

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

<b>Claim Number:</b>	UCGP924045-URC001
<b>Claimant:</b>	Massachusetts Department of Environmental Protection
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$23,303.20
<b>Action Taken:</b>	Offer in the amount of <b>\$22,144.67</b>

### **EXECUTIVE SUMMARY:**

On December 10, 2023, at 09:49 local time, the National Response Center (“NRC”) received notification that a rainbow sheen was seen on the surface of Watershops Pond, a navigable waterway of the United States and located in Springfield, Massachusetts.<sup>2</sup> The NRC report further stated under the Incident Details section that a 200 x 40 foot sheen smelled of diesel.<sup>3</sup>

The United States Environmental Protection Agency (USEPA), is the Federal On Scene Coordinator (FOSC) for the incident. The FOSC spoke with Massachusetts Department of Environmental Protection (“MassDEP” or “Claimant”) who is the State On Scene Coordinator (SOSC) for the incident.<sup>4</sup> MassDEP arrived on scene at 10:20 local time and found approximately 10 gallons of fuel in Watershops Pond as well as product in a nearby storm drain.<sup>5</sup> Searches for the source of the spill were unsuccessful.<sup>6</sup>

MassDEP contacted the Springfield Fire Department and hired Environmental Services, Inc (ESI) when no Responsible Party (“RP”) was immediately identified.<sup>7</sup>

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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> National Response Center (NRC) Report #1386343 dated December 10, 2023.

<sup>3</sup> National Response Center (NRC) Report #1386343 dated December 10, 2023.

<sup>4</sup> Environmental Protection Agency Spill Summary Report #3247577 dated December 10, 2023

<sup>5</sup> Massachusetts Department of Environmental Protection report #11151655, dated December 10, 2023, see page 3 of 5.

<sup>6</sup> Massachusetts Department of Environmental Protection report #11151655, dated December 10, 2023, see page 3 of 5, section E(1)(a).

<sup>7</sup> Massachusetts Department of Environmental Protection report #11151655, dated December 10, 2023, see page 3 of 5, question #12.

On September 10, 2024, the National Pollution Funds Center (NPFC) received MassDEP's claim submission for \$23,303.20 in alleged removal costs.<sup>8</sup> 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 \$22,144.67.<sup>9</sup>

## **I. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>10</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>11</sup> The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>12</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.

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

### ***Incident***

On December 10, 2023, at 09:49 local time, the National Response Center ("NRC") received notification that a rainbow sheen was seen on the surface of Watershops Pond, a navigable waterway of the United States and located in Springfield, Massachusetts.<sup>13</sup> The NRC report further stated under the Incident Details section that a 200 x 40 foot sheen smelled of diesel.<sup>14</sup>

The United States Environmental Protection Agency (USEPA), is the Federal On Scene Coordinator (FOSC) for the incident. The FOSC spoke with Massachusetts Department of Environmental Protection ("MassDEP" or "Claimant") who is the State On Scene Coordinator (SOSC) for the incident.<sup>15</sup>

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<sup>8</sup> See, MassDEP original claim submission dated August 28, 2024.

<sup>9</sup> 33 CFR 136.115.

<sup>10</sup> 33 CFR Part 136.

<sup>11</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>12</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>13</sup> National Response Center (NRC) Report #1386343 dated December 10, 2023.

<sup>14</sup> National Response Center (NRC) Report #1386343 dated December 10, 2023.

<sup>15</sup> Environmental Protection Agency Spill Summary Report #3247577 dated December 10, 2023

### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, the owner of the source which caused the oil spill is the Responsible Party (RP) for the incident.<sup>16</sup> According to MassDEP's incident report, no RP has been identified.<sup>17</sup>

### ***Recovery Operations***

On December 10, 2023, MassDEP arrived on scene at approximately 10:20 am local time and observed a significant rainbow sheen coming from a culvert at the outfall associated with the storm drain system from Alden Street that leads to Watershops Pond.<sup>18</sup> MassDEP and Springfield Fire Department jointly deployed sorbent boom between two concrete structures approximately 20' from the outfall.<sup>19</sup>

MassDEP utilized their existing contract with Environmental Services, Inc (ESI) to respond to the incident.<sup>20</sup> ESI arrived on the scene and placed hard boom to contain the spill; ESI continued to deploy containment boom as needed. When the sorbent boom near the outfall was checked, there was a brownish/ pinkish staining. Sheen was also observed in a manhole in front of 468 Alden Street.<sup>21</sup> Sorbent boom was placed in the storm drain. Storm drains around the location were checked for oil intrusion and no sheen was observed in any additional areas.<sup>22</sup> ESI continued to monitor the booms and remove and replace when soiled. ESI transported the oiled debris to a waste disposal facility.<sup>23</sup>

### **III. CLAIMANT AND NPFC:**

On September 10, 2024, MassDEP presented its removal costs claim to the National Pollution Funds Center ("NPFC") for \$23,303.20.<sup>24</sup> When the claim was received, it included the OSTLF claim form; invoices to ESI related to the spill response; labor rates for MassDEP; the ESI rate sheet; the ESI contract with MassDEP and payment terms and conditions; and Standard Form 1081 from the Department of Treasury.

On September 17, 2024, the NPFC requested additional information, including proof of impact or potential impact to a navigable waterway; proof of coordination with an FOSC; a copy of the chemical analysis on the spill sample; and an accounting of the tasks performed by each staff member during the response.<sup>25</sup>

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<sup>16</sup> 33 U.S.C. § 2701(32).

<sup>17</sup> Massachusetts Department of Environmental Protection report #11151655, dated December 10, 2023, see page 3 of 5

<sup>18</sup> Massachusetts Department of Environmental Protection report #11151655, dated December 10, 2023, see page 3 of 5, question #12.

<sup>19</sup> *Id.*

<sup>20</sup> MassDEP original claim submission, received on September 10, 2024, pg. 32 of 49.

<sup>21</sup> Massachusetts Department of Environmental Protection report #11151655, dated December 10, 2023, see page 3 of 5, question #12.

<sup>22</sup> *Id.*

<sup>23</sup> MassDEP original claim submission dated August 28, 2024, pages 11-12 of 49.

<sup>24</sup> MassDEP original claim submission dated August 28, 2024.

<sup>25</sup> Email from NPFC to MassDEP dated September 17, 2024 requesting additional information.

On September 27, 2024, the NPFC received MassDEP's response which included the chemical analysis on the spill sample, a copy of the NRC report, and an accounting of tasks for each staff member.<sup>26</sup>

#### **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>27</sup> An RP's liability is strict, joint, and several.<sup>28</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>29</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>30</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>31</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>32</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>33</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>34</sup>

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;

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<sup>26</sup> Email from MassDEP to NPFC dated September 27, 2024, with attachments providing additional information.

<sup>27</sup> 33 U.S.C. § 2702(a).

<sup>28</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>29</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>30</sup> 33 U.S.C. § 2701(31).

<sup>31</sup> 33 U.S.C. § 2701(30).

<sup>32</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

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

<sup>34</sup> 33 CFR 136.105.

- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan;
- (d) That the removal costs were uncompensated and reasonable.<sup>35</sup>

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by MassDEP herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate pricing<sup>36</sup> and all costs were supported by adequate documentation which included invoices and/or proof of payment<sup>37</sup> where applicable and have been determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>38</sup>

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$22,144.67 while \$1,158.53 is denied for the following reason:<sup>39</sup>

MassDEP claimed labor costs for activities that occurred after the completion of the spill response which was identified as December 12, 2023.<sup>40</sup>

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

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 was a discharge of diesel fuel, which is an OPA oil, into Watershops Pond, a navigable waterway of the United States.<sup>41</sup> MassDEP spoke with the US EPA, the FOSC, regarding the spill incident and responded to the spill on December 10, 2023.<sup>42 43</sup> All removal costs approved for payment to the claimant were determined to be reasonable and supported by rate schedules provided.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Massachusetts Department of Environmental Protection's request for uncompensated removal costs is approved in the amount of **\$22,144.67**.

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<sup>35</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>36</sup> MassDEP Original Claim Submission received September 10, 2024.

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

<sup>38</sup> *See*, FOSC coordination email dated October 16, 2024.

<sup>39</sup> Enclosure 3, tab 2, which provides a detailed analysis of the amounts approved and denied by the NPFC.

<sup>40</sup> Massachusetts Department of Environmental Protection report #11151655, dated December 12, 2023, see page 5 of 5.

<sup>41</sup> *See*, FOSC coordination email dated October 16, 2024.

<sup>42</sup> Environmental Protection Agency Spill Summary Report #3247577, dated December 10, 2023

<sup>43</sup> Massachusetts Department of Environmental Protection report #11151655, dated December 10, 2023, see page 3 of 5.

This determination is a settlement offer,<sup>44</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>45</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>46</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *10/28/24*

Supervisor Action: *Offer Approved*

Supervisor's Comments:

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<sup>44</sup> 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).

<sup>45</sup> 33 CFR 136.115(b).

<sup>46</sup> 33 CFR 136.115(b).