

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGP924032-URC001
<b>Claimant:</b>	Alaska Department of Environmental Conservation, Spill Prevention & Response
<b>Type of Claimant:</b>	STATE
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$321.28
<b>Action Taken:</b>	Denial

### EXECUTIVE SUMMARY:

On December 21, 2019, Alaska Department of Environmental Conservation, Spill Prevention & Response (“ADEC” or “Claimant”) opened Spill Summary Case #19119935401 on the incident. ADEC called the Mayor of Angoon, Joshua Bowen, Who responded to the incident on December 20, 2019.<sup>2</sup> The Mayor reported that the weather conditions at the time of the incident made for difficult working conditions therefore observations resumed the next day.<sup>3</sup>

United States Coast Guard (USCG) Sector Juneau, is the Federal On Scene Coordinator (FOSC) for the incident base on the incident location. The FOSC received notification from the owner of the fishing vessel, F/V L.K. ANN, AK9357T, stating that it caught fire at Angoon Harbor, LAT: 57°30.1 N LONG: 134°35.4 W, and burned from the railing up, while moored in the Angoon Harbor.<sup>4</sup> The owner stated that there was no pollution in the water at the time of his call and that there was less than 100 callons of fuel onboard the vessel at the time of the fire.<sup>5</sup>

ADEC submitted its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$321.28 on March 27, 2024.<sup>6</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that all costs must be denied.

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<sup>1</sup> 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.

<sup>2</sup> ADEC Spill Summary Report #19119935401 with a spill close date of March 17, 2021, pages 1-2 of 35.

<sup>3</sup> *Id.*

<sup>4</sup> *See*, ADEC original claim submission dated March 26, 2024 with ADEC Spill Summary Report and supporting documentation. *See*, Email from USCG to ADEC dated February 7, 2020, providing an update on the vessel incident, pg. 12 of 35.

<sup>5</sup> *Id.*

<sup>6</sup> ADEC original claim submission dated March 26, 2024.

## **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

### ***Incident***

On December 21, 2019, Alaska Department of Environmental Conservation, Spill Prevention & Response (“ADEC” or “Claimant”) opened Spill Summary Case #19119935401 on the incident. ADEC called the Mayor of Angoon, Joshua Bowen, who responded to the incident on December 20, 2019.<sup>7</sup> Having observed a sheen, the deployed sorbent boom around the vessel. The Mayor reported that the weather conditions at the time of the incident made for difficult working conditions therefore observations resumed the next day.<sup>8</sup>

United States Coast Guard (USCG) Sector Juneau, is the Federal On Scene Coordinator (FOSC) for the incident based on the incident location. The FOSC received notification from the owner of the fishing vessel, F/V L.K. ANN, AK9357T, stating that it caught fire at Angoon Harbor, LAT: 57°30.1 N LONG: 134°35.4 W, and burned from the railing up while moored in the Angoon Harbor.<sup>9</sup> The owner stated that there was no pollution in the water at the time of his call and that there was less than 100 gallons of fuel onboard the vessel at the time of the fire.<sup>10</sup>

### ***Responsible Party***

The Oil Pollution Act identifies the owner and/or operator of a vessel resulting in an OPA incident to be the Responsible Party (RP) for that incident.<sup>11</sup> In this case, the vessel incident was reported and operated by Mr. (b) (6), as the RP.<sup>12</sup>

### ***Recovery Operations***

The Mayor of Angoon, Joshua Bowen, responded to the vessel fire incident on December 20, 2019.<sup>13</sup> Having observed a sheen, they deployed sorbent boom around the vessel. The Mayor Reported that the weather conditions at the time of the incident made for difficult working conditions therefore observations resumed the next day.<sup>14</sup>

On December 23, 2019, the Mayor of Angoon reported that the vessel was taken to a vessel graveyard.<sup>15</sup> ADEC closed its case on March 17, 2021, noting that there were no additional reports of release and all materials were disposed of.<sup>16</sup>

## **II. CLAIMANT AND NPFC:**

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<sup>7</sup> ADEC Spill Summary Report # 19119935401, with a spill close date of March 17, 2021, pages 1-2 of 35.

<sup>8</sup> *Id.*

<sup>9</sup> *See*, ADEC original claim submission dated March 26, 2024 with ADEC Spill Summary Report and supporting documentation. *See*, Email from USCG to ADEC dated February 7, 2020, providing an update on the vessel incident, pg. 12 of 35.

<sup>10</sup> *Id.*

<sup>11</sup> 33 U.S.C. § 2701(32).

<sup>12</sup> *See*, ADEC original claim submission dated March 26, 2024 with ADEC Spill Summary Report and supporting documentation, pg 1 of 35; and *See*, Letter of State Interest to Mr. (b) (6) dated December 27, 2019, pgs. 6-7 of 35.

<sup>13</sup> ADEC Spill Summary Report # 19119935401, with a spill close date of March 17, 2021, pages 1-2 of 35.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> ADEC Spill Summary Report 19119935401, with a spill close date of March 17, 2021 page 3 of 35.

On March 27, 2024, the NPFC received a claim for \$321.28 from ADEC.<sup>17</sup> ADEC provided the NPFC with an OSLTF claim form, ADEC Spill Summary Report #19119935401, ADEC Notification Questionnaire, ADEC Oil & Hazardous Substances Spill Notification Form, ADEC Letter of State Interest, internal email correspondence, email correspondence with the Mayor of the City of Angoon, AK Dept of Natural Resources, and the USCG. Also included in the submission documents was an Unauthorized Use of State Land notification letter from Alaska Dept of Natural Resources, and an Account Statement for (b) (6) and copies of related invoices #SPR-161936, #SPR-163475, #SPR-163991, #SPR-170615, #SPR-172560, #SPR-174197, and #SPR-179864.<sup>18</sup>

On April 2, 2024, the NPFC requested additional information from ADEC relative to the incident.<sup>19</sup> On April 4, 2024, ADEC replied to the NPFC's request, providing their responses.<sup>20</sup>

### **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>21</sup> 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.<sup>22</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>23</sup> 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.<sup>24</sup> An RP's liability is strict, joint, and several.<sup>25</sup> 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."<sup>26</sup> OPA was intended to cure these deficiencies in the law.

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<sup>17</sup> ADEC original claim submission email to NPFC on March 27, 2024.

<sup>18</sup> ADEC original claim submission dated March 26, 2024 with attachment and supporting documentation.

<sup>19</sup> See, NPFC email to ADEC dated April 2, 2024 requesting additional information.

<sup>20</sup> See, ADEC email to NPFC dated April 4, 2024.

<sup>21</sup> 33 CFR Part 136.

<sup>22</sup> 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)).

<sup>23</sup> 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).

<sup>24</sup> 33 U.S.C. § 2702(a).

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

<sup>26</sup> *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).

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.”<sup>27</sup> 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.”<sup>28</sup>

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

OPA defines “compensation allowable” to mean “the amount of compensation allowable is the total of uncompensated reasonable 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.”<sup>32</sup>

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.***<sup>33</sup>

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.]”<sup>34</sup>

CERCLA defines “hazardous substance” broadly.<sup>35</sup> However, the definition of “hazardous substance” under CERCLA specifically excludes “petroleum, including crude oil or any fraction thereof...”<sup>36</sup> 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).”<sup>37</sup>

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<sup>27</sup> 33 U.S.C. § 2701(31).

<sup>28</sup> 33 U.S.C. § 2701(30).

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

<sup>30</sup> 33 CFR Part 136.

<sup>31</sup> 33 CFR 136.105.

<sup>32</sup> 33 CFR 136.205.

<sup>33</sup> 33 U.S.C. § 2701(14)(emphasis added).

<sup>34</sup> 33 U.S.C. § 2701(14).

<sup>35</sup> “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].”

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

OPA defines “removal costs” to mean “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 a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.”<sup>38</sup>

The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.<sup>39</sup> Based on the administrative record and evidence submitted, the NPFC denies the claim based on the following:

1. The Claimant has not provided sufficient evidence to establish that the uncompensable removal costs of actions claimed were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC<sup>40</sup>;
2. That the incident subject of the claim submission is an OPA event. The NPFC requested additional information associated with the fire fighting chemicals used to extinguish the fire. Specifically, the NPFC requested that the Claimant provide a copy of the fire report and the Material Safety Data Sheet (MSDS) for the fire suppression chemicals used to extinguish the fire. The Claimant did not provide the evidence requested and the NPFC is unable to determine if the product in the waterway was strictly an OPA oil or if it was a mixture of oil and hazardous chemicals that are found in fire suppression foam; and
3. The Claimant was not able to demonstrate that proper disposal of petroleum contaminated materials were disposed of in accordance with the NCP. The NPFC requested how the sorbents were disposed of and requested a copy of the waste manifest to which the Claimant replied that they did not possess such information.

#### **V. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, ADEC’s request for uncompensated removal costs is denied as not supported by the record.

**(b) (6)**

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

Date of Supervisor’s review: *4/15/24*

Supervisor Action: *Denial approved*

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<sup>38</sup> 33 U.S.C. § 2701(31).

<sup>39</sup> 33 CFR 136.105.

<sup>40</sup> 33 CFR §§136.203(c) & 205.