

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924009-URC001
Claimant:	State of Alaska Department of Environmental Conservation
Type of Claimant:	State
Type of Claim:	Removal
Claim Manager:	(b) (6)
Amount Requested:	\$629.54
Action Taken:	Offer in the amount of \$134.36

EXECUTIVE SUMMARY:

On August 21, 2021, in its role as Federal On Scene Coordinator (“FOSC”), United States Coast Guard (“USCG”) Sector Southeast Alaska visited the dock at Aurora Harbor in Juneau, Alaska and saw that aboard the MV Ocean Endeavor, a garden hose trailed from inside the bilge to the outside of the vessel.² The USCG reported to the National Response Center (NRC) that at 1415 an unknown oil of an unknown amount was discharged into the Gastineau Channel, a navigable water of the United States, at Aurora Harbor in Juneau, AK.³ A video taken at 1445 shows an individual discharging dispersants into the water near both the MV Adventure Bound and the MV Ocean Endeavor. The FOSC determined that the observed sheen and dispersant should be left to naturally dissipate.⁴

An Alaska Department of Environmental Conservation (“ADEC” or “Claimant”) representative, in its capacity as the State On Scene Coordinator (“SOSC”), visited the site on August 23, 2021, at 1420 and observed no sheens.⁵ Mr. (b) (6) owns the OCEAN ENDEAVOR⁶, making him the Responsible Party (RP) for the incident.⁷ ADEC communicated with the RP and initiated an enforcement action against him.⁸

On November 29, 2023, the National Pollution Funds Center (NPFC) received ADEC’s claim submission for \$390.69 in alleged removal costs.⁹ Via email dated February 6, 2024,

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 ADEC Spill Summary Report # 21119923301 provided with initial Claim submission.

³ NRC Report # 1314353 dated August 21, 2021.

⁴ ADEC Spill Summary Report # 21119923301 provided with initial Claim submission.

⁵ ADEC Spill Summary Report # 21119923301 provided with initial Claim submission.

⁶ Vessel Critical Profile for OCEAN ENDEAVOR dated November 30, 2023.

⁷ 33 U.S.C. § 2701(32).

⁸ See, State of Alaska Notice of Violation to (b) (6) dated September 15, 2021, P. 7/24 of ADEC claim submission.

⁹ See, OSLTF Form, dated November 28, 2023.

ADEC amended its claimed sum certain to \$629.54. The NPFC has thoroughly reviewed all documents submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration, has determined that the claim should be paid in the amount of 134.36.¹⁰

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On August 21, 2021, in its role as Federal On Scene Coordinator (“FOSC”), United States Coast Guard (“USCG”) Sector Southeast Alaska visited the dock at Aurora Harbor in Juneau, Alaska and saw that aboard the MV Ocean Endeavor, a garden hose trailed from inside the bilge to the outside of the vessel.¹¹ The USCG reported to the National Response Center (NRC) that at 1415 an unknown oil of an unknown amount was discharged into the Gastineau Channel, a navigable water of the United States, at Aurora Harbor in Juneau, AK.¹² A video taken at 1445 shows an individual discharging dispersants into the water near both the MV Adventure Bound and the MV Ocean Endeavor. The FOSC determined that the observed sheen and dispersant should be left to naturally dissipate.¹³

An Alaska Department of Environmental Conservation (ADEC or Claimant) representative, in its capacity as the State On Scene Coordinator (“SOSC”), visited the site on August 23, 2021, at 1420 and observed no sheens.¹⁴

Responsible Party

Mr. (b) (6) owns the OCEAN ENDEAVOR¹⁵, making Mr. (b) (6) the Responsible Party (RP) for the incident as defined by the Oil Pollution Act of 1990 (OPA).¹⁶

Recovery Operations

On August 21, 2021, after investigating the incident and sheen, the USCG determined that no cleanup action needed to be taken and the sheen would be left to naturally dissipate.¹⁷

II. NPFC AND RP:

The NPFC issued an RP Notification letter dated November 29, 2023 to (b) (6),¹⁸ but it was returned undelivered.¹⁹ An RP Notification letter notifies the RP that a claim was

¹⁰ 33 CFR 136.115.

¹¹ ADEC Spill Summary Report # 21119923301 provided with initial Claim submission.

¹² NRC Report # 1314353 dated August 21, 2021.

¹³ ADEC Spill Summary Report # 21119923301 provided with initial Claim submission.

¹⁴ ADEC Spill Summary Report # 21119923301 provided with initial Claim submission.

¹⁵ Vessel Critical Profile for OCEAN ENDEAVOR dated November 30, 2023..

¹⁶ 33 U.S.C. § 2701(32).

¹⁷ ADEC Spill Summary Report # 21119923301 provided with initial Claim submission.

¹⁸ RP Notification Letter dated November 29, 2023.

¹⁹ See, Copy of undeliverable certified mail dated January 10, 2024.

presented to the NPFC seeking reimbursement of uncompensated removal costs or damages incurred as a result of the incident in which the recipient is the identified or suspected RP.

III. CLAIMANT AND NPFC:

On November 29, 2023, the NPFC received ADEC's claim in a timely manner via OSLTF Optional Claim form dated November 28, 2023. ADEC seeks reimbursement of \$629.54 for alleged removal costs incurred for ADEC employee costs. The costs entail \$238.85 for "Assessment/Characterization", "Case Management" and "Field Work" for an employee's work from August 23, 2021 to August 25, 2021, \$344.16 for enforcement activity on August 25, 2021, \$14.26 for Case Management activity on September 21, 2021, and \$32.27 for "Cleanup/Corrective Action" (i.e. updated database for case closure) on November 9, 2021.

The claim was properly presented to the NPFC as the state may present a claim for removal costs directly to the OSLTF without first presenting it to the RP.²⁰

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²¹ 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.²² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²³ 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:

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.²⁴ An RP's liability is strict, joint, and several.²⁵ 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

²⁰ 33 U.S.C. §2713(b)(1)(c).

²¹ 33 CFR Part 136.

²² 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)).

²³ 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).

²⁴ 33 U.S.C. § 2702(a).

²⁵ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

favoring those responsible for the spills.”²⁶ 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.”²⁷ 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.”²⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁰ 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.³¹

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 (NCP).
- (d) That the removal costs were uncompensated and reasonable.³²

Claimant asserts that all claimed costs are response costs and State of Alaska statute AS 46.08.070 requires the state to seek reimbursement of response costs incurred in oil spill cleanup.³³ Claimant further asserts that under State of Alaska regulations (18 AAC 75.910) each responsible party is liable for response costs, which include the costs invoiced by ADEC.³⁴ In spite of the state requirements, the OSLTF is not the responsible party and the OSLTF is not bound by state law, but is governed by the Oil Pollution Act of 1990 (“OPA 90”) and its implementing regulations.

On August 21, 2021, the USCG arrived at the scene of the incident and determined that the sheen should be left to naturally dissipate with no further response. A sheen remained through

²⁶ *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).

²⁷ 33 U.S.C. § 2701(31).

²⁸ 33 U.S.C. § 2701(30).

²⁹ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁰ 33 CFR Part 136.

³¹ 33 CFR 136.105.

³² 33 CFR 136.203; 33 CFR 136.205.

³³ Email from ADEC to NPFC dated January 31, 2024.

³⁴ *Id.*

August 23, 2021 as shown in the photographs provided by the claimant.³⁵ The record demonstrates that the USCG communicated with and met with ADEC personnel from August 21, 2021 through August 24, 2021 regarding the incident. Based on these facts, the NPFC finds that the following costs on invoice SPR-206723³⁶ are compensable under OPA:

1. \$14.93 for Assessment/Characterization – follow up on NRC#1314353 on August 23, 2021.
2. \$14.93 for Assessment/Characterization - follow up on NRC#1314353 with USCG on August 24, 2021.
3. \$14.93 for Case Management – follow up with USCG with regard to NRC#1314353 on August 24, 2021.
4. \$89.57 for Field Work – follow up on NRC#1314353 with the USCG on August 24, 2021.

The total of \$134.36 in payable costs above is for initial SOSC response to the oil discharge in coordination with the USCG from August 21, 2021 through August 24, 2021. ADEC actions and costs after that date have not been shown to be compensable removal costs. The remaining \$104.49 of costs on invoice SPR-206723 are denied because they were not coordinated with the USCG FOSC as required by the claims regulations³⁷ and were not shown to be costs of oil spill removal under OPA.

Further, the NPFC finds that the initially claimed invoice costs must be denied for the following reasons:

1. Invoice SPR-185989 in the amount of \$344.16 for enforcement activity on August 25, 2021, because the cost was not oil pollution removal but was an enforcement cost incurred four days after the USCG determined that no removal response was necessary.
2. Invoice SPR-186421 in the amount of \$14.26 for “Case Management” activity on September 21, 2021, because the cost was not oil pollution removal but was a file management cost that was incurred a month after the USCG determined that no removal response was necessary.
3. Invoice SPR-187827 in the amount of \$32.27 for “Cleanup/Corrective Action” (i.e. updated database for case closure) on November 9, 2021,³⁸ because the cost was a database/file management cost that was incurred more than two months after the USCG determined that no removal response was necessary.

While the USCG determined that no removal action needed to be taken as of August 21, 2021, when they decided to let the oil dissipate naturally, USCG personnel did return to the site and coordinated with ADEC through August 24, 2021. ADEC confirmed this as well via email dated January 31, 2024. However, ADEC’s actions after August 24, 2021 were not directed by the USCG FOSC or coordinated with the FOSC.

³⁵ See, ADEC claim submission photos, pages 23 & 24 of 24.

³⁶ Invoice provided by ADEC via email to NPFC dated February, 6, 2024.

³⁷ 33 CFR Part 136

³⁸ ADEC Spill Summary Report # 21119923301 provided with initial Claim submission.

The NPFC finds that \$134.36 represents compensable removal costs under OPA. These costs are a result of the ADEC employee's work leading up to and including a field visit to the spill site where she met with the USCG regarding the incident. The remaining \$495.18 is denied.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, State of Alaska, Department of Environmental Conservation's request for uncompensated removal costs is approved in the amount of **\$134.36**.

This determination is a settlement offer,³⁹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁰ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴¹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor:

(b) (6)

Date of Supervisor's review: *2/23/24*

Supervisor Action: *Offer Approved*

³⁹ 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).

⁴⁰ 33 CFR § 136.115(b).

⁴¹ 33 CFR § 136.115(b).