant are not compensable removal costs based on the the lack of proof of payment demonstrating that the claimant has uncompensated removal costs. The NPFC determined that removal costs claimed in the amount of \$28,160.15 are denied based on the following:

1. Per **33 C.F.R. §136.205 Compensation allowable** – The amount of compensation allowable is the total **uncompensated removal costs** of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

In the claim at hand, the FOSC has determined that the actions taken in response to the incident were consistent with the National Contingency Plan⁴⁶ however the claimant was unable to provide documentary evidence that it compensated Oakland County Mutual Aid Association in the amount of \$28,160.15. As such, the claimant has failed to demonstrate (1) it has uncompensated removal costs and (2) that it possesses Oakland County's subrogable rights to request reimbursement for those costs; and

2. The NPFC denies \$1,800.00 for the use of 40-gallons of BIO-SOLVE dispersant.⁴⁷ The use of dispersants must be pre-approved in accordance with Subpart J of the National Contingency Plan (NCP).⁴⁸ Because the claimant has failed to provide evidence that the United States Environmental Protection Agency (USEPA) approved the use of this dispersant, this cost is not eligible for reimbursement by the Oil Spill Liability Trust Fund (OSLTF).

Should the claimant seek reconsideration, the NPFC will not reimburse \$1,800.00 of the amount requested because the BioSolve Pinkwater was not pre-authorized by the FOSC prior to use in the response as required by Subpart J of the NCP ⁴⁹.

⁴⁶ Email from USEPA OSC to NPFC Re Coordination Statement Response dated December 1, 2023 acknowledging the actions taken by the City of Troy were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

⁴⁷ See, Safety Data Sheet Biosolve Pinkwater Hydrocarbon Mitigation Agent.

⁴⁸ See generally, 40 CFR 300.900(c) and 40 CFR 300.910.

⁴⁹ 40 CFR § 300.910.

VI. CONCLUSION:

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

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *12/14/23*

Supervisor Action: *Denial Approved*

Supervisor's Comments: