

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE23004-URC001
Claimant:	City of McCall
Type of Claimant:	Municipality
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$99,747.67
Action Taken:	Offer in the amount of \$93,554.82

EXECUTIVE SUMMARY:

On May 28, 2023 at approximately 6:00 pm local time, the National Response Center (NRC) was notified of a sheen from an unknown source on Payette Lake, a navigable waterway of the United States.² The discharge originated from a storm drain outfall which caused a sheen with a diesel odor on Payette Lake.³ The City of McCall responded to the incident and initiated coordination of all response efforts with a contractor and city government officials.⁴

Based on the incident location, the United States Environmental Protection Agency (USEPA) Region 10 responded as the Federal On Scene Coordinator (FOSC) for the incident. In its capacity as the FOSC, USEPA Region 10 federalized the incident and oversaw City of McCall and its contractor's remediation activities.⁵ The City of McCall (Claimant) hired Olympus Technical Services, Inc for removal activities.⁶ USEPA did not identify a Responsible Party.⁷

The City of McCall presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$99,747.67 on November 28, 2023. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$93,554.82 is compensable and offers this amount as full and final compensation of this claim.

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 #1368839 dated May 28, 2023.

³ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 1.1.2 Site Description, page 1 of 3.

⁴ Original Claim submission dated November 6, 2023, received on November 28, 2023, City of McCall Event Report, page 3-4 of 45.

⁵ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 2.1.2 Response Actions to Date, pages 1-2 of 3.

⁶ Original Claim submission dated November 6, 2023, received on November 28, 2023, City of McCall Event Report, page 5 of 45.

⁷ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 2.1.3 Identity of Potentially Responsible Parties, page 2 of 3.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On May 28, 2023, the City of McCall received a report of petroleum substance observed near Art Roberts Park and the NRC received a report of a sheen from an unknown source.⁸ The discharge originated from a storm drain outfall which caused a sheen with a diesel odor on Payette Lake.⁹ Payette Lake is the primary drinking water source for the city.¹⁰ On May 31, 2023, beach and water access points through multiple parks were closed until all cleanup operations were complete.¹¹ The FOSC mobilized to the scene and discussed response actions and containment of the spill with the Claimant.¹² The City of McCall hired Olympus Technical Services, Inc for removal activities.¹³ USEPA opened the project number UCGPE23004.¹⁴

Recovery Operations

Olympus Technical Services, Inc (Olympus) was hired by the City of McCall for cleanup and removal.¹⁵ Olympus mobilized on June 1, 2023, and began removal operations on June 2, 2023. Olympus deployed containment boom at the outfall of the conveyance line to prevent oil from jetting activities to get further into the lake.¹⁶ Contaminated liquid, sediments and solids were transferred to tanks staged at the City's wastewater treatment plant.¹⁷ On June 3, 2023, Olympus continued vacuuming down the conveyance line towards the lake and the vortex water sediment/solids separator still had oil in it and strong odor when opened.¹⁸ On June 4, 2023, the containment boom was removed after no sheen was observed. Samples were taken from the frac tank and the solids pile.^{19 20}

II. CLAIMANT AND NPFC:

On November 28, 2023, the NPFC received a claim for \$100,374.19 from the City of McCall.²¹ The City of McCall provided the NPFC with an OSLTF claim form, City of McCall

⁸ Original Claim submission dated November 6, 2023, received on November 28, 2023, City of McCall Event Report, page 3 of 45.

⁹ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 1.1.2 Site Description, page 1 of 3.

¹⁰ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 1.1.2 Site Description, page 1 of 3.

¹¹ Official Website of McCall, Update: May 31, 2023, <https://www.mccall.id.us/news/post/17299/>

¹² USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 2.1.3 Identity of Potentially Responsible Parties, page 1 of 3.

¹³ Original Claim submission dated November 6, 2023, received on November 28, 2023, City of McCall Event Report, page 5 of 45.

¹⁴ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 2.1.3 Identity of Potentially Responsible Parties, page 1 of 3.

¹⁵ Original Claim submission dated November 6, 2023, received on November 28, 2023, City of McCall Event Report, page 5 of 45.

¹⁶ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 1.1.2 Site Description, page 2 of 3.

¹⁷ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 1.1.2 Site Description, page 2 of 3.

¹⁸ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 1.1.2 Site Description, page 2 of 3.

¹⁹ USEPA Region 10 POLREP #1 Initial and Final dated June 15, 2023, 1.1.2 Site Description, page 2 of 3.

²⁰ Original Claim submission dated November 6, 2023, received on November 28, 2023, Analytical Laboratories Inc. Results, page 35-44 of 45.

²¹ Original Claim submission dated November 6, 2023, received on November 28, 2023.

Event Report, Pictures, City Council documents, EPA PolRep, NRC Incident Report, Invoices and AP check statements, and Analytical Lab Report.²² The claimant reduced its sum certain to \$100,178.84 on December 28, 2023 after removing items the contractor had reimbursed them for.²³ And on February 27, 2024, the claimant reduced its sum certain again to \$99,747.67.²⁴

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁵ 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.²⁶ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁷ 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.²⁸ An RP's liability is strict, joint, and several.²⁹ 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."³⁰ 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

²² Original Claim submission dated November 6, 2023, received on November 28, 2023.

²³ Email from Claimant to NPFC Re Sum Certain change dated December 28, 2023.

²⁴ Email from Claimant to NPFC Re Sum Certain change dated February 27, 2024.

²⁵ 33 CFR Part 136.

²⁶ 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)).

²⁷ 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).

²⁸ 33 U.S.C. § 2702(a).

²⁹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁰ *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).

incident.”³¹ 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.”³²

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³³ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁴ 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.³⁵

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.³⁶
- (d) That the removal costs were uncompensated and reasonable.³⁷

The NPFC analyzed each of these factors and determined that the majority of the costs incurred and submitted by City of McCall herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate Olympus Technical Services Inc. published rates and all approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).³⁸

Based on the location of this incident, the FOSC for this incident is the United States Environmental Protection Agency (USEPA).³⁹ The USEPA FOSC coordinated and monitored the removal activities and was present at the location and found that the actions taken by the claimant were consistent with the NCP after reviewing all available incident and response documentation.⁴⁰

³¹ 33 U.S.C. § 2701(31).

³² 33 U.S.C. § 2701(30).

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

³⁴ 33 CFR Part 136.

³⁵ 33 CFR 136.105.

³⁶ In conjunction with the FOSC, City of McCall oversaw the work as well.

³⁷ 33 CFR 136.203; 33 CFR 136.205.

³⁸ City of McCall claim submission dated November 6, 2023, additional information requested by NPFC on multiple dates, and an email from the FOSC to NPFC Re Additional Information dated December 5, 2023 acknowledging the actions taken by Olympus Technical Services Inc. on behalf of City of McCall, were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

³⁹ *See generally*, 40 CFR 300.120(a)(2).

⁴⁰ Email from USEPA OSC to NPFC Re Additional Information dated December 5, 2023 acknowledging the actions taken by the Olympus Technical Services Inc. on behalf of City of McCall were necessary to prevent, minimize, or

After a complete review of all documentation and after contacting the FOSC, the NPFC was able to corroborate the actions undertaken by the claimant and confirm that the FOSC determined City of McCall's actions to be properly coordinated with the FOSC. The NPFC has determined that the majority of the invoiced costs were billed in accordance with the rate schedule in place at the time services were rendered.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$93,554.82 while \$6,192.94 is deemed non-compensable based on the following reasons:⁴¹

1. Olympus Technical Services Inc. Invoice number 173323:
 - a. Invoiced per diem at \$55 per day, NPFC adjusted the rate accordingly per the rate schedule provided. **NPFC denies \$10.00 for these charges.**
 - b. Towing Vehicle Mileage was invoiced under (b) (6) on June 2 and June 4 but no vehicle identification was provided. **NPFC denies \$1,110.00 for these charges.**
 - c. 16' Alum Type III Ext Ladder was invoiced at \$149.79, and Olympus refunded the claimant \$149.70 for the item, leaving \$.09 and the 14% markup unpaid to the claimant totaling \$21.06. **NPFC denies \$21.06 for these items.**
 - d. There is an unidentified difference in the amount of \$3,893.50, therefore the **NPFC is denying \$3,893.50** as an unidentified difference.
2. Olympus Technical Services Inc. Invoice number 18303
 - a. Towing Vehicle Mileage was invoiced under (b) (6) on August 8 and August 12, 2023 however no vehicle identification was provided, **NPFC denies \$1,152.00 for these charges.**
 - b. Materials & Supplies were invoiced at \$45.56 and Olympus refunded the claimant but did not reduce the total invoiced amount by the 14% markup of \$6.38. **NPFC denies \$6.38 for this item.**

Overall Denied Costs = \$6,192.94⁴²

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, City of McCall request for uncompensated removal costs is approved in the amount of **\$93,554.82**.

mitigate the effects of the incident and were consistent with the National Contingency Plan, *see also* USEPA POLREP dated June 15, 2023.

⁴¹ Enclosure 3 to this determination provides a detailed analysis of these costs.

⁴² Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

This determination is a settlement offer,⁴³ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁴ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁵ 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: 3/12/24

Supervisor Action: *Offer Approved*

Supervisor's Comments:

⁴³ 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).

⁴⁴ 33 CFR § 136.115(b).

⁴⁵ 33 CFR § 136.115(b).