

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

<b>Claim Number:</b>	UCGPE24505-URC001
<b>Claimant:</b>	Mid-Michigan Railroad
<b>Type of Claimant:</b>	Private
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$19,732.50
<b>Action Taken:</b>	Offer in the amount of \$4,341.64

### **EXECUTIVE SUMMARY:**

On January 2, 2024, the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) Pollution Emergency Alerting System (“PEAS”) Hotline received a report from a member of the Richland Township Fire Department of an oil sheen in the county drain north of Doyle Road.<sup>2</sup> Later that same day, the Fire Department called the PEAS Hotline again to report the oil sheen was traced back to the C&J Bark Haulers facility in Hemlock, Michigan.<sup>3</sup> The Fire Department laid oil absorbent booms to help mitigate the oil from flowing downstream.<sup>4</sup>

On January 3, 2024, EGLE representatives performed an inspection at C & J Bark Haulers. During the inspection, they discovered a sump pump at the south end of the property.<sup>5</sup> A thick layer of oil was observed after the sump pump’s lid was removed.<sup>6</sup> The sump pump is connected to storm sewer basins which pump storm water from the back of the facility’s yard.<sup>7</sup> The sump pumps stormwater off-site to a ditch along the Mid-Michigan Railroad line, into a storm sewer system to the North Branch of McClellan Run.<sup>8</sup> McClellan Run is free flowing water that leads to Swan Creek, the Shiawassee River, and into the Saginaw River,<sup>9</sup> a navigable waterway of the

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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 with 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> U.S. EPA Region V Unilateral Administrative Order for Removal Activities, IV Findings of Fact #8, dated March 27, 2024.

<sup>3</sup> U.S. EPA Region V Unilateral Administrative Order for Removal Activities, IV Findings of Fact #9, dated March 27, 2024.

<sup>4</sup> *Id.*

<sup>5</sup> U.S. EPA Region V Unilateral Administrative Order for Removal Activities, IV Findings of Fact #10, dated March 27, 2024.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> U.S. EPA Region V POLREP #1, Section 1.1.2.2, dated January 6, 2024.

United States.<sup>10</sup> EGLE representatives also located a large puddle of oil below the outfall pipe from the sump pump.<sup>11</sup>

The United States Environmental Protection Agency (“EPA”) Region V is the Federal On-Scene Coordinator (“FOSC”) for the incident.<sup>12</sup> The FOSC opened Federal Project Number (“FPN”) UCGPE24505 in response to the incident.

On July 10, 2025, Mid-Michigan Railroad (“Claimant”) presented its removal costs claim submission to the National Pollution Funds Center (“NPFC”) for \$19,732.50.<sup>13</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,341.64 of these costs are compensable and offers this amount as full and final compensation of this claim.

### **I. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>14</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>15</sup> The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>16</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>10</sup> EPA Pollution Situation Report POLREP #2, Section 1.1.2 Site Description “According to a Waters of the United States (WOTUS) determination conducted by EPA Region 5 Water Division, McClellan Run is a navigable waterway”.

<sup>11</sup> U.S. EPA Region V Unilateral Administrative Order for Removal Activities, IV Findings of Fact #11, dated March 27, 2024.

<sup>12</sup> U.S. EPA Region V POLREP #1 dated January 6, 2024.

<sup>13</sup> Mid-Michigan Railroad original claim submission received July 10, 2025.

<sup>14</sup> 33 CFR Part 136.

<sup>15</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>16</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 January 3, 2024, EGLE representatives performed an inspection at C & J Bark Haulers. During the inspection, they discovered a sump pump at the south end of the property.<sup>17</sup> A thick layer of oil was observed after the sump pump's lid was removed.<sup>18</sup> The sump pump is connected to storm sewer basins which pump storm water from the back of the facility's yard.<sup>19</sup> The sump pumps stormwater off-site to a ditch along the Mid-Michigan Railroad line, into a storm sewer system to the North Branch of McClellan Run.<sup>20</sup> McClellan Run is free flowing water that flows to Swan Creek, the Shiawassee River, and into the Saginaw River.<sup>21</sup> EGLE representatives also located a large puddle of oil below the outfall pipe from the sump pump.<sup>22</sup>

### ***Responsible Party***

The spill in this case occurred at an onshore facility as defined by the Oil Pollution Act of 1990 ("OPA").<sup>23</sup> OPA defines the Responsible Party (RP) for a discharge from an onshore facility as "any person or entity owning or operating such facility."<sup>24</sup> U.S. EPA Region V identified C & J Bark Haulers, Inc. as the owner and operator of the facility at the time when the spill incident occurred.<sup>25</sup>

### ***Recovery Operations***

On January 4, 2024, EGLE contacted EPA for assistance.<sup>26</sup> The EPA opened FPN UCGPE24505, and mobilized an Emergency and Rapid Removal Service ("ERRS") contractor to document the flow path, sample oil found in the railroad ditch and the North Branch of McClellan Run, and remove oil from the waterways and remove the threat of release downstream.<sup>27</sup> Oil samples were sent to the USCG Marine Safety Lab, and the results confirmed the oil which was present in the railroad ditch was the same oil that discharged from the on-site storm sewer system on the RP's property.<sup>28</sup>

On January 5, 2024, a Notice of Federal Interest (NOFI) was issued to C&J Bark Haulers.<sup>29</sup> The RP granted access to their property for staging equipment but stated they would not perform

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<sup>17</sup> U.S. EPA Region V Unilateral Administrative Order for Removal Activities, IV Findings of Fact #10, dated March 27, 2024.

<sup>18</sup> *Id.*

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

<sup>20</sup> *Id.*

<sup>21</sup> U.S. EPA Region V POLREP #1, Section 1.1.2.2, dated January 6, 2024.

<sup>22</sup> U.S. EPA Region V Unilateral Administrative Order for Removal Activities, IV Findings of Fact #11, dated March 27, 2024.

<sup>23</sup> An "onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land." 33 U.S.C. § 2701(24).

<sup>24</sup> 33 U.S.C. § 2701(32)(b).

<sup>25</sup> *See*, U.S. EPA Notice of Federal Interest (NOFI) issued to C & J Bark Haulers, Inc. on January 5, 2024. *See also*, U.S. EPA Region V POLREP #1, Section 2.1.3, dated January 6, 2024.

<sup>26</sup> U.S. EPA Region V Unilateral Administrative Order for Removal Activities, IV Findings of Fact #14, dated March 27, 2024.

<sup>27</sup> U.S. EPA Region V POLREP #2, Section 2.1.1, dated January 26, 2024.

<sup>28</sup> U.S. EPA Region V POLREP #2, Section 2.1.2, paragraph January 11, 2024, dated January 26, 2024.

<sup>29</sup> U.S. EPA Notice of Federal Interest (NOFI) issued to C & J Bark Haulers, Inc. on January 5, 2024.

off-site response.<sup>30</sup> On January 6, 2024, the EPA issued a Notice of Federal Assumption (NOFA) to the RP.<sup>31</sup>

Mid-Michigan Railroad assisted the EPA with removal efforts. The Mid-Michigan rail line was the only way to access areas heavily affected by oil from C&J Bark Haulers.<sup>32</sup> Because the rail was active, the EPA couldn't safely work there until Mid-Michigan Railroad provided flaggers to temporarily close the line and assigned a Response Manager to coordinate with EPA.<sup>33</sup> Their efforts allowed EPA contractors to safely carry out cleanup operations.<sup>34</sup>

A total of 361,900 gallons of oil/water (4,625 gallons of pure oil), 1764.54 tons of impacted soil/sediment, and 10.1 tons of oil impacted debris was collected and sent off-site for disposal by EPA.<sup>35</sup>

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

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>36</sup> require all claims for removal costs must be presented to the responsible party before seeking compensation from the NPFC.<sup>37</sup>

The claimant satisfied its presentment requirements under OPA when it submitted its claim to C&J Bark Haulers Inc. on February 3, 2024.<sup>38</sup> Presentment to the RP is implicitly verified by the response from C & J Bark Haulers, Inc., through their attorney, where the RP denied payment of the claimant's costs.<sup>39</sup>

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

On July 10, 2025, Mid-Michigan Railroad presented its removal costs claim to the NPFC for \$19,732.50.<sup>40</sup> The claim included an Oil Spill Liability Trust Fund (OSLTF) optional claim form signed by Mid-Michigan Railroad, Mid-Michigan Railroad invoice, C&J Haulers denial, and GWI Environmental Spill Report.<sup>41</sup>

On August 22, 2025 and August 29, 2025, the NPFC requested additional information regarding employee names, pay rates, hours worked, a detailed explanation of crew flagging and manager's response, along with supporting notes, emails, or documentation from Mid-Michigan

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<sup>30</sup> U.S. EPA Region V POLREP #1, Section 2.1.3, dated January 6, 2024.

<sup>31</sup> U.S. EPA Notice of Federal Assumption (NOFA) issued to C & J Bark Haulers, Inc. on January 6, 2024.

<sup>32</sup> Email from FOSC to NPFC dated July 25, 2025.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> U.S. EPA Region V POLREP #4, Section 2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties, dated January 6, 2024.

<sup>36</sup> 33 U.S.C. § 2701 *et seq.*

<sup>37</sup> 33 CFR 136.103.

<sup>38</sup> Letter from (b) (6) to (b) (6) dated February 12, 2025, provided as part of claimant's initial claim submission to the NPFC.

<sup>39</sup> *Id.*

<sup>40</sup> Mid-Michigan Railroad Original claim submission received July 10, 2025.

<sup>41</sup> *Id.*

Railroad.<sup>42</sup> The NPFC stated personnel names with start and stop times for each work day would be sufficient to verify hours worked.<sup>43</sup> On August 28, 2025, the claimant provided a partial response to the request, indicating that the rate was set for flagging services rather than the hourly rate for employees. The claimant noted that flagging performed by a railroad employee is required under FRA regulations (49 CFR part 214 Subpart C), and that the hours included in the manager's response were *estimated*.<sup>44</sup> Mid-Michigan Railroad needed additional time to provide the remaining information associated with these requests. On September 5, 2025, Mid-Michigan Railroad requested a 30-day Tolling Agreement.<sup>45</sup> The same day, the NPFC provided a copy of the fully executed Tolling Agreement granting additional time for Mid-Michigan Railroad to produce all requested information.<sup>46</sup> On October 2, 2025, Mid-Michigan Railroad replied to the NPFC's request for additional information and provided employee's first name initial and last name, start and stop times, crew flagging rate factors, and 219A internal spill form, however, no pay rates were provided.<sup>47</sup>

On October 9, 2025, the NPFC requested additional information regarding overtime hours and manager hourly rate from Mid-Michigan Railroad.<sup>48</sup> On October 17, 2025, Mid-Michigan Railroad replied to the NPFC's request for additional information and provided an explanation of crew flagging and manager costs.<sup>49</sup>

On November 18, 2025, the NPFC requested additional information regarding the union agreement and a breakdown of the crew flagging rate, along with documentation to support the rate applied.<sup>50</sup> On December 15, 2025, Mid-Michigan Railroad replied by providing an updated breakdown of the crew flagging costs and a wage rate adjustment agreement, however, no supporting documentation was provided for the Fringe, Vehicle/Fuel or Admin rates applied.<sup>51</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>52</sup> An RP's liability is strict, joint, and several.<sup>53</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

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<sup>42</sup> Emails from NPFC to Mid-Michigan Railroad dated August 22, 2025 and August 29, 2025.

<sup>43</sup> Email from NPFC to Mid-Michigan Railroad dated August 29, 2025.

<sup>44</sup> Email from Mid-Michigan Railroad to NPFC dated August 28, 2025.

<sup>45</sup> Email from Mid-Michigan Railroad to NPFC dated September 5, 2025.

<sup>46</sup> Email from NPFC to Mid-Michigan Railroad dated September 5, 2025, with executed Tolling Agreement attached.

<sup>47</sup> Email from Mid-Michigan Railroad to NPFC dated October 2, 2025.

<sup>48</sup> Email from NPFC to Mid-Michigan Railroad dated October 9, 2025.

<sup>49</sup> Email from Mid-Michigan Railroad to NPFC dated October 17, 2025.

<sup>50</sup> Email from NPFC to Mid-Michigan Railroad dated November 18, 2025.

<sup>51</sup> See, Email from Mid-Michigan Railroad to NPFC dated December 15, 2025. See also, HESR-BMWED Rate Adjustment signed January 25, 2023.

<sup>52</sup> 33 U.S.C. § 2702(a).

<sup>53</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

favoring those responsible for the spills.”<sup>54</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>55</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>56</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>57</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>58</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>59</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>60</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>61</sup>

The NPFC analyzed each of these factors and determined that the some of the costs incurred and submitted herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified and were supported by adequate documentation which included invoices and/or proof of payment where applicable and have been determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>62</sup>

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$4,341.64 while \$15,390.86 is denied based on the following categories

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<sup>54</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>55</sup> 33 U.S.C. § 2701(31).

<sup>56</sup> 33 U.S.C. § 2701(30).

<sup>57</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>58</sup> 33 CFR Part 136.

<sup>59</sup> 33 CFR 136.105.

<sup>60</sup> Email from FOSC to NPFC dated July 25, 2025.

<sup>61</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>62</sup> Email from FOSC to NPFC dated July 25, 2025.

and detailed in the NPFC Summary of Costs (Enclosure 3).

Crew Flagging Costs:

Mid-Michigan Railroad invoiced crew flagging costs at a standard rate of \$105.00 per hour for various dates between January 5, 2024 through February 6, 2024.<sup>63</sup> The NPFC requested a break down of how the \$105.00 rate was determined.<sup>64</sup> On October 2, 2025, Mid-Michigan Railroad responded, providing a spill report, and stated the rate was based on factors such as the type of railroad, the current union contract, billing structures, track location complexity, and the volume of freight traffic at the remediation site.<sup>65</sup> On December 15, 2025, the claimant submitted an updated cost breakdown, which differed from those factors provided on October 2, 2025.<sup>66</sup> The breakdown chart submitted by the claimant is shown below:

	Regular
<b>Trackman</b>	
Wages	\$27.0
Fringe 70%	\$18.9
Vehicle/Fuel	\$41.6
Admin 20%	\$17.5
<b>Total</b>	<b>\$105.00</b>

Mid-Michigan Railroad provided a wage rate adjustment that amended the contract between Huron and Eastern Railroad, Inc. (“HESR”) and the Brotherhood of Maintenance of Way Employees Division (“BMWED”).<sup>67</sup> The claimant determined the *average hourly wage* for each employee position based on this rate adjustment amendment.<sup>68</sup> The average employee wage is reflected in the chart provided by the claimant above at \$27.00 per hour. Mid-Michigan Railroad provided the employees’ first initials and last names but did not include their position titles, which would have allowed the NPFC to verify the wage of each employee.<sup>69</sup> As a result, the NPFC was unable to determine the actual wage of each employee against the HESR-BMWED Rate Adjustment. Therefore, the NPFC finds it reasonable to approve each employee’s time at the lowest position (Track Laborer) at \$25.39 per hour and deny the remaining \$1.61 per hour.<sup>70</sup> Additionally, other factors such as Fringe 70%, Vehicle/Fuel, and Admin 20% noted in the chart above are denied in total due to the fact that no documentation was provided to support these costs.<sup>71</sup> Lastly, \$420.00 in crew flagging costs is denied due to an unidentified difference.<sup>72</sup>

<sup>63</sup> Mid-Michigan Railroad Original claim submission received July 10, 2025, pages 7-9 of 13.

<sup>64</sup> Emails from NPFC to Mid-Michigan Railroad dated August 29, 2025, October 9, 2025, and November 18, 2025, requesting additional information.

<sup>65</sup> Email from Mid-Michigan Railroad to NPFC dated October 2, 2025.

<sup>66</sup> Email from Mid-Michigan Railroad to NPFC dated December 15, 2025.

<sup>67</sup> See, HESR-BMWED Rate Adjustment signed January 25, 2023. See also, Email from Mid-Michigan Railroad to NPFC dated October 17, 2025, states Mid-Michigan Railroad employees are under the HESR-BMWED union.

<sup>68</sup> Email from Mid-Michigan Railroad to NPFC dated December 15, 2025.

<sup>69</sup> Email from Mid-Michigan Railroad to NPFC dated October 2, 2025.

<sup>70</sup> HESR-BMWED Rate Adjustment signed January 25, 2023.

<sup>71</sup> See, Email from NPFC to Mid-Michigan Railroad dated November 18, 2025. See also, Email from Mid-Michigan Railroad to NPFC dated December 15, 2025.

<sup>72</sup> Encl (3) Summary of Costs spreadsheet, line 16.

**Total denied for crew flagging: \$14,190.86**

Manager Response & Paperwork Costs:

Mid-Michigan Railroad invoiced Manager Response & Paperwork at \$50.00 per hour for 24 hours.<sup>73</sup> The manager's hours and rate during the project were not tracked and were only estimated.<sup>74</sup> The supporting documentation did not substantiate the hours or rate.<sup>75</sup> On October 17, 2025, Mid-Michigan Railroad indicated that the \$1,200.00 charge can be removed from the total claim amount if the submitted information is deemed unacceptable.<sup>76</sup> Accordingly, the NPFC denies \$1,200.00 in Manager Response & Paperwork costs.<sup>77</sup>

**Total denied for Manager Response & Paperwork Costs: \$1,200.00**

**Overall Denied Costs: \$15,390.86**

**VI. 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 an OPA oil spill in McClellan Run, a navigable water of the United States.<sup>78</sup> Additionally, the FOSC determined the response actions performed by Mid-Michigan Railroad were consistent with the NCP and necessary for safe removal operations.<sup>79</sup>

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Mid-Michigan Railroad's request for uncompensated removal costs is approved in the amount of **\$4,341.64**.

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<sup>73</sup> Mid-Michigan Railroad Original claim submission received July 10, 2025, pages 7-9 of 13.

<sup>74</sup> Email from Mid-Michigan Railroad to NPFC dated October 17, 2025.

<sup>75</sup> *Id.*

<sup>76</sup> Email from Mid-Michigan Railroad to NPFC dated October 17, 2025.

<sup>77</sup> Encl (3) Summary of Costs spreadsheet, line 19.

<sup>78</sup> EPA Pollution Situation Report POLREP #2 – HEMLOCK MI OIL SPILL SITE.pdf Section 1.1.2 Site Description "According to a Waters of the United States (WOTUS) determination conducted by EPA Region 5 Water Division, McClellan Run is a navigable waterway".

<sup>79</sup> Email from FOSC to NPFC dated July 25, 2025.

This determination is a settlement offer,<sup>80</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>81</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>82</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<p>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review: 1/13/2026</p> <p>Supervisor Action: <i>Offer Approved</i></p>
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<sup>80</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>81</sup> 33 CFR 136.115(b).

<sup>82</sup> 33 CFR 136.115(b).