

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

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|--------------------------|-----------------------------------------|
| <b>Claim Number:</b>     | UCGPE21515-URC001                       |
| <b>Claimant:</b>         | City of Kenosha Public Works Department |
| <b>Type of Claimant:</b> | Local Government                        |
| <b>Type of Claim:</b>    | Removal Costs                           |
| <b>Claim Manager:</b>    | (b) (6)(b) (6)                          |
| <b>Amount Requested:</b> | \$22,817.10 <sup>2</sup>                |
| <b>Action Taken:</b>     | Offer in the amount of \$22,791.69      |

### **EXECUTIVE SUMMARY:**

On July 20, 2021, at 10:45 a.m. local time, the National Response Center (“NRC”) received notification that a discharge of an unknown material was released from a pipe described as a storm sewer outfall into Lake Michigan, a navigable waterway. The unknown material was later identified by the United States Coast Guard (USCG) Marine Safety Lab (MSL) as severely weathered light fuel oil mixed with lubricating oil.<sup>34</sup> A rainbow sheen was observed, 400 feet in length and 20 feet in width, at the Southport Marina in Kenosha, WI.<sup>5</sup> A City of Kenosha Parks Department employee discovered the discharge and the city monitored the outfall and maintained the storm sewer boom operations in conjunction with the United States Environmental Protection Agency (“USEPA”) Region V, United States Coast Guard (“USCG”) and Wisconsin Department of Natural Resources (“WDNR” or “SOSC”) guidance.<sup>6</sup>

The United States Coast Guard (“USCG”) Sector Lake Michigan Incident Management Division initially served as the Federal On Scene Coordinator (“FOSC”).<sup>7</sup> On September 10,

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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> Claimant provided additional documentation on August 25, 2025, and amended their sum certain to \$22,817.10 via file entitled OSLTF Claim Form Responses – City of Kenosha, P. 1 of 4.

<sup>3</sup> The United States Environmental Protection Agency (USEPA) sent spill samples to the United States Coast Guard (USCG) Marine Safety Laboratory (MSL) on May 12, 2022, for the purpose of oil spill product identification. On May 18, 2022, the MSL issued the laboratory analysis finding via report # 22-066 to the USEPA indicating that the product spilled to be severely weathered light fuel oil mixed with lubricating oil.

<sup>4</sup> National Response Center (“NRC”) Report #1311261 dated July 20, 2021.

<sup>5</sup> National Response Center (“NRC”) Report #1311261 dated July 20, 2021.

<sup>6</sup> City of Kenosha Original Claim Submission received on July 30, 2025, EXHIBIT A – City of Kenosha Public Works Engineering, section 3 Evidence of Spill & Necessary Actions, P. 4/10.

<sup>7</sup> Email from USCG to United States Environmental Protection Agency (USEPA) dated September 24, 2021, transferring the incident case to the USEPA as the Federal On Scene Coordinator (FOSC) for the incident.

2021, the FOSC duties were transferred to USEPA Region V.<sup>8</sup> No definitive source of the release to the sewer system has been identified to date, therefore no Responsible Party (“RP”) has been identified.<sup>9</sup>

On July 30, 2025, the City of Kenosha Public Works Department presented its uncompensated removal costs claim to the National Pollution Funds Center (“NPFC”) for \$26,798.74.<sup>10</sup> On August 25, 2025, the City of Kenosha Public Works Department amended its sum certain to \$22,817.10.<sup>11</sup>

The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$22,791.69 of the claimed costs are compensable and offers this amount as full and final compensation as detailed below.

### **I. 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, but 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.

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

#### ***Incident***

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<sup>8</sup> Email from USCG to United States Environmental Protection Agency (USEPA) dated September 24, 2021, transferring the incident case to the USEPA as the Federal On Scene Coordinator (FOSC) for the incident., with attachment entitled Statement of OSC Transfer dated September 10, 2021.

<sup>9</sup> United States Environmental Protection Agency (“USEPA”) POLREP #1 dated September 30, 2021.

<sup>10</sup> Original OSLTF Claim Form dated June 9, 2025, and received July 30, 2025.

<sup>11</sup> City of Kenosha provided additional information on August 25, 2025, and amended their sum certain via file entitled National Pollutions [sic] Fund Center – Revised Claim Form – City of Kenosha.

<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).

On July 20, 2021, at 10:45 a.m. local time, the National Response Center (“NRC”) received notification that a discharge of an unknown material<sup>15</sup> was released from a pipe described as a storm sewer outfall into Lake Michigan, a navigable waterway.<sup>16</sup> A rainbow sheen was observed, 400 feet in length and 20 feet in width, at the Southport Marina in Kenosha, WI.<sup>17</sup> A City of Kenosha Parks Department employee discovered the discharge and the city monitored the outfall and maintained the storm sewer boom operations in conjunction with the United States Environmental Protection Agency (“USEPA”) Region V, United States Coast Guard (“USCG”) and Wisconsin Department of Natural Resources (“WDNR” or “SOSC”) guidance.<sup>18</sup>

### ***Responsible Party***

No definitive source of the release to the sewer system has been identified to date; therefore, no Responsible Party (“RP”) has been identified.<sup>19</sup>

### ***Recovery Operations***

The City of Kenosha Department of Public Works hired contractors to deploy hard boom and absorbent boom. Clean Harbors Environmental Services deployed and maintained the initial boom.<sup>20</sup> The contractors strung hard boom along the outfall and placed absorbent boom inside the storm sewer and in the shallows of the outfall in Lake Michigan.<sup>21</sup> OSI Environmental supplied absorbent boom and labor for the initial spill response.<sup>22</sup>

The USCG Sector Lake Michigan Incident Management Division served as the initial Federal On Scene Coordinator (“FOSC”). On September 10, 2021, The United States Environmental Protection Agency Region V (“USEPA”) assumed FOSC duties and continued coordinating activities with the City of Kenosha.<sup>23</sup> The City of Kenosha continued with boom maintenance and absorbent boom to contain and prevent further releases to Lake Michigan.<sup>24</sup>

### **III. CLAIMANT AND RP:**

No definitive source of the release to the sewer system has been identified to date, therefore no Responsible Party (“RP”) has been identified.<sup>25</sup>

### **IV. CLAIMANT AND NPFC:**

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<sup>15</sup> The United States Environmental Protection Agency (USEPA) sent spill samples to the United States Coast Guard (USCG) Marine Safety Laboratory (MSL) on May 12, 2022, for the purpose of oil spill product identification. On May 18, 2022, the MSL issued the laboratory analysis finding via report # 22-066 to the USEPA indicating that the product spilled to be severely weathered light fuel oil mixed with lubricating oil.

<sup>16</sup> National Response Center (“NRC”) Report #1311261 dated July 20, 2021.

<sup>17</sup> National Response Center (“NRC”) Report #1311261 dated July 20, 2021.

<sup>18</sup> Original OSLTF Claim Form dated June 9, 2025, and received July 30, 2025, EXHIBIT A – City of Kenosha Public Works Engineering, section 3 Evidence of Spill & Necessary Actions, P. 4/10.

<sup>19</sup> United States Environmental Protection Agency (“USEPA”) POLREP #1 dated September 30, 2021.

<sup>20</sup> EXHIBIT B – Clean Harbors Invoices and Description of Work.

<sup>21</sup> EXHIBIT A – City of Kenosha Engineering Division – OSLTF Background Information.

<sup>22</sup> EXHIBIT C – OSI Invoices & Proof of Payment.

<sup>23</sup> Statement of OSC transfer email dated September 9, 2021, with attachment.

<sup>24</sup> USEPA POLREP #1 dated September 30, 2021.

<sup>25</sup> USEPA POLREP #1 dated September 30, 2021.

On July 30, 2025, the City of Kenosha Public Works Department presented its uncompensated removal costs claim submission to the National Pollution Funds Center (“NPFC”) for \$26,798.74.<sup>26</sup> Later, the City of Kenosha Public Works Department amended its sum certain to \$22,817.10.<sup>27</sup>

The claim submission included:

- An OSLTF Claim Form dated July 30, 2025<sup>28</sup>
- EXHIBIT A – City of Kenosha Engineering Division – OSLTF Background Information<sup>29</sup>
- EXHIBIT B – Clean Harbors Invoices and Description of Work<sup>30</sup>
- EXHIBIT C – OSI Invoices & Proof of Payment<sup>31</sup>
- EXHIBIT D – Uline Invoices & Proof of Payment<sup>32</sup>.

On August 11, 2025, the NPFC requested additional information from the claimant.<sup>33</sup> On August 25, 2025, the claimant responded to the NPFC providing additional information and re-submitted their claim with a revised sum certain in the amount of \$22,817.10.<sup>34</sup> <sup>35</sup> They also provided OSLTF Claim Form Inquiry Responses – CITY OF KENOSHA.<sup>36</sup>

#### **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.<sup>37</sup> An RP’s liability is strict, joint, and several.<sup>38</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>39</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

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<sup>26</sup> Original OSLTF Claim Form dated June 9, 2025, and received July 30, 2025.

<sup>27</sup> City of Kenosha provided additional information on August 25, 2025, and amended their sum certain via file entitled National Pollutions [sic] Fund Center – Revised Claim Form – City of Kenosha.

<sup>28</sup> Original OSLTF Claim Form dated June 9, 2025, and received July 30, 2025.

<sup>29</sup> EXHIBIT A – City of Kenosha Engineering Division – OSLTF Background Information.

<sup>30</sup> EXHIBIT B – Clean Harbors Invoices and Description of Work.

<sup>31</sup> EXHIBIT C – OSI Invoices & Proof of Payment.

<sup>32</sup> EXHIBIT D – Uline Invoices & Proof of Payment.

<sup>33</sup> Email to City of Kenosha requesting additional information August 11, 2025.

<sup>34</sup> Email from City of Kenosha with additional information and attachment August 25, 2025.

<sup>35</sup> National Pollutions Fund Center (sic) – REVISED Claim Form – City of Kenosha received August 25, 2025.

<sup>36</sup> OSLTF Claim Form Inquiry Responses received August 25, 2025.

<sup>37</sup> 33 U.S.C. § 2702(a).

<sup>38</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>39</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).

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>40</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>41</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>42</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>43</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>44</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;
- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan;<sup>45</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>46</sup>

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by the City of Kenosha Public Works Department 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>47</sup> and all approved costs were supported by adequate documentation which included invoices and daily field logs<sup>48</sup> which have been determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>49</sup>

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<sup>40</sup> 33 U.S.C. § 2701(31).

<sup>41</sup> 33 U.S.C. § 2701(30).

<sup>42</sup> *See generally*, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>43</sup> 33 CFR Part 136.

<sup>44</sup> 33 CFR 136.105.

<sup>45</sup> In conjunction with the FOSC WDNR oversaw the work as well.

<sup>46</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>47</sup> Original OSLTF Claim Form dated June 9, 2025, and received July 30, 2025, and amended claim documentation provided on August 25, 2025.

<sup>48</sup> City of Kenosha Original claim submission and supporting documentation provided on July 30, 2025, and August 25, 2025, respectively.

<sup>49</sup> *See*, USEPA POLREPS 1 thru 5 dated between the dates of September 30, 2021, through July 7, 2025, respectively.

The NPFC has determined that the amount of compensable removal costs is \$22,791.69 while \$25.41 is denied because Wisconsin law exempts sales to any county, city, village, town or school district from sales tax.<sup>50</sup>

The USCG Sector Lake Michigan Incident Management Division served as the initial Federal On Scene Coordinator (“FOSC”) and coordinated activities with the claimant.<sup>51</sup> On September 10, 2021, the FOSC duties were transferred to the United States Environmental Protection Agency Region V (“USEPA”) where activities continued to be coordinated with the claimant.<sup>52</sup>

## **VI. CONCLUSION:**

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC determined and finds as a matter of fact that a discharge of severely weathered light oil mixed with lubricating oil<sup>53</sup> was released from a pipe into Lake Michigan on July 30, 2021, in Kenosha, WI as supported by the USCG Sector Lake Michigan and the USEPA Region V.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the City of Kenosha Public Works Department’s request for uncompensated removal costs is approved in the amount of \$22,791.69.

This determination is a settlement offer,<sup>54</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>55</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>56</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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<sup>50</sup> See, Wisconsin Sales and Use Taxes; Managed Forest Lands; Other Taxes and Fees Chapter 77.54(9a) (b). See also, Enclosure 3 sheet 2, line 53. The spreadsheet provides a detailed analysis of the amounts approved and denied by the NPFC.

<sup>51</sup> Email from USCG SEC LAKE MICH to NPFC dated September 10, 2021.

<sup>52</sup> USEPA POLREP #1 dated September 30, 2021.

<sup>53</sup> The United States Environmental Protection Agency (USEPA) sent spill samples to the United States Coast Guard (USCG) Marine Safety Laboratory (MSL) on May 12, 2022, for the purpose of oil spill product identification. On May 18, 2022, the MSL issued the laboratory analysis finding via report # 22-066 to the USEPA indicating that the product spilled to be severely weathered light fuel oil mixed with lubricating oil.

<sup>54</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>55</sup> 33 CFR 136.115(b).

<sup>56</sup> 33 CFR 136.115(b).

(b) (6)

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

Date of Supervisor's review: November 13, 2025

Supervisor Action: *Offer Approved*