

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

<b>Claim Number:</b>	UCGP924035-URC001
<b>Claimant:</b>	State of California – Department of Fish and Wildlife
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$10,765.44
<b>Action Taken:</b>	Denial

### **EXECUTIVE SUMMARY:**

On March 17, 2019, the City of Los Angeles Watershed Protection Division, Department of Sanitation notified the National Response Center (NRC) that 1500-gallons of an unknown petroleum water mixture was discharged from a burning 9000-gallon storage tank that was discovered at a property lot with the address of (b) (6), Los Angeles, CA.<sup>2</sup> It was also reported that a residual amount of the material impacted a nearby storm drain that leads to the Compton and Los Angeles Rivers but did not impact the rivers, the material also migrated down the storm drain to Route 66 and Broadway.<sup>3</sup>

On March 17, 2019 State of California Department of Fish and Wildlife (“CDFW-OSPR,” “OSPR,” or “Claimant”) Law Enforcement Division, responded to the tanker explosion in the City of Los Angeles.<sup>4</sup> Los Angeles City Fire Department (“LAFD”), Los Angeles Police Department (“LAPD”), among other local and state entity responders were on-scene as well.<sup>5</sup> Based on the location of this incident, the Federal On Scene Coordinator (FOSC) was the United States Environmental Protection Agency (USEPA).<sup>6</sup>

On April 3, 2024, the National Pollution Funds Center (NPFC) received OSPR’s removal cost claim submission in the amount of \$10,765.44.<sup>7</sup> The NPFC has thoroughly reviewed all

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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 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> NRC Case Number 1240344, Description of Incident section, dated March 17, 2024.

<sup>3</sup> NRC Case Number 1240344, Incident section and Incident location section, dated March 17, 2024.

<sup>4</sup> State of California, Department of Fish and Wildlife, Law Enforcement Division Investigation Report dated April 5, 2019, P. 20 and 21/28 of claim submission.

<sup>5</sup> Los Angeles City Fire Department (LAFD), Los Angeles Police Department (LAPD), Los Angeles Watershed Protection (LAWP), Los Angeles County Public Works (Public Works), Los Angeles City Public Health Department, and others were on-scene responding to the incident. *See*, Pgs. 20 and 21/28 of claim submission.

<sup>6</sup> *See*, State of California Department of Fish and Wildlife, Law Enforcement Division Investigation, Second Paragraph, dated April 5, 2019, P. 20 and 21/28 of claim submission. *See also*, Email from USEPA FOSC dated April 11, 2024.

<sup>7</sup> *See*, OSLTF Form dated March 28, 2024.

documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration, has determined that the claim must be denied on the basis that the Claimant has failed to provide all requested documentation to support the claim and the FOSC has not provided FOSC coordination for this claim.

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

### ***Incident***

On March 17, 2019, the City of Los Angeles Watershed Protection Division, Department of Sanitation notified the National Response Center (NRC) that 1500-gallons of an unknown petroleum water mixture was discharged from a burning 9000-gallon storage tank that was discovered at a property lot with the address of 210 West Slauson, Los Angeles, CA.<sup>8</sup> It was also reported that a residual amount of the material impacted a nearby storm drain that leads to the Compton and Los Angeles Rivers but did not impact the rivers, the material also migrated down the storm drain to Route 66 and Broadway.<sup>9</sup>

### ***Responsible Party***

A responsible party (RP) as defined by the Oil Pollution Act of 1990 (OPA) has not been identified.

### ***Recovery Operations***

The City of Los Angeles Watershed Protection Division, Department of Sanitation and Clean Harbors flushed the storm drains  $\frac{3}{4}$  miles down using 5000 gallons of water until the sheen dissipated. Clean Harbors continued remedial actions for the property managers.<sup>10</sup>

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

On April 3, 2024, the NPFC received State of California, Department of Fish and Wildlife, OSPR claim submission for \$10,765.44 in uncompensated removal costs. The claim included a State of California – Natural Resources Agency letter head, signed OSLTF Claim Form, OSPR Voucher and schedule of Withdrawal and Credits Standard Form 1081, OSPR Incident Billing Invoice # 1271107 for billing period March 2019 through March 2019, Cost Summary or Invoice # FED CLAIM 56526 addressed to Mr. (b) (6) Property Trust, Department of Fish and Wildlife – Timesheets for (b) (6), (b) (6), (b) (6), and (b) (6), State of California Monthly Travel Log for (b) (6), Hourly Rates by Classification (Federal ICRP) Effective January 1, 2019, State of California Department of Fish and Wildlife Law Enforcement Division Investigation Report # 1 dated April 5, 2019, photographs, State of California – Natural resources Agency Department of Fish and Wildlife demand letter to (b) (6)

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<sup>8</sup> NRC Case Number 1240344, Description of Incident section, dated March 17, 2024.

<sup>9</sup> NRC Case Number 1240344, Description of Incident section and Incident location section, dated March 17, 2024.

<sup>10</sup> State of California, Department of Fish and Wildlife, Law Enforcement Division Investigation Report dated April 5, 2019, P. 20 and 21/28 of claim submission.

(b) (6) Property Trust dated February 26, 2020 with California Department of Fish and Wildlife Office of Spill Prevention and Response (OSPR) Incident Billing Invoice #1271107.<sup>11</sup>

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>12</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>13</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>14</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>15</sup> An RP's liability is strict, joint, and several.<sup>16</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>17</sup> 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."<sup>18</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

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<sup>11</sup> Signed claim submission dated received on April 3, 2024.

<sup>12</sup> 33 CFR Part 136.

<sup>13</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>14</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>15</sup> 33 U.S.C. § 2702(a).

<sup>16</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>17</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).

<sup>18</sup> 33 U.S.C. § 2701(31).

damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”<sup>19</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>20</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>21</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>22</sup>

OPA defines a “claim” to mean “a request made in writing for a sum certain for compensation for damages or removal costs **resulting from an incident.**”<sup>23</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>24</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>25</sup>

CERCLA defines “hazardous substance” broadly.<sup>26</sup> However, the definition of “hazardous substance” under CERCLA specifically excludes “petroleum, including crude oil or any fraction thereof...”<sup>27</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>28</sup>

Upon review of the evidence submitted by the Claimant, the NPFC opines there is not enough evidence to substantiate the product released was exclusively an OPA oil. The NPFC requested evidence demonstrating that the claim was the result of an OPA oil spill event. As

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<sup>19</sup> 33 U.S.C. § 2701(30).

<sup>20</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

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

<sup>22</sup> 33 CFR 136.105.

<sup>23</sup> 33 U.S.C. § 2701(14).

<sup>24</sup> 33 U.S.C. § 2701(14).

<sup>25</sup> 33 U.S.C. § 2701(14).

<sup>26</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>27</sup> *Id.*

<sup>28</sup> *Id.*

such, on April 4, 2024, the NPFC requested additional information to support OSPR's removal cost claim. The NPFC specifically requested the following:<sup>29</sup>

1. Information regarding the tanker and the company that owned it.
2. Information explaining why the truck was parked on the (b) (6) Property.
3. Information regarding the cause of the explosion.
4. Complete lab analysis of the product that was removed from the storm drain.
5. Explanation on the nexus to the navigable waterway that was threatened.
6. Reports/documentation/pictures from responding Federal, State, and local authorities.
7. Reports/documentation/ pictures from the claimant.
8. Witness Statements.

April 4, 2024, the NPFC received notification that OSPR received the NPFC's request for additional information.<sup>30</sup> On April 5, 2024, the NPFC sent an email to the FOSC, requesting they share their records and photos concerning this case with the NPFC. The NPFC also requested that the FOSC provide information regarding the cleanup of this incident.<sup>31</sup> On April 11, 2024, the FOSC replied indicating they do not have records concerning the tanker explosion.<sup>32</sup> The FOSC sent a separate email advising NPFC to check with another colleague because the second FOSC responded to the incident as well and might have records.<sup>33</sup> On April 12, 2024, the NPFC sent an email to the second FOSC requesting any documentation in support of OSPR's claim.<sup>34</sup> To date, the NPFC has not received a response from the second FOSC regarding the tanker explosion.

April 15, 2024, the NPFC sent another email to OSPR, reminding them that the request for additional information was still outstanding.<sup>35</sup> Later the same day, the NPFC received a "Read" receipt from OSPR for the April 4, 2024, additional information request.<sup>36</sup> To date OSPR has not provided the requested information to support of their claim.

In accordance with the Oil Pollution Act of 1990, the claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the NPFC, to support and properly process the claim, as required by 33 CFR 136.105.<sup>37</sup> After careful analysis of all the supporting documentation submitted by OSPR, the NPFC must deny the costs claimed since there is not enough evidence, including but not limited to, chemical analysis, to substantiate the product released was exclusively an OPA oil nor did the claimant provide FOSC coordination from the FOSC determining that the actions performed by OSPR were determined to be consistent with the National Contingency Plan (NCP).<sup>38</sup>

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<sup>29</sup> See, NPFC Email to OSPR requesting specific support documentation dated April 4, 2024.

<sup>30</sup> See, "Read" receipt from OSPR to NPFC dated April 4, 2024.

<sup>31</sup> Email sent to FOSC from NPFC dated April 4, 2024.

<sup>32</sup> Email from FOSC to NPFC dated April 11, 2024.

<sup>33</sup> Email from U.S. EPA to NPFC dated April 11, 2024.

<sup>34</sup> Email to U.S. EPA from NPFC dated April 12, 2024.

<sup>35</sup> See, NPFC Email to OSPR reminding them of the AI Request dated April 15, 2024.

<sup>36</sup> See, "Read" Receipt from (b) (6) to NPFC dated April 15, 2024.

<sup>37</sup> 33 CFR 136.105.

<sup>38</sup> 33 CFR 136.203 & 205.

**VI. CONCLUSION:**

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

**(b) (6)**

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

Date of Supervisor's review: *6/4/24*

Supervisor Action: *Denial Approved*