

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924041-URC001
Claimant:	Alaska Dept. of Environmental Conservation, Spill Prevention & Response
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$3,097.21
Action Taken:	Denial

EXECUTIVE SUMMARY:

On September 6, 2018 at approximately 8:45 am local time, the National Response Center (NRC) was notified of a sheen from an unknown source near the Granite Point Platform in Cook Inlet.² On September 6, 2018, at 6:30 pm local time, the NRC received another report of an unknown sheen that was believed to be from a sunken vessel and described as 100 rings of sheen about 6" to about 2' in diameter each and coming up in bursts of about 4-5 at a time, observed 400 feet away from the Granite Point Platform.³ No Responsible Party (RP) has been identified.

The State of Alaska Department of Environmental Conservation, Spill Prevention & Response ("Claimant" or "ADEC") communicated with the United States Coast Guard's (USCG's) Marine Safety Detachment (MSD) Homer⁴ ("USCG" or "FOSC") and also communicated via email and phone with Hilcorp Corporation regarding sheen sightings in the area.⁵ The USCG is the predesignated Federal On-Scene Coordinator (FOSC) based on the location of this incident.

ADEC presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$3,097.21 on July 12, 2024.⁶ 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.

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 National Response Center Incident Report # 1223853 dated September 6, 2018.

³ NRC Report # 1223860 dated September 6, 2018.

⁴ ADEC original claim submission dated July 11, 2024, and received by the NPFC on July 12, 2024, ADEC Spill Summary Report 18239924802, page 2.

⁵ ADEC original claim submission dated July 11, 2024, and received by the NPFC on July 12, 2024, ADEC Spill Summary Report 18239924802, page 2.

⁶ ADEC original claim submission dated July 11, 2024, and received by the NPFC on July 12, 2024.

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁷ 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.⁸ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁹ 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.

II. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On September 6, 2018 at approximately 8:45 am local time, the National Response Center (NRC) was notified of a sheen from an unknown source near the Granite Point Platform in Cook Inlet.¹⁰ On September 6, 2018, at 6:30 pm local time, the NRC received another report of an unknown sheen that was believed to be from a sunken vessel and described as 100 rings of sheen about 6" to about 2' in diameter each and coming up in bursts of about 4-5 at a time, observed 400 feet away from the Granite Point Platform.¹¹ No Responsible Party (RP) has been identified.

Recovery Operations

On September 6, 2018, ADEC reviewed testing results on the oil and gas pipeline provided by Hilcorp at Granite Point Platform, in an effort to identify a potential source for the unknown sheens around the platform.¹² Throughout the following days, ADEC communicated with the FOSC and provided status updates to response partners including Alaska Department of Natural Resources, Alaska Department of Fish and Game, and USCG.¹³ On October 2, 2018, ADEC reviewed and discussed sonar survey of the sunk M/V Monarch and the water column around Leg 1 of the Granite Point Platform conducted by Global Diving on behalf of the USCG.¹⁴

⁷ 33 CFR Part 136.

⁸ 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)).

⁹ 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).

¹⁰ National Response Center Incident Report # 1223853 dated September 6, 2018.

¹¹ NRC Report # 1223860 dated September 6, 2018.

¹² Email from Claimant to NPFC dated September 5, 2024, Re Additional Information Response.

¹³ Email from Claimant to NPFC dated September 5, 2024, Re Additional Information Response.

¹⁴ Email from Claimant to NPFC dated September 5, 2024, Re Additional Information Response.

III. CLAIMANT AND NPFC:

Having not received payment from the RP after ninety days, the claimant submitted its claim to the NPFC for \$3,097.21 on July 11, 2024. In its claim submission to the NPFC, ADEC provided an executed OSLTF Claim Form; Analysis Summary Report, ADEC Billing Rates Forms, NRC Emails, ADEC Spill Summary, Sonar Survey for MV Monarch, Monarch Documents, Hilcorp Sonar Disturbance Images, Leak Tests and Emails with Hilcorp regarding pipeline testing. The NPFC requested additional information on multiple occasions and the claimant provided the information available to them.

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.¹⁵ An RP's liability is strict, joint, and several.¹⁶ 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."¹⁷ 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."¹⁸ 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."¹⁹

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

¹⁵ 33 U.S.C. § 2702(a).

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

¹⁷ *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).

¹⁸ 33 U.S.C. § 2701(31).

¹⁹ 33 U.S.C. § 2701(30).

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

²¹ 33 CFR Part 136.

²² 33 CFR 136.105.

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;²³
- (d) That the removal costs were uncompensated and reasonable.²⁴

The NPFC analyzed each of these factors and determined the costs incurred by Claimant and submitted herein are not compensable removal costs based on the supporting documentation provided. The NPFC determined that removal costs claimed in the amount of \$3,097.21 are denied based on the following:

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.

The NPFC contacted the FOSC’s representative (FOSCR) and requested after the fact FOSC coordination. The NPFC provided the FOSCR with all of the documents included in the claimant’s submission. In response to the NPFC’s request for FOSC coordination, the FOSCR stated that it did not direct any actions undertaken by ADEC. The FOSCR stated that ADEC did not have a significant presence during the GP Platform discharge in the fall of 2018.

The FOSCR explained that the Kenai ADEC office was the FOSC’s usual point of contact for Cook Inlet discharges and was notified, according to USCG policy, as the sheening occurred during the months of August-October of that year.²⁵ Others within ADEC were added to the email string as the discharges occurred with increased regularity, however the FOSCR confirmed that there was no physical involvement by the ADEC staff.²⁶ The FOSCR further stated that the communication with ADEC was not for assistance but rather for a stakeholder’s awareness of actions that had occurred.²⁷

The FOSCR has determined that the actions taken by ADEC were not consistent with the NCP since the FOSC did not direct the actions of the claimant and as such, the claim must be denied.

Denied Costs: \$3,097.21

VI. CONCLUSION

²³ 33 CFR 136.203.

²⁴ 33 CFR 136.203; 33 CFR 136.205.

²⁵ Email from USCG to NPFC Re FOSC Coordination Response dated July 31, 2024.

²⁶ Email from USCG to NPFC Re FOSC Coordination Response dated July 31, 2024.

²⁷ Email from USCG to NPFC Re FOSC Coordination Response dated July 31, 2024.

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC determines and finds as a matter of fact that there is no documentation in the claim file to substantiate that the claimant coordinated their actions with the FOSC or that the actions performed were at the direction of the FOSC.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Alaska Dept. of Environmental Conservation, Spill Prevention & Response request for uncompensated removal costs is denied.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review:

Supervisor Action: *Denial Approved*

Supervisor's Comments: