

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE24421-DRP003
Claimant:	Twin Fire & Rescue
Type of Claimant:	County Municipality
Type of Claim:	Public Services & Real or Personal Property Damage
Claim Manager:	(b) (6)
Amount Requested:	\$6,800.00
Action Taken:	Denial

EXECUTIVE SUMMARY:

The National Response Center (NRC) received notification that on June 3, 2024, at 4:00 a.m. local time, a tractor trailer truck overturned causing a release of approximately 3,000-5000 gallons of hot road tar onto Interstate 22 in Marion County, Alabama.² The release traveled through the highway medium and entered a drainage outfall discharging into Cooper Creek, a navigable waterway of the United States. The product migrated approximately 1.5 miles downstream of the initial discharge point. The United States Environmental Protection Agency Region IV (US EPA Region IV) served as the Federal On Scene Coordinator (FOSC) for this incident, working with Marion County Emergency Management Authority (MC EMA) and Alabama Department of Transportation (AL DOT) on the response.³

Twin Fire & Rescue (Claimant) submitted its uncompensated public service and real or personal property damage cost claim to the National Pollution Funds Center (NPFC) in the total amount of \$6,800.00 on July 29, 2024. Costs claimed for Public Services was \$3,100.00 and Real or Personal Property was \$3,700.00. Claimed costs were for claimant's personnel and equipment time and damaged equipment and Personal Protective Equipment (PPE) while rescuing the driver from the overturned truck. The costs were presented to the Responsible Party (RP) on September 11, 2024. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that the claim 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 (NRC) Report #1400695

³ U.S. EPA Region IV POLREP #1 dated June 4, 2024

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).⁴ 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.⁵ The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁶ 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

The NRC received notification that a tractor trailer truck overturned on June 3, 2024, at 4:00 a.m. local time, causing a release of approximately 3,000-5000 gallons of hot road tar.⁷ US EPA Region IV served as the FOSC for this incident and determined that at the point the product discharged from the truck, it posed a substantial threat of a discharge into navigable waters.⁸ The release traveled through the highway medium and entered a drainage outfall discharging into Cooper Creek, a navigable waterway of the United States. The product migrated approximately 1.5 miles downstream of the initial discharge point. The FOSC worked with MC EMA and AL DOT on the response, which concluded on November 29, 2024.⁹

Responsible Party

The US EPA Region IV identified B&M Paving, Inc. of Fulton MS as the Responsible Party (RP).¹⁰

⁴ 33 CFR Part 136.

⁵ 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)).

⁶ 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).

⁷ National Response Center (NRC) Report #1400695

⁸ Email from U.S. EPA Region IV FOSC to NPFC dated February 20, 2025.

⁹ U.S. EPA Region IV POLREP #5 dated February 13, 2025.

¹⁰ U.S. EPA Region IV POLREP #1 dated June 4, 2024.

On July 31, 2024, the NPFC notified the RP of the claim.¹¹ The RP responded by email requesting more clarifying information and itemization of the costs.¹² NPFC responded that there were no further details provided by the claimant at that time and it was understood through an voicemail left by the RP on August 2, 2024, they were pursuing a claim with their auto insurance policy for the costs associated with this incident.¹³

Recovery Operations

The EPA engaged an Emergency and Rapid Response Services Contractor to implement their removal action plan.¹⁴ On June 15, 2024, the contractor completed removal operations on approximately one mile of Cooper Creek. EPA POLREP 4 states that operations would continue with the EPA coordinating response actions with the ADEM, ALDOT, and Marion and Fayette County EMA.¹⁵ EPA POLREP 5 states that removal work consisted primarily of manual activities with limited to none mechanized activities. The response concluded on November 29, 2024.¹⁶

Twin Fire and Rescue's work on scene consisted of approximately three hours of rescue efforts extricating the driver from the overturned 18-wheel truck.¹⁷

III. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)¹⁸ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.¹⁹

Claimant did not submit its claim to the RP prior to submitting it to the NPFC. On September 11, 2024, Twin Fire & Rescue presented its costs to the RP,²⁰ B&M Paving, Inc. by invoice dated September 3, 2024, in the amount of \$6,715.00.²¹

IV. CLAIMANT AND NPFC:

Twin Fire & Rescue submitted its uncompensated public service and real or personal property damage cost claim to the NPFC in the amount of \$6,800.00 on July 29, 2024. The Claimant's submission consisted solely of the signed OSLTF claim form.²² OPA requires that a claim first be presented to the responsible party, as defined under 33 U.S.C. § 2713(a). If the

¹¹ Email from NPFC to the Responsible Party (RP) dated July 31, 2024, with notification letter attached.

¹² Email from RP to NPFC dated August 2, 2024, requesting more information and itemized costs.

¹³ Email from NPFC to RP dated August 5, 2024.

¹⁴ U.S. EPA Region IV POLREP #4 dated June 15, 2024

¹⁵ *Id.*

¹⁶ U.S. EPA Region IV POLREP #5 dated February 13, 2025.

¹⁷ Twin Fire & Rescue Report dated June 3, 2024, received via USPS on December 3, 2024.

¹⁸ 33 U.S.C. § 2701 *et seq.*

¹⁹ 33 CFR 136.103.

²⁰ Invoice dated September 3, 2024, received via USPS on December 3, 2024.

²¹ *Id.*

²² Original Claim Submission Optional OSLTF Claim Form dated July 8, 2024.

responsible party denies the claim or has not paid the claim within 90 days after the claim was presented to them, the claimant may then elect to initiate a court action against the responsible party or present a claim to the OSLTF. The Claimant presented the cost documentation to the RP on September 11, 2024. After 90 days passed with no settlement provided, the NPFC began adjudication of the claim. The invoice submitted to the RP totaled \$6,715.00.²³ NPFC requested additional information to support the difference in claimed costs to the RP and NPFC, along with requests for support of each cost via e-mail on December 3, 2024.²⁴ An additional email was sent on December 16, 2024, to remind the claimant of our requests for support of each cost.²⁵ To date, the claimant has not provided any additional information to support its claim.

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.²⁶ An RP's liability is strict, joint, and several.²⁷ 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."²⁸ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred damages where the responsible party has failed to do so. Real or Personal Property Damages are defined as "Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property."²⁹ The definition of Public Services is "Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State or political subdivision of a State."³⁰

The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³¹ 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.³²

Authorized claimants seeking reimbursement for increased public services must establish:

²³ Invoice dated September 3, 2024, received via USPS on December 3, 2024.

²⁴ E-mail from NPFC to claimant dated December 3, 2024

²⁵ E-mail from NPFC to claimant dated December 16, 2024.

²⁶ 33 U.S.C. § 2702(a).

²⁷ See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

²⁸ *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).

²⁹ 33 U.S.C. § 2702(b).

³⁰ *Id.*

³¹ 33 CFR Part 136.

³² 33 CFR 136.105.

- (a) The nature of the specific public services provided and the need for those services;
- (b) That the services occurred during or after removal activities;
- (c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and
- (d) The net cost for the services and the methods used to compute those costs.³³

The OPA defines public services costs as “.....the net costs of providing increased or additional public services during or after removal activities”.³⁴ The NPFC finds that Twin Fire & Rescue responded to this incident to provide emergency extrication of the driver from the 18-wheel truck that overturned on the highway.³⁵ The claimed \$3,100.00 of personnel and equipment time is not an increased or additional public service that was provided because of the oil spill response. The claimant did not establish that these services would not have otherwise been provided, or how they were over and above normal duties expected of this fire and rescue company.³⁶ Additionally, the claimant did not provide the method used to compute its claimed time.³⁷ The NPFC requested additional information to resolve both of these regulatory issues on December 3, 2024 and through a follow-up email on December 16, 2024 with no response as of the date of this determination. Therefore, this Public Service claimed cost is denied.

Before reimbursement can be authorized for real and personal property damages, the claimant must establish:

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;
- (c) The cost of repair or replacement; and
- (d) The value of the property both before and after injury occurred.³⁸

Twin Fire & Rescue also claimed \$3,700.00 in Real or Personal Property damages to firefighting apparatus’ that were allegedly oiled during the extrication of the truck driver. The claimant provided an invoice that showed the replacement cost of the items but failed to provide proof of ownership³⁹, that the property was injured or destroyed⁴⁰ or the value of the property both before and after the damage occurred.⁴¹ The NPFC requested additional information to resolve these regulatory issues on December 3, 2024 and through a follow-up email on December 16, 2024 with no response as of the date of this determination. Therefore, the claimed costs for Real and Personal Property damages are denied.

VI. CONCLUSION:

³³ 33 CFR 136.239

³⁴ 33 U.S.C. § 2702(b)(2)(F).

³⁵ Twin Fire and Rescue Report dated June 3, 2024, received via USPS on December 3, 2024.

³⁶ 33 CFR 136.239(c).

³⁷ 33 CFR 136.239(d).

³⁸ 33 CFR 136.215

³⁹ 33 CFR 136.215(a)(1).

⁴⁰ 33 CFR 136.215(a)(2).

⁴¹ 33 CFR 136.215(a)(4)

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 Twin Fire & Rescue responded to the emergency extrication of the driver from the overturned 18-wheel truck and these actions are not an increased or additional public service that was provided because of the oil spill response. Additionally, the claimant did not provide the evidence, information, and documentation deemed relevant and necessary to support the Real or Personal Property damage claim. Therefore, the claimed costs for \$3,100.00 in Public Services and \$3,700.00 in Real or Personal Property damages totaling \$6,800.00 are denied.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: 2/27/2024

Supervisor Action: *Denial Approved*